



July 2011

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Extra-territorial jurisdiction of ECHR States

Article 1 (obligation to respect human rights)

The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

State's acts occurring within ECHR space but outside State's own territory

Diplomatic premises:

W.M.v. Denmark (no.17392/90)

Commission decision

14 October 1992

The applicant, in an attempt to leave East Germany (German Democratic Republic) and move to the west (the Federal Republic of Germany), entered the premises of the Danish Embassy in (East) Berlin in 1988. At the request of the Danish ambassador, the East German police entered the Embassy, took the applicant away and he was ultimately sentenced to conditional imprisonment after spending 33 days in detention. He complained that his right to liberty and security was violated when he was handed over to the East German police.

It was clear from the constant jurisprudence of the European Commission of Human Rights (the body examining - until 1998 - Convention applications, before those were sent to the Court) that authorised agents of a State, including diplomatic or consular agents, brought other people or property within the jurisdiction of that State to the extent that they exercised authority over them. Therefore, the acts of the Danish ambassador, of which the applicant had complained, had affected people within the jurisdiction of the Danish authorities.

Military presence and political support:

Loizidou v. Turkey (no. 15318/89)

23 March 1995

Ms Loizidou complained, in particular, that her property rights had been breached as a result of the continued occupation and control of the northern part of Cyprus by Turkish armed forces which had, on several occasions, prevented her from gaining access to her home and other properties there. She claimed that represented a continuing violation of her property rights contrary to Article 1 of Protocol No. 1 to the Convention as well as a continuing violation of her right to respect for her home contrary to Article 8.

The Court recalled that, although Article 1 set limits on the reach of the Convention, the concept of "jurisdiction" under that provision was not restricted to the national territory of the Convention State parties. In particular, State's responsibility might also arise when as a consequence of military action - whether lawful or unlawful - it exercised effective control over an area outside its national territory. States' obligation to secure in

such areas the Convention rights and freedoms derived from the fact that they exercised effective control there, whether that was done directly, through the State's armed forces, or through a subordinate local administration.

Turkey had acknowledged that Ms Loizidou had lost control of her property as a result of the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the "Turkish Republic of Northern Cyprus". Turkey exercised effective overall control over northern Cyprus through its military presence there, with the result that its responsibility under the Convention was engaged for the policies and actions of the "TRNC" authorities. Consequently, the acts of "TRNC" authorities, supported by Turkish forces, fell within Turkish jurisdiction.

Cyprus v. Turkey (application no. 25781/94)

Grand Chamber judgment

10 May 2001

The case related to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus. Cyprus contended that, despite the proclamation of the "Turkish Republic of Northern Cyprus" (the "TRNC") in November 1983, that was an illegal entity under international law and therefore Turkey was the accountable State for a broad range of Convention violations there. Turkey argued that the "TRNC" was politically independent from Turkey and consequently Turkey could not be held responsible for its acts.

The Court stressed that Turkey's responsibility under the Convention could not be confined to the acts of its own soldiers and officials operating in northern Cyprus but was also engaged by virtue of the acts of the local administration ("the TRNC"), which survived by virtue of Turkish military and other support. Turkey, therefore, had jurisdiction under the Convention.

Andreas Manitaras and Others v. Turkey (no. 54591/00)

3 June 2008

Following the Turkish intervention of 1974 in the north of Cyprus, Ioannis Manitaras remained living together with a small group of Greek Cypriots. In February 1998, he gave evidence to the delegation of the European Commission of Human Rights in the course of the *Cyprus v. Turkey* (no. 25781/94) proceedings at a hearing in a hotel in Nicosia. In April 1999, he was found dead in his house in Rizokarpaso. While the local authorities concluded that he had died of natural death as a result of a myocardial infection, the applicants, who are his relatives, complained that he was killed.

The Court recalled its finding in the case of *Cyprus v. Turkey* (cited above) that having effective overall control over northern Cyprus, Turkey's responsibility could not be confined to the acts of its own soldiers or officials in northern Cyprus but was also engaged via the acts of the local administration which survived by virtue of Turkish military and other support. It followed that Turkey's jurisdiction extended to the entire range of Convention rights violations of which were imputable to Turkey. The area in which the alleged acts took place was on "TRNC" territory. Therefore, Ioannis Manitaras came under the authority and/or effective control, and therefore within the jurisdiction, of Turkey.

Military, political and economic influence:

Ilaşcu and Others v. Moldova and Russia (no. 48787/99)

8 July 2004

The applicants were arrested in June 1992 at their homes in Tiraspol by people, some of whom wore uniforms of the former United Soviet Socialist Republics (USSR)'s Fourteenth Army. The applicants were accused of anti-Soviet activities and illegally combating the legitimate government of the State of Transdniestria, and were also charged with a number of offences including two murders. In December 1993, the "Supreme Court of the Transdniestrian region" sentenced Mr Ilaşcu to death and property confiscation, and

the other applicants to imprisonment between 12 and 15 years, and property confiscation. The applicants complained, among other things, that the court which had convicted them did not have jurisdiction.

Russia's jurisdiction

The Court noted that, during the Moldovan conflict in 1991-92, forces of the former USSR Fourteenth Army, stationed in Transdniestria, had fought with and on behalf of the Transdniestrian separatist forces. In addition, even after the ceasefire agreement of 21 July 1992, the Russian authorities had continued to provide military, political and economic support to the separatist regime. Further, the transfer of the applicants by Russian soldiers to the separatist regime was also capable of engaging Russian responsibility for the consequences of the acts of that regime. In addition, the Russian army was still stationed in Moldovan territory. Both before and after 5 May 1998, when the Convention came into force with regard to Russia, the Transdniestrian region remained under the effective authority, or at the very least under the decisive influence, of Russia. In any event, it survived by virtue of the military, economic, financial and political support that Russia gave it. Consequently, there was a continuous and uninterrupted link of responsibility on the part of Russia for the applicants' fate. The applicants therefore came within Russia's jurisdiction and its responsibility was engaged with regard to the acts of which they complained.

State's acts occurring on territory outside of ECHR space

State security forces acting abroad:

Öcalan v. Turkey (no. 46221/99)

Grand Chamber judgment

12 May 2005

Abdullah Öcalan is currently serving a life sentence in İmralı Prison (Bursa, Turkey) for terrorist activities against the Turkish State. At the time of the events, he was in Kenya, where, on the evening of 15 February 1999, in disputed circumstances, he was taken on board an aircraft at Nairobi airport and arrested by Turkish officials. He was then flown to Turkey. He complained that Turkey had violated a number of his Convention rights.

The Court noted that Mr Öcalan had been arrested by members of the Turkish security forces inside an aircraft registered in Turkey in the international zone of Nairobi Airport.

It was common ground that, directly after being handed over to the Turkish officials by the Kenyan officials, Mr Öcalan had been effectively under Turkish authority and therefore within its jurisdiction, even though in that instance Turkey exercised its authority outside its territory. It was true that Mr Öcalan had been physically forced to return to Turkey by Turkish officials and had been under their authority and control following his arrest and return to Turkey.

Ilich Sanchez Ramirez v. France (no. 28780/95)

Commission decision

24 June 1996

The applicant, known as Carlos, was born in Venezuela and describes himself as a revolutionary by profession. He is currently in prison in France. During the night of 14 to 15 August 1994, Sudanese police officers kidnapped and handed him over to French police officers, who put him onto a French military plane, took him to a French military base and, once there, served him with an arrest warrant issued by a French judge in connection with an 1982 car bomb explosion in Paris. The applicant essentially complained about his deprivation of liberty by the French authorities.

The Commission noted that the applicant was taken into the custody of French police officers and deprived of his liberty in a French military aeroplane. Therefore, from the time of his handing over to the French officers, the applicant had been effectively under the authority, and therefore the jurisdiction, of France, even if that authority was, in the circumstances, being exercised abroad.

Military presence:

Al-Saadoon and Mufdhi v. the United Kingdom (no. 61498/08)

2 March 2010

Following the invasion of Iraq by an international coalition of armed forces in March 2003, the applicants were arrested by British forces and detained in British-run detention facilities on suspicion of violence against the coalition forces, including the murder of two British soldiers. In December 2005 the British authorities decided to refer the murder case against the applicants to the Iraqi criminal courts, which the applicants challenged unsuccessfully before the UK courts claiming that they risked to be hanged. On 30 December 2008, the European Court of Human Rights indicated to the UK Government that it should not transfer the applicants until further notice from the Court. The UK Government replied on the following day that, principally because the UN Mandate, which authorised the role of British forces in arrest, detention and imprisonment tasks in Iraq, was due to expire at midnight on 31 December 2008, exceptionally the UK could not comply with the Court's request and had transferred the applicants to Iraqi custody earlier that day.

The Court found in its 30 July 2009 decision on the admissibility of the applicants' complaints that the UK authorities had had total and exclusive control over the detention facilities in which the applicants were held, first through the exercise of military force and then by law. The Court found that the applicants had been within the UK's jurisdiction and had remained so until their physical transfer to the custody of the Iraqi authorities on 31 December 2008.

Al-Skeini and Others v. the UK

7 July 2011

The case concerned the deaths of the applicants' six close relatives in Al-Basrah, Southern Iraq, in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body.

The Court found that, in the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from 1 May 2003 to 28 June 2004, the UK had jurisdiction under Article 1 (obligation to respect human rights) of the Convention in respect of civilians killed during security operations carried out by UK soldiers in Basrah; and, that there had been a failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants, in violation of Article 2 (right to life) of the Convention.

Al-Jedda v. the UK

7 July 2011

The case concerned the internment of an Iraqi civilian for more than three years (2004-2007) in a detention centre in Basrah, Iraq, run by British forces.

The Government maintained that the applicant's internment was attributable to the United Nations (UN) and not to the UK. The Court unanimously rejected that argument. It noted that, at the time of the invasion in March 2003, there was no UN Security Council (UNSC) resolution providing for the allocation of roles in Iraq if the existing regime was displaced. In May 2003 the US and the UK, having displaced the previous regime, assumed control over the provision of security in Iraq; the UN was allocated a role in providing humanitarian relief, supporting the reconstruction of Iraq and helping in the formation of an Iraqi interim government, but had no role as regards security. The Court did not consider that subsequent UNSC Resolutions altered that position. As the UNSC had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multi-National Force, Mr Al-Jedda's internment was not attributable to the UN. It took place within a detention facility in Basrah City, controlled exclusively by British forces. He was therefore within the authority and control of the UK

throughout. The Court therefore agreed with the majority of the House of Lords that Mr Al-Jedda's internment was attributable to the UK and that, while interned, he fell within the jurisdiction of the UK for the purposes of Article 1 of the Convention.

Military intervention exercising effective control:

Mansur PAD and Others v. Turkey (no. 60167/00)

Admissibility decision

28 June 2007

The application concerned the alleged killing of seven Iranian men in North-West Iran by Turkish soldiers in May 1999. Turkey admitted to having bombed the area from a helicopter as it had suspected that terrorists had been there at the time of the events. It also submitted that, in order to maintain good relations with Iran, it had agreed to pay the amount of compensation claimed by the Iranian authorities for the killings. The victims' families refused to take the money.

The Court reiterated that a State may be held accountable for Convention violations of people who were in the territory of another State which was not part of the legal space of the Contracting States, but who were found to be under the former State's authority and control through its agents operating – whether lawfully or unlawfully – in the latter State. In the instant case, it was not disputed by the parties that the victims of the alleged events came within the jurisdiction of Turkey. The Court found that it was not required to determine the exact location of the events, given that the Turkish Government had already admitted that the fire discharged from its helicopters had caused the killing of the applicants' relatives. Accordingly, the victims had been within the jurisdiction of Turkey at the material time.

Medvedev and Others v. France (no 3394/03)

Grand chamber judgment

23 March 2010

The applicants were crew-members of a cargo vessel registered in Cambodia. As the French authorities suspected the vessel was carrying significant quantities of narcotics for distribution in Europe, the French Navy apprehended it off the shores of Cap Verde and confined the crew to their quarters on board under French military guard. The applicants complained that they had been deprived of their liberty unlawfully, particularly as the French authorities had not had jurisdiction.

The Court held that France had exercised full and exclusive control over the Cambodian vessel and its crew, at least de facto, from the time of its interception, in a continuous and uninterrupted manner. Besides the interception of the vessel, its rerouting had been ordered by the French authorities, and the crew had remained under the control of the French military throughout the voyage to Brest in France. Accordingly, the applicants had been effectively within France's jurisdiction.

Markovic and Others v. Italy (application no. 1398/03)

Grand Chamber judgment

14 December 2006

The application concerned an action in damages brought by the applicants in the Italian courts in respect of the deaths of their relatives as a result of air strikes on 23 April 1999 by the NATO alliance against the Federal Republic of Yugoslavia.

The Court held that once the applicants had brought a civil action in the Italian courts, there indisputably existed a "jurisdictional link" for the purposes of Article 1 of the Convention.

Military intervention not exercising effective control:

[Banković and Others v. Belgium and 16 Other Contracting States \(application no. 52207/99\)](#)

Admissibility decision

19 December 2001

The application was brought by six people living in Belgrade, Serbia against 17 NATO member States which are also Convention State parties. The applicants complained about the bombing by NATO, as part of its campaign of air strikes against during the Kosovo conflict, of the Serbian Radio-Television headquarters in Belgrade which caused damage to the building and several deaths.

The Court was satisfied that, while international law did not exclude a State's exercise of jurisdiction extra-territorially, jurisdiction was, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States. The Court found that other bases of jurisdiction were exceptional and required special justification in the particular circumstances of each case. The Convention was a multi-lateral treaty operating in an essentially regional context and notably in the legal space of the Contracting States. The then Federal Republic of Yugoslavia clearly did not fall within that legal space. The Court was not persuaded that there was any jurisdictional link between the victims and the respondent States and declared the application inadmissible.

[Issa and Others v. Turkey \(no. 31821/96\)](#)

16 November 2004

According to the applicants, Iraqi nationals, a group of their relatives - shepherds from an Iraqi province near the Turkish border - encountered Turkish soldiers in the hills who were allegedly carrying out military operations in the area and who immediately abused and assaulted them. Following the withdrawal of the Turkish troops from the area, the bodies of the shepherds were found with bullet wounds and severely mutilated.

The Court recalled that the concept of "jurisdiction" under the Convention was not restricted to the national territory of the Contracting Parties. In exceptional circumstances the acts of Contracting States performed outside their territory, or which produced effects there, might amount to exercise by them of their jurisdiction. Accountability in such situations stemmed from the fact that Article 1 of the Convention could not be interpreted so as to allow a State party to perpetrate violations of the Convention on the territory of another State, which it could not perpetrate on its own territory.

However, the Court was unable to determine, on the basis of the evidence available to it, whether the applicants' relatives had been killed by gunfire coming from Turkish troops. The Court was accordingly not satisfied that the applicants' relatives had been within Turkish jurisdiction for the purposes of Article 1 of the Convention.

[Saddam Hussein v. Coalition Forces \(Albania, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Turkey, Ukraine and the United Kingdom\) \(no. 23276/04\)](#)

Admissibility decision

14 march 2006

Saddam Hussein, former president of Iraq, complained about his arrest, detention and transfer to the Iraqi authorities and about his ongoing trial and its outcome. He maintained that he fell within the jurisdiction of all the respondent States because they were the occupying powers in Iraq, because he was under their direct authority and control or because they were responsible for the acts of their agents abroad. He further argued that he remained within their jurisdiction following the transfer of authority, and his transfer, to the Iraqi authorities in June 2004 because the respondent States remained in *de facto* control in Iraq.

The Court observed that coalition forces, led by a US General, invaded Iraq in March 2003. While the greater part of the forces and support came from the United States and

the United Kingdom, it assumed for the purposes of the case that the coalition forces included support from each of the Convention States enumerated in the complaint. However, it found that Saddam Hussein had not addressed each respondent State's role and responsibilities or the division of labour/power between them and the US. In addition, he had not indicated which respondent State (other than the US) had any (and, if so, what) influence or involvement in his arrest, detention and handover. Accordingly, the Court held that there was no jurisdictional link between Saddam Hussein and the Convention States within the meaning of Article 1 of the Convention.

Behrami and Behrami v. France (no. 71412/01)

Admissibility decision

31 May 2007

At the time of the events Mitrovica was within the sector of Kosovo for which a multinational brigade led by France was responsible; it was one of four brigades making up the international security force (KFOR) presence in Kosovo, mandated by UN Security Council Resolution 1244 of June 1999. In March 2000, a boy was playing in that area with his friends when they found and exploded an un-detonated cluster bomb, dropped during the 1999 bombardment by NATO. The bomb killed one of the children and seriously injured another one. Following a refusal bring criminal proceedings in relation with the incident, the applicants claimed that the children's death and injuries were caused by the failure of the French KFOR troops to mark and/or defuse the un-detonated cluster bombs which KFOR had known to be present on the site in question.

The Court considered that the question raised by the case was less whether France exercised extra-territorial jurisdiction in Kosovo but, far more centrally, whether the Court was competent to examine under the Convention the contribution of France to the relevant civil and security presence exercising control of Kosovo. It found that the supervision of de-mining in Kosovo fell within the mandate of UNMIK, hence the UN, given that the UN Security Council had passed Resolution 1244 establishing UNMIK and KFOR. The UN had a legal personality separate from that of its member states and was not a Contracting Party to the Convention. Since UNMIC and KFOR relied for their effectiveness on support from member states, the Convention could not be interpreted in a manner which would subject Contracting Parties' acts or omissions to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the UN's key mission to preserve peace. The Court concluded that it was not necessary to examine the question of its competence to hear complaints against France about extra-territorial acts or omissions.

State's act on its own territory produces effect in another State

Extradition:

Soering v. The United Kingdom (no. 14038/88)

07.07.1989

Mr Jens Soering was a German national detained in a prison in England pending extradition to the United States of America (USA) to face murder charges for killing his girlfriend's parents. He complained that, despite the diplomatic assurances, he risked being sentenced to death if extradited to the USA. He maintained that, in particular because of the "death row phenomenon" where people spent several years in extreme stress and psychological trauma awaiting to be executed, if extradited, he would be subjected to inhuman and degrading treatment and punishment contrary to Article 3 of the Convention.

The Court recalled that the Convention did not govern the actions of States not parties to it, nor did it require the Contracting States to impose Convention standards on other States. However, the decision by a Contracting State to extradite someone might engage that State's responsibility under the Convention where a risk existed that the person would be tortured or otherwise ill-treated if extradited. There was no question of

establishing the responsibility of the receiving country. Under the Convention liability was incurred by the extraditing Contracting State because of its action which exposed an individual to prohibited ill-treatment. The Court concluded that the UK would violate Article 3 if it extradited Mr Soering to the US.

Publication of controversial cartoons :

Mohammed Ben El Mahi and Others v. Denmark (no. 5853/06)

Admissibility decision

11 December 2006

In September 2005, a privately owned Danish newspaper published twelve cartoon caricatures of Prophet Muhammad, the most controversial of which showed him with a bomb in his turban. In October 2005 several Muslim organisations in Denmark complained to the Danish police that the cartoons invoked blasphemy and religious insult. Following the prosecutor's refusal to initiate criminal proceedings against the newspaper, the applicants complained that Denmark had permitted that publication.

The Court recalled that none of the exceptions to the State's primarily territorial jurisdictional competence were present in this case. The applicants were a Moroccan national resident in Morocco and two Moroccan associations which were based in Morocco and operated in that country. The Court considered that there was no jurisdictional link between any of the applicants and Denmark, or that they could come within the jurisdiction of Denmark on account of any extra-territorial act.

Shooting of demonstrators:

Andreou v. Turkey (45653/99)

Admissibility decision

03 June 2008

The applicant, now deceased, complained that she was shot and injured by the Turkish armed forces on 14 August 1996, during tensions at the United Nations buffer zone near Dherynia (Cyprus), while she had been standing outside the UN buffer zone and in the area which was close to the Greek-Cypriot National Guard checkpoint.

In its decision on the admissibility of the application the Court found that the responsibility of Turkey under the Convention was engaged. According to a UN press release on the events, Ms Andreou's injuries had been caused by Turkish and/or Turkish Cypriot uniformed personnel, who had fired into the crowd and who had been at the time of opening fire in the territory of the "TRNC". When Ms Andreou was hit by the bullet, she was standing outside the neutral UN buffer zone and in close vicinity to the Greek-Cypriot National Guard checkpoint. Unlike the applicants in the *Bankovic and Others* case (cited above) she had accordingly been within territory covered by the Convention. Even though Ms Andreou had sustained her injuries on territory over which Turkey exercised no control, the opening of fire on the crowd from close range, which had been the direct and immediate cause of those injuries, had been such that Ms Andreou should be regarded as within the jurisdiction of Turkey.

The Internet

Internet publications:

Perrin v. the United Kingdom (no. 5446/03)

Admissibility decision

18 October 2005

The case concerned the conviction and sentencing by the UK courts to 30 months' imprisonment of a French national, Mr Perrin. He resided in the UK and operated a US-based Internet company which offered sexually explicit content unsuitable for children on its front page which was accessible to all. Mr Perrin maintained that because of the worldwide nature of the Internet, publishers could not foresee the legal requirements in all the individual states where the material could be accessed. In addition, he argued

that the UK had no jurisdiction to bring charges against him given that the company, which published the material, was registered and operating legally in the US.

The Court accepted the reasoning of the UK Court of Appeal, namely that, if the UK courts were only able to examine publication-related cases if the place of publication fell under the courts' jurisdiction, that would encourage publishers to publish in countries in which prosecution was unlikely. The Court then found that as Mr Perrin was a UK resident, UK law was accessible to him, and he should have further sought legal advice given that he was carrying out a professional activity in the country. The Court recalled that the applicable UK law (the 1959 Obscene Publications Act) applied also to the transmission of data that was stored electronically. Finally, it agreed with the UK Court of Appeal's reasoning that, while the UK law provided limited protection to vulnerable people, there was no reason why a responsible Government should abandon their protection. The application was declared inadmissible.

Internet-based activities:

Premininy v. Russia (no. 44973/04)

The applicants are two Russian nationals living in Russia, who were detained in Russia on suspicion of hacking into the online security system of an American bank, "Green Point Bank", in 2001 and stealing its database of clients and extorting money in exchange for the promise not to publish that database on the Internet. The Bank had agreed to pay and the first applicant had provided it with his real name and address. They complained that the first applicant had been arrested and detained unlawfully in Russia and was beaten while in detention awaiting trial.

The Russian courts heard the case and the applicants did not claim that the courts lacked jurisdiction for it. The Court examined their complaints related to their detention and ill-treatment on the merits and found violations of Article 3 and 5.

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