



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

**RESEARCH AND LIBRARY DIVISION**

---

*Article 1*

*A State's "jurisdiction" for the acts of its  
diplomatic and consular agents*



Publishers or organisations wishing to reproduce this report or part of it (or a translation thereof) in print or online are asked to contact [publishing@echr.coe.int](mailto:publishing@echr.coe.int) for further instructions.

This document has been prepared by the Research and Library division, Directorate of the Jurisconsult and does not bind the Court.

The manuscript for this text was finalised in February 2019 and may be subject to editorial revision.

The case-law research reports are available for downloading at [www.echr.coe.int](http://www.echr.coe.int) (Case-law / Case-law analysis / Case-law research reports). For publication updates please follow the Court's Twitter account at <https://twitter.com/echrpublication>

© Council of Europe/European Court of Human Rights, 2019

**STUDY OF THE ECHR CASE-LAW**  
**ARTICLE 1**

**SUMMARY**

There are very few cases in which the former Commission dealt specifically with the question of the State's "*jurisdiction*" in respect of the acts of its diplomatic and consular officials. The universally applied principle is that the acts of a State's officials, including diplomatic and consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. Thus, the respondent State's "*jurisdiction*" has been recognised in two contexts: when the manner in which diplomatic or consular agents defended the interests of their country's nationals was called into question, or when the physical control exercised over the applicant's person or property was called into question.

In immigration matters, there are two categories in the Court's case-law, depending on which article of the Convention is at stake. With regard to the refusal of an entry visa in the context of family reunion requested under Article 8, the State's jurisdiction has always been tacitly presumed and has never been challenged. In contrast, with regard to complaints under Articles 2 and 3, in a single and so far isolated case (*Abdul Wahab Khan v. the United Kingdom*), the Court has concluded that the respondent State did not have jurisdiction on account of the fact that the applicant was not physically present on that State's territory.

## TABLE OF CONTENTS

<b>INTRODUCTION.....</b>	<b>5</b>
<b>THE CASE-LAW OF THE CONVENTION INSTITUTIONS .....</b>	<b>5</b>
<b>A. General remarks .....</b>	<b>5</b>
<b>B. Affirmation of the general principle of the existence of jurisdiction .....</b>	<b>7</b>
<b>C. Direct exercise of the diplomatic or consular agents' authority over the applicants.....</b>	<b>7</b>
(1) Acts in respect of a national of the sending State who is in the territory of the receiving State .....	8
(2) Acts in respect of a national of the sending State resident in that same State .....	10
(3) Acts in respect of a national of a third State .....	11
<b>D. The acts of diplomatic or consular staff in immigration matters .....</b>	<b>12</b>
(1) Article 8: private and family life .....	12
(2) Articles 2 and 3: right of asylum .....	14
(3) Can the concept of <i>non-refoulement</i> be applied? .....	16
<b>CONCLUSIONS.....</b>	<b>19</b>

## INTRODUCTION

1. Where a diplomatic or consular representation (mission) of a State Party to the Convention, accredited in another State, issues or refuses to issue an entry visa to an alien, does he or she fall within the "*jurisdiction*" of that Contracting State within the meaning of Article 1 of the Convention? – this is the specific subject of the present research report. In this connection, it must be borne in mind that the notion of "*jurisdiction*" within the meaning of the Convention – and, generally speaking, within the meaning of international human-rights law – may not be identical to the same concept as used in general international law.

## THE CASE-LAW OF THE CONVENTION INSTITUTIONS

### *A. General remarks*

2. It is important to remember that, historically, the text prepared by the Committee on Legal and Administrative Questions of the Consultative Assembly of the Council of Europe provided, in what would become Article 1 of the Convention, that the "*member States shall undertake to ensure to all persons residing within their territories the rights...*". The Expert Intergovernmental Committee which considered the Consultative Assembly's draft decided to replace the reference to "*all persons residing within their territories*" with a reference to persons "*within their jurisdiction*". The reasons were noted in the following extract from the *Collected edition of the "Travaux Préparatoires" of the European Convention on Human Rights*:

"The Assembly draft had extended the benefits of the Convention to 'all persons residing within the territories of the signatory States'. It seemed to the Committee that the term 'residing' might be considered too restrictive. It was felt that there were good grounds for extending the benefits of the Convention to all persons in the territories of a signatory States, even those who could not be considered as residing there in the legal sense of the word. This word, moreover, has not the same meaning in all national laws. The Committee therefore replaced the term 'residing' by the words 'within their jurisdiction' which are also contained in Article 2 of the Draft Covenant of the United Nations Commission." (vol. III, p. 260)

3. The adoption of Article 1 of the Convention was preceded by a comment made by the Belgian representative on 25 August 1950 during the plenary sitting of the Consultative Assembly, to the effect that:

"... henceforth the right of protection by our States, by virtue of a formal clause of the Convention, may be exercised with full force, and without any differentiation or

distinction, in favour of individuals of whatever nationality, who on the territory of any one of our States, may have had reason to complain that [their] rights have been violated.”

4. It is also necessary to reiterate that the question of whether the acts which form the basis of the applicant's complaints fall within the *jurisdiction* of the respondent State and whether that State is actually *responsible* for those acts are two quite separate issues, the second belonging rather to the merits phase of the case (see [Loizidou v. Turkey \(preliminary objections\)](#), 23 March 1995, §§ 61 and 64, Series A no. 310). It is also necessary to distinguish the question of *jurisdiction* under Article 1 of the Convention from the issue of whether the alleged violation can be *imputed* to the acts or omissions of the respondent State, this latter point being examined under the heading of the application's compatibility *ratione personae* with the provisions of the Convention (see [Loizidou v. Turkey \(merits\)](#), 18 December 1996, § 52, *Reports of Judgments and Decisions* 1996-VI). The Court usually considers the notions of imputability and responsibility as going together, the State only engaging its responsibility under the Convention where an alleged violation could be imputed to it. In certain specific cases, however, the Court is careful to distinguish between these two concepts and to examine them separately (see [Assanidze v. Georgia](#) [GC], no. 71503/01, § 144, ECHR 2004-II).

5. Further, with regard to “jurisdiction” within the meaning of Article 1 of the Convention, the Court's general attitude is always the same, namely:

- jurisdiction is *primarily territorial* and is normally exercised throughout the national territory (see *Assanidze*, cited above, § 139);
- extraterritorial jurisdiction, that is, based on acts which were performed or produced their effects outside the territory of the State in question, is an exception (see [Catan and Others v. the Republic of Moldova and Russia](#) [GC], nos. 43370/04 and 2 Others, § 104, ECHR 2012, and the case-law cited therein, and [Chagos Islanders v. the United Kingdom](#) (dec.), no. 35622/04, §§ 70-71, 11 December 2012). In order to establish it, the question whether exceptional circumstances exist which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the particular facts in each case (*ibid.*, § 105; [Al-Skeini and Others v. the United Kingdom](#) [GC], no. 55721/07, § 132, ECHR 2011).

6. The ground of a State's jurisdiction outside its borders can be constituted essentially in two ways:

- (a) on account of control that is effectively exercised over the foreign territory in question (*ratione loci*);
- (b) on account of authority (or control) that is effectively exercised over the applicant's person (*ratione personae*). In the case of a

decision taken or an act performed by a diplomatic or consular representation abroad, it is this second hypothesis which is engaged.

### ***B. Affirmation of the general principle of the existence of jurisdiction***

7. In its decision in the case of *Cyprus v. Turkey* (nos. 6780/74 and 6950/75, Commission decision of 26 May 1975, Decision and Report 2, pp. 138 and 149-150), which did not involve any act by a diplomatic or consular representative, the Commission held:

“8. In Article 1 of the Convention, the High Contracting Parties undertake to secure the rights and freedoms defined in Section 1 to everyone ‘within their jurisdiction’ (in the French text : ‘*relevant de leur juridiction*’). The Commission finds that this term is not, as submitted by the respondent Government, equivalent to or limited to the national territory of the High Contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting Parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad.

...

The Commission further observes that nationals of a State, including registered ships and aircrafts, are partly within its jurisdiction wherever they may be, and that authorised agents of a State, including diplomatic or consular agents and armed forces, not only remain under its jurisdiction when abroad but bring any other persons or property ‘within the jurisdiction’ of that State, to the extent that they exercise authority over such persons or property. Insofar as, by their acts or omissions, they affect such persons or property, the responsibility of the State is engaged.”

8. In the case of *Banković and Others v. Belgium and Others* (dec.) [GC] (no. 52207/99, ECHR 2001-XII), which concerned the bombing of a building in Belgrade by NATO forces in 1999, the Court also noted:

“73. Additionally, the Court notes that other recognised instances of the extra-territorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have recognised the extra-territorial exercise of jurisdiction by the relevant State.”

### ***C. Direct exercise of the diplomatic or consular agents’ authority over the applicants***

9. With regard to specific cases in which the acts of diplomatic or consular agents were in fact called into question under Article 1 of the Convention, there are very few examples in the case-law. Three scenarios are possible.

(1) Acts in respect of a national of the sending State who is in the territory of the receiving State

10. **Firstly**, a national of a Contracting State residing abroad may complain about the actions or omissions of the embassy or consulate of his own country, for example, where he or she alleges that they are failing to defend his or her legitimate interests sufficiently, with the result that one or more rights under the Convention are breached. In the case of [X. v. Germany](#) (no. 1611/62, Commission decision of 25 September 1965), the applicant, a German national who did not consider himself as such (since he belonged to the category of Sudeten German, *Sudetendeutsche*) and was resident in Morocco, complained about a series of acts allegedly committed by the German consular officials in that country, damaging his reputation and that of his wife, and having ultimately, in his view, led to his expulsion from Moroccan territory by the authorities of that State. Before the Commission, he relied on Article 13 of the Convention and Article 1 of Protocol No. 1. After partly reclassifying the applicant's complaints under Articles 3 and 8 of the Convention, the Commission declared the application inadmissible, noting as follows:

"[In] certain respects, the nationals of a contracting State are within its 'jurisdiction' even when domiciled or resident abroad; [in] particular, the diplomatic and consular representatives of their country of origin perform certain duties with regard to them which may, in certain circumstances, make that country liable in respect of the Convention; ..."

11. In the case of [S. v. Germany](#) (no. 10686/83, Commission decision of 5 October 1984, D.R. 40, p. 291), the applicant, a German national, was sentenced to a prison term and fined for homosexual offences and passport forgery, then expelled from the country. After his return to Germany, he lodged a civil action against that State on the grounds that during his arrest and trial in Morocco he had not been assisted by the German diplomatic services. His claim was dismissed on the grounds that the German diplomats had not neglected any of their professional obligations and that there was no causal link between the conduct of the German diplomats and the applicant's conviction. The Commission found:

"There has been no direct interference with the invoked rights by the German authorities. The applicant was detained and tried by the Moroccan authorities.

The applicant maintains, however, that the Federal Republic of Germany was obliged to take proper measures to uphold the Convention rights of its nationals. He suggests that action could and should have been taken by such means as diplomatic assistance and participation of an observer at his trial. He further submits that the failure of the German diplomatic service to take action by such means renders it responsible under the Convention for the interference with his Convention rights by Moroccan authorities and courts.

The Commission first notes that the subject of the applicant's complaint is not his treatment in a Moroccan prison and the alleged unfairness of his trial in Morocco but the alleged failure of the German diplomatic authorities to take adequate action. The applicant's complaints are thus exclusively against the Federal Republic of Germany. The Commission therefore has to consider whether the Convention imposed any obligation on the diplomatic authorities of the Federal Republic of Germany to take action such as that contended by the applicant. The applicant's complaints can only succeed if the Convention guarantees a right to have such action taken.

The Commission first recalls that it has previously held that a High Contracting Party may, in certain circumstances, be liable for the acts or omissions of its authorities occurring outside its territory, or having consequences outside its territory...

However the Commission has already decided in a previous case that no right to diplomatic intervention *vis-à-vis* a third State, which by action within its own territory has interfered with Convention rights of a person 'within the jurisdiction' of a Contracting State, can be inferred from the obligation imposed on the Contracting States by Article I of the Convention to 'secure' that person's rights.

...

The Commission notes, finally, that the circumstances of the present case are entirely different from those of expulsion cases in which it has held that, in exceptional circumstances, expulsion or extradition may violate the Convention. Such expulsion or extradition is in itself clearly an act of 'jurisdiction' on the part of the Contracting State concerned, for which it is responsible under the Convention.

It follows that the applicant had no right under the Convention to diplomatic and other action in respect of criminal proceedings on charges of offences instituted before a Moroccan criminal court. The application is accordingly incompatible with the Convention *ratione materiae* and must be considered inadmissible [under] the Convention ..."<sup>1</sup>

---

<sup>1</sup>. The Commission also held that the Convention does not guarantee, as such, any right to diplomatic protection (see *De Lukats v. Sweden*, no. 12920/87, Commission decision of 13 December 1988).

12. In a third case, *Gill and Malone v. the Netherlands and the United Kingdom* (no. 24001/94, Commission decision of 11 April 1996), the applicants, an unmarried Irish-British couple residing in the Netherlands, complained about the alleged inactivity of the British Vice-Consul in Amsterdam after the authorities of the United Kingdom refused to recognise the British nationality of their minor daughter (which was only possible by way of legitimation which, in the circumstances of the case, was impossible under Dutch international private law). After reiterating the principle that the acts of consular agents exercising their authority in respect of a person brought that person under the jurisdiction of the State that they represent, the Commission noted that in the given case, the Vice-Consul had merely informed the applicants of the content and scope of the applicable British law. The situation complained of by the applicants resulted entirely from the acts of the Dutch authorities, which had applied British law in line with the rules governing a conflict of laws. The responsibility of the United Kingdom was therefore not directly engaged in this respect.

(2) Acts in respect of a national of the sending State resident in that same State

13. The **second** scenario arises where the applicant is physically present in his or her own State, but where acts or omissions of that State's diplomatic and consular agents performed abroad concern him or her directly and affect his or her rights and legitimate interests. In such a situation, the individual concerned comes within his or her State's jurisdiction. In the case of *X. v. the United Kingdom* (no. 7547/76, Commission decision of 15 December 1977, D.R. 12, p. 75), the applicant was a British national and was living in the United Kingdom. She married a Jordanian citizen, by whom she had a daughter. The father subsequently took the girl to his family in Jordan and left her there. The applicant successfully applied to an English court for custody of her daughter and obtained a committal order requiring the father to bring her back to the United Kingdom. The applicant got in touch with the British Consulate in Amman, asking it to secure, on her behalf, custody of her daughter from the Jordanian courts. The consulate reported to her on the child's wellbeing, provided her with a list of lawyers practising in Jordan and registered her daughter in her passport, but did not undertake any other steps in her favour. Before the Commission, the applicant complained about the alleged inaction of the British Consul in Jordan, relying in this connection on Articles 8 and 13 of the Convention. The Commission stated:

“The applicant's complaints are directed mainly against the British consular authorities in Jordan. It is clear, in this respect, from the constant jurisprudence of the Commission that authorised agents of a State, including diplomatic or consular agents

bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. Insofar as they affect such persons or property by their acts or omissions, the responsibility of the State is engaged... Therefore, in the present case the Commission is satisfied that even though the alleged failure of the consular authorities to do all in their power to help the applicant occurred outside the territory of the United Kingdom, it was still 'within the jurisdiction' within the meaning of Article I of the Convention."

(3) Acts in respect of a national of a third State

14. A **third** scenario is that in which the applicant complains about the actions of a diplomatic or consular agent from a State of which he or she is not a national, to the extent that that agent effectively exercises his or her authority over that person or his/her property and takes a decision which affects them directly. In the case of [\*M. v. Denmark\*](#) (no. 17392/90, Commission decision of 14 October 1992, D.R. no. 73, p. 193), the applicant, his wife and a group of other citizens of the former DDR entered the building of the Danish Embassy in East Berlin, demanding the possibility to leave for West Germany. The Danish Ambassador then requested help from the DDR police, who arrested the applicant and the other members of the group; they were subsequently convicted and given suspended prison sentences by the East German courts. In the meantime, the Danish authorities held that the ambassador's actions had been contrary to the practice applicable in such situations, but did not discipline him. In particular, the applicant alleged that there had been a breach of Article 5 of the Convention by Denmark. As in the cases cited above, the Commission began by pointing out:

"The Commission notes that these complaints are directed mainly against Danish diplomatic authorities in the former DDR. It is clear, in this respect, from the constant jurisprudence of the Commission that authorised agents of a State, including diplomatic or consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. In so far as they affect such persons or property by their acts or omissions, the responsibility of the State is engaged ... Therefore, in the present case the Commission is satisfied that the acts of the Danish ambassador complained of affected persons within the jurisdiction of the Danish authorities within the meaning of Article 1."

15. Nonetheless, the Commission declared the application inadmissible as manifestly ill-founded, on the grounds that the treatment complained of was essentially imputable to the authorities of the former DDR, and not to the Danish authorities:

"As regards the complaint submitted by the applicant under Article 5 of the Convention, the Commission recalls that the applicant and his friends entered the Danish Embassy in the former DDR at approximately 11.15 hours on 9 September 1988 and that on several occasions they were asked to leave. At 2.30 hours the following morning they left the Embassy when DDR police officers requested them to do so and they were immediately arrested by the DDR police. The applicant was

subsequently tried and convicted by a DDR court and spent a total of 33 days in detention. In these circumstances the Commission finds that the applicant was not deprived of his liberty or security of person ... by an act of the Danish diplomatic authorities but by an act of the DDR authorities. The Commission recalls, however, that an act or omission of a Party to the Convention may exceptionally engage the responsibility of that State for acts of a State not party to the Convention where the person in question had suffered or risks suffering a flagrant denial of the guarantees and rights secured to him under the Convention ... The Commission finds, however, that what happened to the applicant at the hands of the DDR authorities cannot in the circumstances be considered to be so exceptional as to engage the responsibility of Denmark."

***D. The acts of diplomatic or consular staff in immigration matters***

16. The fact of authorising the entry of aliens into the accrediting State by issuing them with visas or residence permits is a specific category of acts performed by diplomatic and consular agents. Most of the applications examined by the Court in this area concern family reunion and were submitted under Article 8 of the Convention, on the right to respect for private and family life. In addition, a refusal to issue an entry visa may, at least in theory, pose a problem under Articles 2 and 3 of the Convention - for example, when the person concerned wishes to travel to the accrediting State to seek asylum therein because of the risks that he or she would allegedly be exposed to in the receiving State or another country.

(1) Article 8: private and family life

17. With regard to the right to respect for private and family life as guaranteed by Article 8 of the Convention, the Court has consistently taken the following approach:

- (a) the Convention does not guarantee as such the right of an alien to enter or to reside in a particular country;
- (b) in addition, the States have the right, as a matter of well-established international law, to control the entry, residence and expulsion of aliens;
- (c) however, the decisions taken by States in the immigration sphere can in some cases amount to interference with the right to respect for private and family life secured by Article 8 of the Convention, in particular where the persons concerned possess strong personal or family ties in the host country which are liable to be seriously affected by an expulsion order (see, among many other authorities, [\*Moustaquim v. Belgium\*](#), §§ 36 and 43, 18 February 1991, Series A no. 193; [\*Beldjoudi v. France\*](#), 26 March 1992, § 74, Series A

no. 234-A; *Chahal v. the United Kingdom*, § 73, 15 November 1996, Reports 1996-V; *El Boujaïdi v. France*, § 39, 26 September 1997, Reports 1997-VI; *Dalia v. France*, 19 February 1998, § 52, Reports 1998-I; *Baghli v. France*, no. 34374/97, § 45, ECHR 1999-VIII; *Boultif v. Switzerland*, no. 54273/00, § 39, ECHR 2001-IX; *Amrollahi v. Denmark*, no. 56811/00, § 33, 11 July 2002; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 81, ECHR 2006-XI; *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 100, 3 October 2014).

18. In cases raised under Article 8 in which immigration decisions had been taken by diplomatic or consular agents while the applicants themselves (or, respectively, their family members) were abroad, the Convention organs have never challenged the jurisdiction of the respondent State. It has always been tacitly assumed. Thus, for example, in *Abdulaziz, Cabales and Balkandali v. the United Kingdom* (28 May 1985, Series A no. 94, §§ 44-49), the husband of the second applicant (Ms Cabales) was in the Philippines and wished to travel to join her in the United Kingdom. He had made representations to the British Embassy in Manila, but in this case the visa had been refused by the Home Secretary in London, the Embassy acting only as an intermediary.

19. In two judgments of 10 July 2014, *Mugenzi v. France* (no. 52701/09) and *Tanda-Muzinga v. France* (no. 2260/10), the Court held that there had been a violation of Article 8 on account of the prolonged refusal to grant family reunion to two male refugees (respectively Rwandan and Cameroonian). The men, who were resident in France, complained that they had been unable to bring their wives and children to that country for extended periods. The members of the applicants' families were in Kenya and Cameroon and had made representations to the relevant French embassies and consulates. In another case, *Ly v. France* (dec.) (no. 23851/10, 16 June 2014), a Mauritanian national who was legally residing in France complained about the refusal by the French embassy in Nouakchott to issue his daughter with a long-term visa. In all these cases, the final decisions on reunification were taken by the services of the Ministry of Foreign Affairs in France.

20. In the case of *Nessa and Others v. Finland* (dec.) (no. 31862/02, 6 May 2003), the second and third applicants (a mother and her minor daughter living in Bangladesh) complained about the refusal by the Finnish embassy in Bangladesh to issue them with visas in order to join the first applicant (their mother and grandmother respectively). It must be emphasised that, in contrast to the above-mentioned cases, the embassy took this decision as a principal party, not only as an intermediary for the central authorities in the sending State, especially as there was no right of appeal under Finnish law against a refusal to issue a visa (whereas an appeal was possible against a refusal to issue a residence permit).

21. Similarly, in the case of *Schembri v. Malta* (dec.) (no. 66297/13, 19 September 2017) the applicant, a Maltese national, travelled to Italy, where she married a Pakistani national, thirty years her junior, who had previously spent some time in Malta as an asylum seeker. The couple then applied to the Maltese embassy in Rome for an entry visa for the husband. Taking the view that the marriage was one of convenience, the embassy dismissed the request. Here too, the embassy took that decision as a principal party and not merely as an intermediary for the ministry in Malta, especially since the law did not provide for any hierarchical or administrative appeal against such refusals to grant a visa application (see §§ 9-13 of the decision).

22. The case of *Savoia and Bounegru v. Italy* (dec.) (no. 8407/05, 11 July 2006) is also noteworthy. Here, the applicants alleged that the refusal by the Italian embassy in Moldova to issue the second applicant with a visa for the purposes of marriage had been in breach of Article 12 of the Convention.

23. In none of the above-mentioned cases was the existence of the "jurisdiction" of the State whose embassy or consulate had taken the decision to reject the applicants' visa applications – whether for the applicant himself/herself or for a member of his or her family – called into question. **It is clear that in some cases the embassy or consulate had made the decision itself; in others, they had served only as a focal point, the decision being taken by the relevant ministerial departments in the sending State. However, there does not seem to be any difference between the two situations [in the case-law].**

(2) Articles 2 and 3: right of asylum

24. The situation is different where an applicant wishes to travel to a country in which he or she is not physically present and with which he or she does not have sufficiently strong ties, in order to avoid treatment that could potentially be contrary to Articles 2 and 3 of the Convention. Given that he or she is not physically present in the respondent State, is he or she still within that State's "jurisdiction" for the purposes of Article 1 of the Convention? The only case in which the Court has had an opportunity to examine this specific question is that of *Abdul Wahab Khan v. the United Kingdom* (dec.) (no. 11987/11, 28 January 2014). The applicant, a Pakistani national, had been resident in the United Kingdom on the basis of a student visa which had been extended. Arrested as a suspect in a terrorism case, he was informed of the authorities' intention to deport him. He then left the United Kingdom voluntarily and returned to Pakistan; his leave to remain was subsequently cancelled. The applicant appealed to the relevant UK authority (the SIAC), alleging that he was at risk of ill-treatment in his country of origin, requesting leave to return to the United Kingdom and

seeking leave to appeal against the decision to cancel his residence permit. The SIAC dismissed his appeal, holding in particular that Pakistani citizens who were physically present in Pakistan did not come within the jurisdiction of the United Kingdom; it followed that that State could not assume any responsibility for ill-treatment allegedly sustained by such persons in their own country.

25. The Court declared inadmissible *de plano* the applicant's complaints submitted under Articles 2, 3, 5 and 6 of the Convention. The relevant part of the Court's reasoning reads as follows (emphasis added):

"24. Whether Articles 2, 3, 5 and 6 are engaged in the present case turns on whether, although he is in Pakistan (having returned there voluntarily), the applicant can be said to be "within the jurisdiction" of the United Kingdom for the purposes of Article 1 of the Convention. SIAC and the Court of Appeal, by applying the principles set out in *Banković and Others*, cited above, found that he was not. **There is nothing in this Court's subsequent case-law, or in the applicant's submissions, to cast doubt on the approach that SIAC and the Court of Appeal took.**

25. A State's jurisdictional competence under Article 1 is primarily territorial. However, the Court has recognised two principal exceptions to this principle, namely circumstances of "State agent authority and control" and "effective control over an area .... In the present case, where the applicant has returned voluntarily to Pakistan, neither of the two principal exceptions to territorial jurisdiction apply. This is particularly so when **he does not complain about the acts of British diplomatic and consular agents in Pakistan** and when he remains free to go about his life in the country without any control by agents of the United Kingdom. He is in a different position, both to the applicants in *Al-Saddoon and Mufdhi* (who were in British detention in Iraq and thus, until their handover to the Iraqi authorities, were under British authority and control) and to the individuals in *Al-Skeini and Others* (who had been killed in the course of security operations conduct by British soldiers in South East Iraq).

26. Moreover, and contrary to the applicant's submission, there is no principled reason to distinguish between, on the one hand, someone who was in the jurisdiction of a Contracting State but voluntarily left that jurisdiction and, on the other, someone who was never in the jurisdiction of that State. Nor is there any support in the Court's case-law for the applicant's argument that the State's obligations under Article 3 require it to take this Article into account when making adverse decisions against individuals, **even when those individuals are not within its jurisdiction.**

27. There is support in the Court's case-law for the proposition that the Contracting State's obligations under Article 8 may, in certain circumstance, require family members to be reunified with their relatives living in that Contracting State. However, that positive obligation rests, in large part, on the fact that one of the family members/applicants is already in the Contracting State and is being prevented from enjoying his or her family life with their relative because that relative has been denied entry to the Contracting State.... **The transposition of that limited Article 8 obligation to Article 3 would, in effect, create an unlimited obligation on Contracting States to allow entry to an individual who might be at real risk of ill-treatment contrary to Article 3, regardless of where in the world that individual might find himself.** The same is true for similar risks of detention and trial contrary to Articles 5 and 6 of Convention.

28. Furthermore, and again contrary to the applicant's submissions, jurisdiction cannot be established simply on the basis of the proceedings before SIAC. The mere fact that the applicant availed himself of his right to appeal against the decision to cancel his leave to remain has no direct bearing on whether his complaints relating to the alleged real risk of his ill-treatment, detention and trial in Pakistan fall within the jurisdiction of the United Kingdom: it is the subject matter of the applicants' complaints alone that is relevant in this regard...

29. It follows from the above reasons that these complaints must be rejected as incompatible with the provisions of the Convention and, as such, inadmissible pursuant to Article 35 §§ 3 (a) and 4 of the Convention."

26. The above-cited *Abdul Wahab Khan* case remains an isolated example to date. It is important to note that the Court made a clear distinction between the "limited" positive obligation that a State may be subject to under Article 8 with regard to family reunion and the proposed obligation to admit to its territory an alien alleging ill-treatment. The main reason for that distinction, specifically set out by the Court, is that, **in the case of Article 8, there already exists a link with the State in question: either the applicant him/herself lives there and wishes to be joined by family members, or his/her family lives there and the applicant wishes to join them. In other words, there is a pre-existing "private life" or "family life" that the State must protect.** This situation is fundamentally different to that of a person who simply wishes to leave his or her country to take refuge abroad.

27. Moreover, one of the grounds put forward by the Court in *Abdul Wahab Khan* for finding that the United Kingdom did not have jurisdiction was the fact that UK diplomatic or consular agents had played no part in creating the situation complained of. At the same time, this passage does not necessarily mean that, had these agents been involved, the Court would have reached the opposite conclusion.

(3) Can the concept of *non-refoulement* be applied?

28. One might ask whether the situation of an applicant who, relying on Article 2 or 3 of the Convention, complains about a refusal to issue a visa or residence permit while he or she is outside the desired country of asylum could be equated, *mutatis mutandis*, with the concept of ***non-refoulement***. In this regard, the most relevant case would appear to be that of [\*M.A. and Others v. Lithuania\*](#) (no. 59793/17, judgment of the Fourth Section of 11 December 2018), which does not involve acts by diplomatic or consular agents but nonetheless concerns the entry to the national territory of aliens who were physically outside that territory. The applicants, a seven-person Russian family of Chechen origin, attempted on two occasions to enter Lithuania from Belarus by presenting themselves at land border checkpoints and making oral requests for asylum (according to the version of the facts

ultimately accepted by the Court). They were refused entry to Lithuanian territory on the grounds that they had no valid visa or residence permit. On the third occasion, they entered Lithuanian territory by train with a written asylum request, but were sent back to Belarus. The Court concluded, by a majority, that there had been a violation of Articles 3 and 13 of the Convention.

29. The Lithuanian Government had raised an objection of inadmissibility on the grounds of its alleged lack of "*jurisdiction*", not on account of the fact that the applicants were not physically present in the national territory during the first two entry attempts but rather because they had in the meantime been granted entry to the territory of Poland, where they had effectively been able to submit an asylum application (see § 67 of the judgment). For its part, the Court merely stated:

"69. The Court notes that the applicants complained that Lithuanian border officials had refused to accept their asylum applications and denied them entry into Lithuania on three occasions.... From the Government's submissions, it is not clear if they intended to contest the applicants' victim status or the responsibility of the Lithuanian authorities for the grievances raised by the applicants. The Court will thus address both of those aspects.

70. With regard to the Lithuanian authorities' responsibility, the Court observes that there is no dispute that all the decisions complained of by the applicants in the present case were taken by Lithuanian border officials. **It is therefore evident that the actions complained of by the applicants were imputable to Lithuania and thereby fell within its jurisdiction within the meaning of Article 1 of the Convention.** Nor is there any dispute that at the time when the applicants were refused entry into Lithuania ..., their asylum applications were not yet under consideration in Poland – asylum proceedings in Poland were only initiated at the beginning of 2018.... Accordingly, there are no grounds to exclude the responsibility of Lithuania for examining the applicant's asylum applications lodged in April and May 2017...."

30. With regard to the respondent State's obligations, the Court emphasised, in particular:

"104. The Court also reiterates that indirect *refoulement* of an alien leaves the responsibility of the Contracting State intact, and that State is required, in accordance with the well-established case-law, to ensure that the person in question would not face a real risk of being subjected to treatment contrary to Article 3 in the event of repatriation. It is a matter for the State carrying out the return to ensure that the intermediary country offers sufficient guarantees to prevent the person concerned being removed to his or her country of origin without an assessment of the risks faced. That obligation is all the more important when the intermediary country is not a State Party to the Convention..."

31. However, the most important aspect here is not the judgment itself but rather the concurring opinion of Judge Pinto de Albuquerque, which explains in greater detail the applicability of the case-law arising from [Hirsi Jamaa and Others v. Italy](#) [GC] (no. 27765/09, ECHR 2012) and [N.D. and N.T. v. Spain](#), (nos. 8675/15 and 8697/15, 3 October 2017). The relevant part of this text reads as follows:

“3. It is the case-law of the Court that the exercise of jurisdiction is a *condition sine qua non* for engaging the responsibility of the State. In *Hirsi Jamaa and Others*, the Court reiterated that, “[w]henever the State through its agents ... exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual”. The Court concluded that in the period between boarding the ships of the Italian armed forces and being handed over to the Libyan authorities, the applicants were under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities. Remarkably, the Court considered that Italy could not circumvent its jurisdiction under the Convention by describing the events in issue as rescue operations on the high seas. To be clearer, the *Hirsi Jamaa and Others* case-law to the effect that Article 4 of Protocol No. 4 is not limited to territorial removal, but also includes the extraterritorial removal of migrants, aims at closing any gap in protection: for the Court there is no “area outside the law where individuals are covered by no legal system capable of affording them enjoyment of the rights and guarantees protected by the Convention which the States have undertaken to secure to everyone within their jurisdiction.”

4. If the removal of aliens on the high seas in the circumstances of the *Hirsi Jamaa and Others* case constitutes an exercise of jurisdiction, *a fortiori* the non-admission or rejection of migrants at the land border also constitutes such exercise of jurisdiction.

...

...

6. The acknowledgement of the State's exercise of jurisdiction at its borders is all the more important in that it makes it possible to consider fully the relationship between human rights and refugee law and more precisely to ensure the respect of the principle of *non-refoulement*, which constitutes the “cornerstone of international refugee protection”....

...

10. In other words, the approach adopted by the Chamber in the present case avoids a situation in which the Lithuanian State circumvents its jurisdiction and thus escapes its obligations under the Convention. Such an interpretation of the notion of a State's jurisdiction is indeed not only the necessary prerequisite to ensure the effective access of the applicants to international protection, but also and more broadly guarantees the effective protection of their fundamental rights and consequently makes it possible to avoid a situation in which the Lithuanian State's borders become a “no man's land”. It is indeed essential that “all forms of immigration and border control of a State party to the European Convention on Human Rights are subject to the human rights standard established in it and the scrutiny of the Court”.

...

11. In *Hirsi Jamaa and Others*, the Italian Government submitted that Article 4 of Protocol No. 4 was not applicable to that case, since the guarantee provided by the above provision came into play only in the event of expulsion of persons who were on the territory of a State or who had crossed the national border illegally and, in the relevant case, the measure in issue was a refusal to authorise entry to national territory rather than “expulsion”. The applicants argued that such a prohibition should also apply to measures to push back migrants on the high seas, carried out without any preliminary formal decision, in so far as such measures could constitute “hidden

expulsions". A teleological and "extraterritorial" interpretation of that provision would render it practical and effective rather than theoretical and illusory.

...

13. Hence, the removal of aliens carried out in the context of interceptions on the high seas by the authorities of a State in the exercise of their sovereign authority, the effect of which is to prevent migrants from reaching the borders of the State or even to push them back to another State, constitutes an exercise of jurisdiction within the meaning of Article 1 of the Convention which engages the responsibility of the State in question under Article 4 of Protocol No. 4....

...

15. In the Spanish case, the Court used a logically impeccable *a fortiori* argument to counter the Government's position: "Given that even interceptions on the high seas come within the ambit of Article 4 of Protocol No. 4 ..., the same must also apply to the allegedly lawful refusal of entry to the national territory of persons arriving in Spain illegally." Since the applicants were removed and returned to Morocco against their wishes, this clearly amounted to an "expulsion" within the meaning of Article 4 of Protocol No. 4...."

## CONCLUSIONS

32. There are very few cases in which the former Commission dealt specifically with the question of the State's "jurisdiction" in respect of the acts of its diplomatic and consular officials. The universally applied principle is that the acts of a State's officials, including diplomatic and consular agents, bring other persons or property within the jurisdiction of that State to the extent that they exercise authority over such persons or property. Thus, the respondent State's "jurisdiction" has been recognised in two contexts: when the manner in which diplomatic or consular agents defended the interests of their country's nationals was called into question, or when the physical control exercised over the applicant's person or property was called into question.

33. In immigration matters, there are two categories in the Court's case-law, depending on which article of the Convention is at stake. With regard to the refusal of an entry visa in the context of family reunion requested under Article 8, the State's jurisdiction has always been tacitly presumed and has never been challenged. In contrast, with regard to complaints under Articles 2 and 3, in a single and so far isolated case (*Abdul Wahab Khan v. the United Kingdom*), the Court has concluded that the respondent State did not have jurisdiction on account of the fact that the applicant was not physically present on that State's territory.