



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

Information Note on the Court's case-law 247

January 2021

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***Ukraine v. Russia (re Crimea) (dec.) [GC] - 20958/14***

Decision 16.12.2020 [GC]

**Article 1**

**Jurisdiction of States**

Jurisdiction of Russia over Crimea

**Article 33**

**Inter-State application**

Alleged existence of an administrative practice by Russian authorities in Crimea resulting in multiple Convention violations: *admissible*

*Facts* – The Ukrainian Government maintains that the Russian Federation has from 27 February 2014 exercised effective control over the Autonomous Republic of Crimea and the city of Sevastopol, integral parts of Ukraine, and that it had adopted an administrative practice in or in respect of Crimea which resulted in numerous Convention violations between 27 February 2014 and 26 August 2015, in connection with the purported integration of Crimea into the Russian Federation.

*Law*

*Scope of the case* – The questions of the legality *per se* under international law of the “annexation of Crimea” and, accordingly, of its consequent legal status thereafter had not been referred to the Court. Accordingly, they were outside the scope of the case and were not directly considered by the Court.

*Alleged lack of a genuine application* – The political nature of any motives that might have inspired an applicant Government to lodge an inter-State application before it, or the political implications that the Court's ruling might have, were of no relevance in the establishment of its jurisdiction to adjudicate the legal issues submitted before it on the basis of the competence expressly conferred on the Court by Article 19 of the Convention. The respondent Government's preliminary objection under this head was dismissed.

*Approach to the evidence* – The Court adhered to its usual approach to the burden of proof for the purposes of assessing evidence in the present case. It also identified the standards of proof applicable to the respective issues of the respondent State's “jurisdiction” in Crimea and the alleged existence of an “administrative practice” (see below).

*Article 1 - The respondent State's "jurisdiction" over Crimea*

The issue of the respondent State's "jurisdiction" had to be examined to the "beyond reasonable doubt" standard of proof, it being understood that such proof might follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. The Court's decision on this preliminary issue at this stage of the proceedings was without prejudice to the issues of attribution and responsibility of the respondent State under the Convention for the acts complained of, which fell to be examined at the merits phase of the proceedings.

The Court examined separately two periods – respectively, before and after 18 March 2014, date on which the Russian Federation, the "Republic of Crimea" and the City of Sevastopol signed a treaty whereby Crimea and the city of Sevastopol were, as a matter of Russian law, admitted as constituent entities of the Russian Federation.

(a) As to the period from 27 February to 18 March 2014

It had to be established whether it had been shown to the appropriate standard of proof that there were exceptional circumstances capable of giving rise to the exercise of extraterritorial jurisdiction by the respondent State on a part of the territory of the applicant State during that time.

*1. Strength of the Russian military presence in Crimea.*

The framework for the presence and operations of the Russian military forces (Black Sea Fleet) in Crimea was provided for by a series of bilateral agreements between Ukraine and the Russian Federation of 1997 and 2010. The number of Russian troops on the peninsula had nearly doubled within a short space of time, namely between late January and mid-March 2014. The respondent Government had not produced any evidence that the presence of Russian troops in Crimea had ever reached the same level as in the present case at any time since the entry into force of the Agreements. Ukraine had not consented to such an increase of the Russian military presence on its territory. The fact that troop numbers had not exceeded the general limits set in the Agreements could not be decisive for the Court's assessment. The Court's concern was rather the actual size and strength of the respondent State's military presence considered in the relevant context. According to the Ukrainian Government, the Russian military forces stationed in Crimea had been "elite troops" "equipped for effective and prompt seizure and retention of a territory". The respondent Government had not contested the allegations suggesting technical, tactical, military and qualitative superiority of the Russian military forces. The purported grounds submitted by the respondent Government to justify the increase of the Russian military presence in Crimea had not been corroborated by any convincing evidence. In particular, it had not been shown that there had been any, let alone any real, threat to the Russian military forces stationed in Crimea at the time. Moreover, in accordance with the relevant Agreement, any protective measures were to be applied "in cooperation with the competent Ukrainian authorities". Regarding the purported aims to "assist the Crimean people in resisting attack by the Ukrainian armed forces", to "ensure that Crimean population could make a democratic choice safely without fear of reprisal", there was nothing in the Agreements that could be interpreted as allowing the Russian military units to carry out any policing or public-order functions in Crimea.

*2. Conduct of the Russian military forces in Crimea*

The respondent Government had not provided any evidence or convincing arguments that could call into question the credibility of the applicant Government's version of events and the evidence submitted in support of it, in particular the allegations that Russian servicemen had been actively involved in the events of 27 February 2014 in the administrative buildings of the Supreme Council and the Council of Ministers of Crimea, resulting in the transfer of power to the new local authorities, which had subsequently

organised the “referendum”, declared the independence of Crimea and taken active steps towards its integration into the Russian Federation.

In the first place and importantly, the Court had particular regard to the uncontested statement by President Putin made in a meeting with heads of security agencies during the night of 22 to 23 February 2014, namely that he had taken the decision to “start working on the return of Crimea to the Russian Federation”. Secondly, the respondent Government had confirmed that “between 1 and 17 March 2014 [the Russian troops in Crimea] stood ready to assist the Crimean people in resisting attack by the Ukrainian armed forces”. Thirdly, Resolution No. 48-SF adopted on 1 March 2014 by the Federation Council of the Federal Assembly of the Russian Federation had authorised the President of the Russian Federation to use armed forces on the territory of Ukraine “until the social and political situation in the country becomes normal”. Fourthly, the Defence Minister of the Russian Federation, Mr Sergey Shoigu, had asserted that the Russian Special Forces had seized the building of the Supreme Council in Simferopol on 27 February 2014. Finally, the Court gave particular weight to President Putin’s interview statements explicitly acknowledging that the Russian Federation had “disarm[ed] the military units of the Ukrainian army and law enforcement agencies” and that “the Russian servicemen did back the Crimean self-defence forces”.

*Conclusion:* There was sufficient evidence that during the relevant period the respondent State had exercised effective control over Crimea. The respondent Government’s objection *ratione loci* was dismissed.

(b) As to the period after 18 March 2014

It was common ground between the parties that the respondent State had exercised jurisdiction over Crimea after 18 March 2014. However, their positions differed as to the legal basis of that jurisdiction. Unlike the applicant Government, who had asserted that that jurisdiction was based on the “effective control” ground, the respondent Government had invited the Court not to enter into the determination of the nature of its jurisdiction after 18 March 2014.

However, it was necessary to consider the nature or legal basis of the respondent State’s jurisdiction over Crimea in relation to three specific complaints advanced by the applicant Government. First, in so far as the Ukrainian Government had alleged a violation of the requirement for a “tribunal established by law” under Article 6 § 1, it would be impossible for the Court to examine that complaint without first determining whether the relevant “domestic law” was that of Ukraine or that of the Russian Federation. The other two complaints brought under Article 2 of Protocol No. 4 and under Article 14, taken in conjunction with Article 2 of Protocol No. 4, concerned the alleged restrictions of freedom of movement between Crimea and mainland Ukraine resulting from the *de facto* transformation by the respondent State of the administrative border line into a State border (between the Russian Federation and Ukraine). If the jurisdiction exercised by the Russian Federation over Crimea at the relevant time took the form of territorial jurisdiction rather than that of “effective control over an area”, Article 2 § 1 of Protocol No. 4 would not be applicable.

As the respondent Government had asserted and the Court accepted, it was not for the Court to determine whether and to what extent the Accession Treaty of 18 March 2014 had, consistently with public international law, changed the sovereign territory of either the respondent or the applicant State. The Court had regard to the following factors. In the first place, both Contracting States had ratified the Convention in respect of their respective territories within the internationally recognised borders as at that time; secondly, no change to the sovereign territories of both countries had been accepted or notified by either State; thirdly, a number of States and international bodies had refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the

meaning of international law. The respondent Government had not, in fact, advanced a positive case that the sovereign territory of either party to the proceedings had been changed.

*Conclusion:* For the purposes of this admissibility decision, the Court proceeded on the basis of the assumption that the jurisdiction of the respondent State over Crimea was in the form or nature of "effective control over an area" rather than in the form or nature of territorial jurisdiction.

*Article 35 § 1 (exhaustion of domestic remedies) and standard of proof applicable to the alleged existence of an "administrative practice"*

The applicant Government had limited the scope of the case to the alleged existence of an administrative practice of violations of the Convention. They had clearly and unequivocally stated that their aim "was not to seek individual findings of violations". Accordingly, the exhaustion rule did not apply in the circumstances of the present case.

In the Court's view, the close interplay between the two admissibility issues, namely the exhaustion rule and the substantive admissibility of the complaint of an "administrative practice" said to amount to an "alleged breach" (in the French version "manquement ... qu'elle croira pouvoir être imputé") under Article 33 of the Convention, required the application of a uniform standard in order for the complaint of an administrative practice to be admissible on both formal and substantive grounds. It had been consistently held that the prima facie evidentiary threshold, as the appropriate standard of proof required at the admissibility stage regarding allegations of an administrative practice, needed to be satisfied so as to render the exhaustion requirement inapplicable to this category of cases. This standard was to apply to each of the two component elements of the alleged "administrative practice", namely the "repetition of acts" and the necessary "official tolerance". Only if both component elements of the alleged "administrative practice" were sufficiently substantiated by prima facie evidence did the exhaustion rule not apply. In the absence of such evidence, it would not be necessary for the Court to go on to consider whether there were other grounds, such as the ineffectiveness of domestic remedies, which exempted the applicant Government from the exhaustion requirement. In that event, the complaint of an administrative practice could not on substantive grounds be viewed as admissible and warranting the Court's examination on the merits.

The only question, therefore, that needed to be addressed in the present case was whether there was sufficient prima facie evidence to establish that there had been an administrative practice (that is, both the "repetition of acts" and "official tolerance") in relation to each of the complaints made by the applicant Government.

Any conclusion by the Court as to the admissibility of the complaint of an administrative practice was without prejudice to the question whether the existence of an administrative practice was at a later stage established on the merits "beyond reasonable doubt", and if so, whether in this respect any responsibility under the Convention could be attributed to the respondent State. Those were questions that could only be determined after an examination of the merits.

*Conclusion:* the respondent Government's objection of non-exhaustion of domestic remedies dismissed.

*Admissibility of the complaints of an administrative practice*

*General remarks as to the evidence* - The Court rejected the respondent Government's argument that, in order to be regarded as admissible, an allegation of administrative practice had to be supported by direct evidence emanating from the alleged victims. Direct evidence might be difficult to come by, and witnesses and alleged victims might

reasonably have feared possible persecution by the post-February 2014 authorities in Crimea. Moreover, the Court did not consider that evidence obtained from Ukrainian officials or from media reporting was *per se* inadmissible, even though it had to be treated with a degree of caution.

Furthermore, the reliability of the relevant international reports, as well as the relative probative value of all available evidence, was considered not only on the basis of whether they corroborated each other, but also in the light of the refusal by the respondent State to grant human rights monitoring bodies unhindered access to Crimea, notably through the imposition of visa requirements, involving prior authorisation of individual members of the monitoring bodies by the receiving State. The Court drew a parallel between a situation where a State restricted the access of independent human rights monitoring bodies to an area in which it exercised "jurisdiction" within the meaning of Article 1 and a situation where there was non-disclosure by a Government of crucial documents in their exclusive possession that prevented or hindered the Court establishing the facts. After all, in both situations the events in issue lied wholly, or in large part, within the exclusive knowledge of the authorities of the respondent State.

Any findings by the Court that an allegation of an administrative practice was inadmissible by reason of the absence of sufficient *prima facie* evidence were without prejudice to the right of individuals to bring individual applications under Article 34.

*Conclusion:* The Court declared *admissible*, without prejudging the merits, the applicant Government's complaints concerning:

- (a) the alleged existence of an administrative practice of enforced disappearances and of a lack of an effective investigation into the alleged existence of such an administrative practice, in violation of Article 2 of the Convention;
- (b) the alleged existence of an administrative practice of ill-treatment, in violation of Article 3 of the Convention;
- (c) the alleged existence of an administrative practice of unlawful detention, in violation of Article 5 of the Convention;
- (d) the alleged existence of an administrative practice of extending the Russian Federation's laws to Crimea and the resulting effect that as from 27 February 2014 the courts in Crimea could not be considered to have been "established by law" within the meaning of Article 6 of the Convention;
- (e) the alleged existence of an administrative practice of unlawful automatic imposition of Russian citizenship (regarding the system of opting out of Russian citizenship), in violation of Article 8 of the Convention;
- (f) the alleged existence of an administrative practice of arbitrary raids of private dwellings, in violation of Article 8 of the Convention;
- (g) the alleged existence of an administrative practice during the period under consideration on account of the harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith, arbitrary raids of places of worship and confiscation of religious property, in violation of Article 9 of the Convention;
- (h) the alleged existence of an administrative practice of suppression of non-Russian media, in violation of Article 10 of the Convention;

(i) the alleged existence of an administrative practice of prohibiting public gatherings and manifestations of support, as well as intimidation and arbitrary detention of organisers of demonstrations, in violation of Article 11 of the Convention;

(j) the alleged existence of an administrative practice of expropriation without compensation of property from civilians and private enterprises, in violation of Article 1 of Protocol No. 1 to the Convention;

(k) the alleged existence of an administrative practice of suppression of the Ukrainian language in schools and harassment of Ukrainian-speaking children at school, in violation of Article 2 of Protocol No. 1 to the Convention;

(l) the alleged existence of an administrative practice of restricting the freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by the respondent State) of the administrative border line into a State border (between the Russian Federation and Ukraine), in violation of Article 2 of Protocol No. 4 to the Convention;

(m) the alleged existence of an administrative practice targeting Crimean Tatars, in violation of Article 14 of the Convention, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention;

(n) the alleged existence of an administrative practice targeting Crimean Tatars, in violation of Article 14 of the Convention, taken in conjunction with Article 2 of Protocol No. 4 to the Convention.

The Court declared *inadmissible* the following applicant Government's complaints concerning:

(a) the alleged existence of an administrative practice of killing and shooting and a lack of an effective investigation into the alleged existence of such an administrative practice, in violation of Article 2 of the Convention;

(b) the alleged existence of an administrative practice of apprehension and intimidation of, and seizure of material from, international journalists, in violation of Article 10 of the Convention;

(c) the alleged existence of an administrative practice of nationalisation of the property of Ukrainian soldiers, in violation of Article 1 of Protocol No. 1 to the Convention.

The Court further decided to *communicate* to the respondent Government the complaint about the alleged transfers of "convicts" to the territory of the Russian Federation, in violation of Article 8 of the Convention; to join application no. 38334/18 to the present case, and to examine, exceptionally, the admissibility and merits of the complaints raised therein together with the above-mentioned transfer of "convicts" complaint at the same time at the merits stage of the proceedings and to invite the respondent Government to submit their observations on the admissibility and merits of this part of the case.

The Court also decided to *lift* the interim measure indicated to the parties on 13 March 2014 in relation to Crimea under Rule 39 of the Rules of Court.