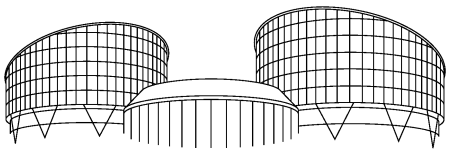

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Guide on Article 1 of the European Convention on Human Rights

Obligation to respect human rights – Concepts of “jurisdiction” and imputability

Updated on 28 February 2025

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Note to readers

This Guide is part of the series of Case-Law Guides published by the European Court of Human Rights (hereafter "the Court", "the European Court" or "the Strasbourg Court") to inform legal practitioners about the fundamental judgments and decisions delivered by the Strasbourg Court. This particular Guide analyses and sums up the case-law under Article 1 of the European Convention on Human Rights (hereafter "the Convention" or "the European Convention"). Readers will find herein the key principles in this area and the relevant precedents.

The case-law cited has been selected among the leading, major, and/or recent judgments and decisions.*

The Court's judgments and decisions serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154, 18 January 1978, Series A no. 25, and, more recently, *Jeronovičs v. Latvia* [GC], no. 44898/10, § 109, ECHR 2016).

The mission of the system set up by the Convention is thus to determine issues of public policy in the general interest, thereby raising the standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89, no. 30078/06, ECHR 2012). Indeed, the Court has emphasised the Convention's role as a "constitutional instrument of European public order" in the field of human rights (*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 156, ECHR 2005-VI, and more recently *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 110, 13 February 2020).

Protocol No. 15 to the Convention recently inserted the principle of subsidiarity into the Preamble to the Convention. This principle "imposes a shared responsibility between the States Parties and the Court" as regards human rights protection, and the national authorities and courts must interpret and apply domestic law in a manner that gives full effect to the rights and freedoms defined in the Convention and the Protocols thereto (*Grzęda v. Poland* [GC], § 324).

This Guide contains references to keywords for each cited Article of the Convention and its Additional Protocols. The legal issues dealt with in each case are summarised in a *List of keywords*, chosen from a thesaurus of terms taken (in most cases) directly from the text of the Convention and its Protocols.

The *HUDOC database* of the Court's case-law enables searches to be made by keyword. Searching with these keywords enables a group of documents with similar legal content to be found (the Court's reasoning and conclusions in each case are summarised through the keywords). Keywords for individual cases can be found by clicking on the Case Details tag in HUDOC. For further information about the HUDOC database and the keywords, please see the *HUDOC user manual*.

* The case-law cited may be in either or both of the official languages (English and French) of the Court and the European Commission of Human Rights. Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber. Chamber judgments that were not final when this update was published are marked with an asterisk (*).

Introduction

Article 1 of the Convention – 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 [the] Convention."

HUDOC keywords

> High Contracting Party (1) – Responsibility of States (1) – Jurisdiction of States (1)

1. As provided by Article 1, the engagement undertaken by a Contracting State is confined to "securing" ("*reconnaître*" in the French text) the listed rights and freedoms to persons within its own "jurisdiction". "Jurisdiction" within the meaning of Article 1 is a threshold criterion. The exercise of jurisdiction is a necessary condition for a Contracting State to be able to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 103, and the case-law therein).

2. In the Convention context, the term jurisdiction in English (in French sometimes "compétence" and sometimes "juridiction") has two separate but related senses. The first corresponds to the Court's own jurisdiction (compétence) on the basis, in particular, of Articles 19 and 32 of the Convention, to receive an application and examine it. For that purpose it needs to establish its jurisdiction ratione personae (ascertaining for example whether, in the context of an individual application, an applicant may be regarded as a "victim" for the purposes of Article 34), and its jurisdiction ratione materiae (ascertaining for example whether the right relied upon is protected by the Convention and protocols thereto and whether the facts complained of fall within its scope). The Court has repeatedly pointed out that it must satisfy itself that it has jurisdiction in any case brought before it and is therefore obliged to examine the question of its jurisdiction at every stage of the proceedings (see, for example, *Slovenia v. Croatia* (dec.) [GC], 2020, *Svetova and Others v. Russia*, 2023, §§ 23-28), or *Ukraine v. Russia (Crimea)* [GC], 2024, § 862). The second sense relates to the jurisdiction (juridiction) of the High Contracting Parties, given that Article 1 obliges them to secure to "everyone within their jurisdiction" the rights and freedoms defined in the Convention (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 503-505; *Ukraine v. Russia (Crimea)* [GC], 2024, § 863). This guide will refer to jurisdiction in the latter sense.

3. Historically, the text drawn up by the Committee on Legal and Administrative Affairs of the Consultative Assembly of the Council of Europe laid down, in what was to become Article 1 of the Convention, that "member States [should] undertake to secure to everyone residing in their territories the rights ...". The Committee of Intergovernmental Experts which examined the Consultative Assembly's draft decided to replace the words "residing in their territories" with "within their jurisdiction". The reasons for that amendment are described 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 the signatory States, even those who could not be considered as residing there in the legal sense of the word. 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)

4. The adoption of Article 1 of the Convention was also preceded by a comment made by the Belgian representative, who, on 25 August 1950 during the plenary sitting of the Consultative Assembly, said 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."

5. The *travaux préparatoires* go on to note that the wording of Article 1, including "within their jurisdiction", did not give rise to any further discussion and the text as it was (and is now) was adopted by the Consultative Assembly on 25 August 1950 without further amendment (*Collected Edition*, vol. VI, p. 132) (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, §§ 19-20).

6. The concept of "jurisdiction" for the purposes of Article 1 of the Convention must be considered to reflect the term's meaning in public international law (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, § 344).

7. Establishing the existence of "jurisdiction" within the meaning of Article 1 of the Convention is not necessarily determined by the merits of the case, and it is not therefore necessary to be left to be determined at the merits stage of the proceedings (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, § 265). Accordingly, there is nothing to prevent the Court from establishing already at the preliminary (admissibility) stage whether the matters complained of by the applicant fall within the jurisdiction of the respondent Government (*Ukraine and the Netherlands v. Russia* [GC] (dec), 2022, § 507). In any event, the question whether the case falls within the jurisdiction of the respondent State is a preliminary issue to be determined before any assessment of the merits of the substantive allegations can take place (*Ukraine v. Russia (*re *Crimea)* [GC] (dec.), 2020, § 264; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 506).

8. In addition, the Court may examine of its own motion the question of jurisdiction or that of the imputability of the alleged violations to the respondent State even if the Government have not raised an objection on such grounds (*Stephens v. Malta (no. 1)*,2009, § 45; *Vasiliciuc v. Republic of Moldova*, 2017, § 22; *Veronica Ciobanu v. Republic of Moldova*, 2021, § 25).

9. 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 in fact *responsible* for those acts under the Convention are very different questions; the latter more typically falls to be determined by the Court at the merits stage (*Loizidou v. Turkey* (preliminary objections), 1995, §§ 61 and 64; *Duarte Agostinho and Others v. Portugal and 32 others* (dec.) [GC], 2024, § 178). A distinction must also be drawn between the issue of *jurisdiction*, within the meaning of Article 1 of the Convention, and that of the *imputability* of the alleged violation to the actions or omissions of the respondent State, the latter issue being examined from the angle of the application's compatibility *ratione personae* with the provisions of the Convention (*Loizidou v. Turkey* (merits), 1996, § 52). Questions of responsibility and imputability are often intrinsically linked to the establishment of the facts of the case and the assessment of evidence; the Court will thus address these issues in the light of its findings on the particular facts of the case (*Abu Zubaydah v. Lithuania*, 2018, §§ 411 and 584-585; *Al-Hawsawi v. Lithuania*, 2024, §§ 127, 157 and 161-163). The Court usually considers the notions of imputability and responsibility as going together, such that the State's responsibility under the Convention is only engaged if the alleged violation could be attributed to it. In some specific cases, however, the Court is careful to distinguish between the two notions and to examine them separately (*Assanidze v. Georgia* [GC], 2004, § 144).

10. Unlike jurisdiction, issues of attribution and the responsibility of the respondent State under the Convention for the acts complained of fall to be examined at the merits stage of the proceedings. It is, however, important to clarify that this concerns only the evidential question whether the act or omission complained of was in fact attributable to a State agent as alleged. It does not preclude an

assessment, at the admissibility stage, of whether particular individuals or entities could be considered State agents such that any actions shown at the later merits stage to have been taken by them would be capable of giving rise to the responsibility of the State in question (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 550; see also the approach adopted in *Cyprus v. Turkey*, Commission decision, 1975, (D.R.) 2, p. 32, § 84, pp. 125 and 151). Similarly, as to the general principles determining the attribution of an extraterritorial act, the Court may determine the matter at the admissibility stage; for example, it was at this stage that it established a general rule that would be applicable in matters of international legal and judicial cooperation, whereby an act initiated by a requesting State on the basis of its own domestic law and followed up by the requested State in response to its treaty obligations may be attributed to the requesting State even if the act was executed (or is supposed to have been executed) by the requested State (*The J. Paul Getty Trust and Others v. Italy*, 2024, §§ 237-239).

11. The Court explained in one case that its decision was concerned only with the extent of the jurisdiction and responsibility of the respondent State for the violations alleged. As a result, only the question whether the State had jurisdiction in respect of those violations fell to be discussed; the question of the jurisdiction of any other State (one of the applicant States in an inter-State case) in respect of the events was not within the scope of the case (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 395). However, it may be helpful to set out the general principles in respect of both situations, since they form part of a holistic view of the Court's approach to jurisdiction in such cases (*ibid*., § 552).

12. The Court has established a number of clear principles in its Article 1 case-law. Thus Article 1 makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the member States' "jurisdiction" from scrutiny under the Convention (*N.D. and N.T. v. Spain* [GC], 2020, § 102). However, in any case brought before it, the issue of the respondent State's "jurisdiction" under Article 1 must be examined to the "beyond reasonable doubt" standard of proof, it being understood that such proof, as noted above, may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, § 265).

13. The Convention organs have developed a framework for the interpretation and application of Article 1 of the Convention. The relevant principles have evolved with a view to the effective protection of human rights in a largely regional context. Their origins pre-date the ILC Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA", adopted by the International Law Commission and recommended to States by General Assembly resolution 56/83 of 12 December 2001), which took into account the prior case-law of the Convention organs when formulating the relevant rules under international law (*Ukraine and the Netherlands v. Russia* [GC] (dec.), § 547). While the test for establishing the existence of jurisdiction under Article 1 of the Convention is not the same as the test for establishing a State's responsibility for an internationally wrongful act under international law, as codified in ARSIWA, there may be some areas of overlap in so far as the Court is invited to examine whether any acts of the perpetrators are to be attributed to the State in the context of its jurisdiction assessment. In determining whether an individual or entity may be considered a State agent, the rules set out in the ARSIWA as applied by international courts and tribunals are clearly relevant and the Court's case-law shows that they are taken into account (*ibid*., § 551).

14. Under Article 1 of the Convention, 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 before the events at issue, and, on the other, someone who was never in the jurisdiction of that State. Likewise, a State's jurisdiction does not depend on the seriousness or intensity of the alleged breach, and such factors do not alter the Court's reasoning on this point (*Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 26).

15. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 318; *Solomou and Others v. Turkey*, 2008, § 46).

16. Article 1 makes no distinction as to the type of rule or measure concerned, and does not exclude any part of the member States' "jurisdiction" from scrutiny under the Convention (*N.D. and N.T. v. Spain* [GC], 2020, § 102).

17. It should also be borne in mind that, for the purposes of the Convention, the sole issue of relevance is the State's international responsibility, irrespective of the national authority to which the breach of the Convention in the domestic system is imputable. Even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. Further, the Convention does not merely oblige the higher authorities of the Contracting States themselves to respect the rights and freedoms it embodies; it also has the consequence that, in order to secure the enjoyment of those rights and freedoms, those authorities must prevent or remedy any breach at subordinate levels. The higher authorities of the State are under a duty to require their subordinates to comply with the Convention and cannot shelter behind their inability to ensure that it is respected. The general duty imposed on the State by Article 1 of the Convention entails and requires the implementation of a national system capable of securing compliance with the Convention throughout the territory of the State for everyone. That is confirmed by the fact that, firstly, Article 1 does not exclude any part of the member States' "jurisdiction" from the scope of the Convention and, secondly, it is with respect to their "jurisdiction" as a whole that member States are called on to show compliance with the Convention. (*Assanidze v. Georgia* [GC], 2004, §§ 146-147). In short, it is only the responsibility of the Contracting State itself – not that of a domestic authority or organ, whether central or local – that is in issue before the Court. It is not the Court's role to deal with a multiplicity of national authorities or courts or to examine disputes between institutions or over internal politics (*ibid*., § 149).

18. Generally speaking, a State may be held responsible even where its agents are acting *ultra vires* or contrary to instructions. Under the Convention, a State's authorities are strictly liable for the conduct of their subordinates; they are under a duty to impose their will and cannot shelter behind their inability to ensure that it is respected (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 319).

I. The territoriality principle and the exceptions thereto

A. The territoriality principle and its scope

1. The territoriality principle in the traditional sense of the term

19. A State's jurisdiction within the meaning of Article 1 is *primarily territorial*. In accordance with Article 31 § 1 of the Vienna Convention on the Law of Treaties of 1969, the Court has interpreted the words "within their jurisdiction" by ascertaining the ordinary meaning to be given to the phrase in its context and in the light of the object and purpose of the Convention (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 99). Accordingly, Article 1 of the Convention must be considered to reflect this ordinary and essentially territorial notion of jurisdiction, other bases of jurisdiction being exceptional and requiring special justification in the particular circumstances of each case (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, §§ 61, 67, 71, also *Catan and Others v. the*

Republic of Moldova and Russia [GC], 2012, § 104, and the references therein); for very clear examples of application of the territorial criterion see *Gurbanov v. Armenia*, 2023, §§ 22-26, and as regards ports and territorial waters, *Friedrich and Others v. Poland*, 2024, § 113 and *M.A. and Z.R. v. Cyprus*, 2024, § 63).

20. The fact that an applicant currently lives in a Contracting State does not suffice to confer territorial jurisdiction on that State, and therefore responsibility under Article 1 of the Convention. It is the subject-matter of the applicant's complaints alone that is relevant in this regard (*Chagos Islanders v. the United Kingdom* (dec.), 2012, § 63).

21. In the case of *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, the applicants complained about the deaths of members of their families (and the injuries sustained by one of the applicants who had survived) resulting from the bombing of the Serb radio and television premises in Belgrade by NATO armed forces, even though the Federal Republic of Yugoslavia was not a Contracting State. The Court rejected the applicants' argument that any person suffering the negative effects of an act attributable to a Contracting State came ipso facto, wherever the act was committed or wherever its consequences were felt, "under the jurisdiction" of that State for the purposes of Article 1 of the Convention. It reiterated that the Convention was a multilateral treaty operating, subject to Article 56 of the Convention, in an essentially regional context and notably in the legal area (espace juridique) of the Contracting States, to which the Federal Republic of Yugoslavia did not belong. The Convention was not therefore designed to be applied throughout the world, even in respect of the conduct of Contracting States. The Court was not persuaded, in that case, that there was any jurisdictional link between the respondent States and the applicants, who had not demonstrated that they and their deceased relatives were capable of coming within the jurisdiction of the respondent States on account of the extraterritorial act in question (see also *Marković and Others v. Italy* (dec.), 2003). The Court subsequently abandoned that approach, finding that the Convention rights could be "divided and tailored" for the application of Article 1 (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 571, with further references).

22. A State's jurisdiction is considered to be exercised normally throughout its territory (*Assanidze v. Georgia* [GC], 2004, § 139; *Ukraine v. Russia (re Crimea)* (dec.) [GC], 2020, § 345). The Convention precludes territorial exclusions other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories) (*ibid*., § 140; *N.D. and N.T. v. Spain* [GC], 2020, § 106; and *A.A. and Others v. North Macedonia*, 2022, § 61). In other words, the territorial scope of the Convention cannot be reduced, selectively and artificially, to only certain parts of the territory of a Contracting State (*ibid*., 2022, § 63).

23. It is immaterial whether the respondent State is unitary or federal. Unlike the American Convention on Human Rights of 22 November 1969 (Article 28), the European Convention does not contain a "federal clause" limiting the obligations of the federal State for events occurring on the territory of the States forming part of the federation. Besides, even if an implied federal clause similar in content to that of Article 28 of the American Convention were found to exist in the European Convention (which is impossible in practice), it could not be construed as releasing the federal State from all responsibility, since it requires the latter to "immediately take suitable measures, in accordance with its constitution ..., to the end that the [states forming part of the federation] may adopt appropriate provisions for the fulfilment of [the] Convention". Indeed, for reasons of legal policy – the need to maintain equality between the States Parties and to ensure the effectiveness of the Convention – it could not be otherwise. But for the presumption, the applicability of the Convention could be selectively restricted to only parts of the territory of certain States Parties, thus rendering the notion of effective human rights protection underpinning the entire Convention meaningless while, at the same time, allowing discrimination between the States Parties, that is to say between those which accepted the application of the Convention over the whole of their territory and those which did not (*Assanidze v. Georgia*, 2004, §§ 141-142). Moreover,

the authorities of a territorial entity of the State are public-law institutions which perform the functions assigned to them by the Constitution and the law (*ibid.*, § 148).

24. Moreover, the practical difficulties in the migration context cannot justify leaving an 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 (*A.A. and Others v. North Macedonia*, 2022, § 63).

25. The European Commission of Human Rights ("the Commission") affirmed the principle of territoriality in the framework of two applications from a single person directed against the United Kingdom and Ireland, respectively. The applicant in those cases, a British national living in Northern Ireland, alleged a violation by both those States of the positive obligations stemming from Article 2 of the Convention on account of her husband's murder committed in the territory of the Republic of Ireland, and her brother's murder committed in Northern Ireland (and therefore in the United Kingdom). In the first application, against the United Kingdom, the applicant submitted that that State had also been responsible under the Convention for her husband's murder in the Republic of Ireland because the British authorities had not done all in their power to combat the overall phenomenon of IRA terrorism. The Commission recorded its disagreement. It noted that when he had died, the direct victim – the applicant's husband – had not been within the "jurisdiction" of the United Kingdom for the purposes of Article 1 of the Convention. The Commission also considered whether any action of the United Kingdom authorities could have played a part in the applicant's husband's murder in the Republic of Ireland, but found that the applicant herself had at no point alleged any such action on the part of the British authorities. Consequently, inasmuch as her complaint concerned the United Kingdom and related to her husband's murder, it was incompatible *ratione loci* with the Convention. On the other hand, her brother's murder in the United Kingdom had bestowed "jurisdiction" on that State, such that the corresponding complaint was indeed compatible *ratione loci* (*W. v. the United Kingdom*, Commission decision of 28 February 1983). In the second case, against Ireland, the Commission reached diametrically opposed conclusions, to the effect that the applicant's husband had been within the jurisdiction of the respondent State, but not her brother. In particular, as regards the brother, the Commission added that the constitutional claim to the territories of Northern Ireland set out in Articles 2 and 3 of the Irish Constitution were not recognised by the international community as constituting the basis of jurisdiction over Northern Ireland (*W. v. Ireland*, Commission decision of 28 February 1983).

26. The existence of a fence located some distance from the border does not authorise a State to unilaterally exclude, alter or limit its territorial jurisdiction, which begins at the line forming the border (*N.D. and N.T. v. Spain* [GC], 2020, § 109). The case cited concerned the return to Morocco of two persons, one a Malian and the other an Ivoirian national, who had attempted to enter Spanish territory unlawfully by scaling three parallel fences surrounding the Spanish enclave of Melilla, which is located on the North African coast. The applicants had managed to reach only the top of the inner fence, from which they had finally climbed down with the help of the Spanish security forces, which had subsequently handed them over to the Moroccan authorities. The Court could not discern any "constraining de facto situation" or "objective facts" capable of limiting the effective exercise of the Spanish State's authority over its territory at the Melilla border and, consequently, of rebutting the "presumption of competence" in respect of the applicants. They therefore fell within Spain's "jurisdiction" within the meaning of Article 1 of the Convention. The Court pointed out that the practical difficulties of managing illegal immigration (in this case, the storming of the border fences by groups generally comprising several hundred non-nationals) did not alter its reasoning; on the contrary, the special nature of the context as regards migration cannot justify an 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 (*ibid.*, §§ 104-111).

27. Furthermore, the Court has recently specified that three refusals by Lithuanian border officials to accept asylum applications from a Chechen family at the border with Belarus constituted actions

imputable to Lithuania, thereby falling within that country's jurisdiction under Article 1 of the Convention (*M.A. and Others v. Lithuania*, 2018, § 70).

28. As regards the territory of a State's diplomatic missions abroad, the administrative control exercised by the State over the premises of its embassies is not sufficient to bring every person who enters those premises within its jurisdiction (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 119). Thus the Court refused to recognise the territorial jurisdiction of Belgium in respect of four Syrian nationals who had submitted visa applications at the Belgian Embassy in Lebanon. Indeed, as they had not been in the territory of the State in question or at its border, they had not been in a situation of removal from its territory (*ibid*., § 120).

29. Where the circumstances leading to the alleged violation occurred in a cross-border or transnational context, pursuant to the principle that the jurisdictional competence of a State is primarily territorial, an application directed against several Contracting States is compatible ratione loci with the provisions of the Convention as regards the events which occurred on their respective territories (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 160).

30. The case of *Petrović and Others v. Croatia**, 2025, concerned the suspicion of three mothers that their new-born babies, born between 1986 and 1994 on Croatian territory, had not fallen ill and died, contrary to the affirmations of the public hospitals concerned, but had been abducted and illegal proposed for adoption. The respondent Government had objected that they had no jurisdiction ratione loci, arguing firstly that the first applicant's children had been born in Vukovar at a time when it had not been under Croatian control and, secondly, that two of the babies had been transferred to a hospital in Serbia, where they had died. The duty to provide the applicants with relevant information had thus fallen to the Serbian authorities. The Court considered that it had jurisdiction to examine whether Croatia had fulfilled its positive obligation to provide the applicants with final and/or credible information about what had happened to their children, including those born in Vukovar during the above-mentioned period, and similarly the question of the extent to which Croatia could have, within the limits of its own territorial sovereignty, taken steps to provide information on the fate of the babies transferred to Serbia (*ibid.*, §§ 107-113).

31. In the specific context of the State's positive obligations in matters of climate change, the Court found that individuals living on the territory of a Contracting Party were within its jurisdiction for such purposes. The issue of responsibility, however, is a separate matter to be examined, if necessary, in relation to the merits of the complaint (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* [GC], § 287, 2024; *Duarte Agostinho and Others v Portugal and 32 Others* (dec.) [GC], 2024, § 178).

2. Transfers of sovereignty over a given territory

32. Article 19 of the Convention does not empower the Court to deliver a judgment on the lawfulness and validity of a transfer of territorial sovereignty under international law. However, the Court is empowered, in so far as and only to the extent necessary for the exercise of its competence under Article 19 of the Convention to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto", to determine the nature of the jurisdiction exercised by a respondent State over a given territory. Indeed, the Court must inevitably determine the question of transfer of sovereignty where the Convention provision alleged to have been breached comprises a reference to the provisions of domestic law. Under its established case-law, the Court must examine the provisions of domestic law in considering the merits of a complaint, and therefore it must determine what the applicable "domestic" law is (*Ukraine v. Russia (*re *Crimea)* [GC] (dec.), 2020, §§ 341-342).

33. The Court examined the admissibility of an inter-State case against Russia in which the Ukrainian Government had raised a series of complaints concerning events which had occurred between 27 February 2014 and 26 August 2015; in the course of those events the Crimean region (including the

city of Sebastopol) had been incorporated into the Russian Federation. In that connection the Court followed the approach adopted by the International Court of Justice, various international arbitral tribunals and the Swiss Federal Court, declaring that it was not called upon to decide in the abstract on the "legality" under international law of what had been presented as the "annexation of Crimea" or of the resultant legal status of that territory. Those matters had not been referred to the Court and did not therefore constitute the subject matter of the dispute before it (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, §§ 243-244 and 339). The Court examined the question of the respondent State's "jurisdiction", dealing separately with two different periods: the period preceding 18 March 2014, when the Russian Federation, the "Republic of Crimea" and the City of Sebastopol had signed a "unification treaty" incorporating Crimea into Russia, and the period since that date. As regards the former period, the Court followed its usual approach as defined in *Al-Skeini and Others v. the United Kingdom* [GC], 2011 (§§ 133-140), exceptionally recognising the extraterritorial exercise of jurisdiction based on the "effective control" by Russia of the area in question. Conversely, in connection with the latter period, the Court reiterated that it was not appropriate for it to assess whether and to what extent the "unification treaty" of 21 March 2014 had changed the sovereign territory of either State in a manner compatible with public international law. Nevertheless, it noted, first of all, that Ukraine and Russia had ratified the Convention in respect of their respective territories as delimited by their then internationally recognised borders; secondly, that neither of the States in question had notified any changes to their sovereign territories; and thirdly, that a number of States and international bodies had refused to recognise any kind of change involving Crimea, affecting the territorial integrity of Ukraine under international law. Under those circumstances, the Court stated that the applicant Government had failed to put forward any arguments capable of convincing it that there had been any change to the sovereign territory of either party to the proceedings. For the purposes of the decision on the admissibility of the application, therefore, 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", as mentioned above (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, §§ 338-351). In short, the alleged victims of the administrative practice complained of by the applicant Government fell within the "jurisdiction" of the respondent State (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, § 352); *Ukraine v Russia (Crimea)* [GC], 2024, § 864).

3. The relationship between Articles 1 and 56 of the Convention

34. Article 56 of the Convention, which is titled "Territorial application" (Article 63 before the entry into force of Protocol No. 11 in 1998), reads as follows:

> "1. Any State may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the present Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
>
> 2. The Convention shall extend to the territory or territories named in the notification as from the thirtieth day after the receipt of this notification by the Secretary General of the Council of Europe.
>
> 3. The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.
>
> 4. Any State which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention."

35. The principles of extraterritorial application of the Convention as formulated by the Court in its constant case-law under Article 1 (see, in particular, *Al-Skeini and Others v. the United Kingdom* [GC], 2011), do not replace the system of declarations which the Contracting States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were

responsible. In other words, in the absence of a declaration made in conformity with Article 56, an applicant cannot legitimately rely on Article 1 to extend the application of the Convention to a territory located outside its legal area (*Quark Fishing Ltd v. the United Kingdom* (dec.), 2006; *Chagos Islanders v. the United Kingdom* (dec.), 2012, §§ 67-75). The Article 56 mechanism cannot simply be ignored on the grounds that it is an "objectionable colonial relic" or in order to prevent a vacuum in the protection offered by the Convention. Article 56 remains in force, its meaning is plain, and it cannot be abrogated at will by the Court in order to reach a purportedly desirable result or because of a perceived need to right an injustice (*Chagos Islanders v. the United Kingdom* (dec.), 2006, § 74). While the situation has changed considerably since the early days of the Convention, just after the Second World War, only the Contracting States can bring the declarations system to an end by means of the usual procedure of signature and ratification. Lastly, there is no obligation under the Convention for any Contracting State to ratify any particular Protocol or to give reasons for its decisions concerning the territorial extent of its jurisdiction for the purposes of Article 56 (*Quark Fishing Ltd v. the United Kingdom* (dec.), 2006).

36. In the case of *Quark Fishing Ltd v. the United Kingdom* (dec.), 2006, a fishing company, complained about the refusal by the authorities of the South Georgia and the South Sandwich Islands ("SGSSI") to grant it a licence to catch a particular species of fish. The applicant company applied to the British High Court and secured the quashing of the instruction in question; nevertheless, his claim for damages was dismissed by the court on the grounds that the application of Protocol No. 1 to the Convention (right to the peaceful enjoyment of property) had not been extended to the SGSSI. The Court found that according to the decisions of the British courts, the SGSSI were under the responsibility of the United Kingdom for the purposes of Article 56 of the Convention, but that the United Kingdom had not made a declaration extending the scope of Protocol No. 1 to that territory. The Court then rejected the applicant's plea relying on the "effective control" principle for the purposes of Article 1; that principle did not replace the system of declarations provided for in Article 56. The fact that the United Kingdom had extended the Convention itself to the territory gave no grounds for finding that Protocol No. 1 had also to apply to that territory and the Court could not require the United Kingdom somehow to justify its failure to extend that Protocol.

37. In the case of *Chagos Islanders v. the United Kingdom* (dec.), 2012, the applicants were 1,786 former inhabitants or descendants of former inhabitants of the Chagos Islands, now known as the British Indian Ocean Territory (or BIOT). The Chagos Islanders had been expelled de facto from their homeland, or had been prohibited from returning there, by the British Government between 1967 and 1973, in order to allow for the construction of US defence facilities on one of the islands. No force was used, but the inhabitants of the islands found themselves destitute after having been uprooted and having lost their homes and means of subsistence. The proceedings in the British courts ended in 1982 in a settlement involving renunciation by the islanders of their right to return to their homeland. Adjudicating on the applicability ratione loci of the Convention, the Court noted that the United Kingdom had never made a notification under Article 56 extending the right of individual petition to the population of the BIOT. A possible basis of jurisdiction within the meaning of Article 1, as defined by the Court's case-law (see in particular *Al-Skeini and Others v. the United Kingdom* [GC], 2011), could not take precedence over Article 56. The fact that the final decision went to politicians or civil servants in the United Kingdom did not constitute sufficient grounds to bring within the jurisdiction of that State a region located outside the Convention's legal area. Lastly, inasmuch as the applicants had complained under Article 6 about the decisions of the British courts, the Court's assessment had to be confined to the procedural rights secured under that provision.

4. The jurisdictional link created by the commencement of civil or criminal proceedings

38. The mere fact that an individual has initiated a procedure in a State Party with which he has no connections is insufficient to establish that State's jurisdiction over him (*Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 28). It is different if the individual has a connection with the country in question.

39. Thus, even if the events at the origin of a court case occurred outside the territory of the respondent State, where a person brings a civil action concerning those events before the courts of that State there is an undeniable "jurisdictional link" for the purposes of Article 1 of the Convention, to the extent that the rights secured under Article 6 § 1 are at stake – obviously without prejudice to the outcome of proceedings (*Marković and Others v. Italy* [GC], 2006, § 54; *Couso Permuy v. Spain*, 2024, § 99; see also *Chagos Islanders v. the United Kingdom* (dec.), 2012, § 66). Indeed, if the domestic law recognises a right to bring an action and if the right claimed is one which prima facie possesses the characteristics required by Article 6 of the Convention, the Court sees no reason why such domestic proceedings should not be subjected to the same level of scrutiny as any other proceedings brought at the national level. Even though the extraterritorial nature of the events alleged to have been at the origin of an action may have an effect on the applicability of Article 6 and the final outcome of the proceedings, it cannot under any circumstances affect the jurisdiction ratione loci and ratione personae of the State concerned. If civil proceedings are brought in the domestic courts, the State is required by Article 1 of the Convention to secure in those proceedings respect for the rights protected by Article 6 (*Marković and Others v. Italy* [GC], 2006, §§ 53-54). In the cited case, the Court had examined the objection as to incompatibility ratione loci raised by the respondent Government, to the effect that the civil action brought by the applicants before the Italian courts had concerned events of an extraterritorial nature (an air strike by NATO forces in the Federal Republic of Yugoslavia).

40. Similarly, if the investigative or judicial authorities of a Contracting State institute their own criminal investigation or proceedings concerning a death which has occurred outside the jurisdiction of that State, by virtue of their domestic law (e.g. under provisions on universal jurisdiction or on the basis of the active or passive personality principle), the institution of that investigation or those proceedings is sufficient to establish a jurisdictional link for the purposes of Article 1 between that State and the victim's relatives who later bring proceedings before the Court (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, § 188; see also *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 559). This approach is also in line with the nature of the procedural obligation to carry out an effective investigation under Article 2, which has evolved into a separate and autonomous obligation, albeit triggered by acts in relation to the substantive aspects of that provision. In this sense it can be considered to be a detachable obligation arising out of Article 2 and capable of binding the State even when the death occurred outside its jurisdiction (*Güzelyurtlu and Others v. Cyprus and Turkey* [GC], § 189, and the references therein). Furthermore, it does not follow from the mere establishment of a jurisdictional link in relation to the procedural obligation under Article 2 that the substantive act falls within the jurisdiction of the Contracting State or that the said act is attributable to that State (*Hanan v. Germany* [GC], 2021, § 143).

41. On the other hand, where no investigation or proceedings have been instituted in a Contracting State, according to its domestic law, in respect of a death which has occurred outside its jurisdiction, the Court will have to determine whether a jurisdictional link can, in any event, be established for the procedural obligation imposed by Article 2 to come into effect in respect of that State. Although the procedural obligation under Article 2 will in principle only be triggered for the Contracting State under whose jurisdiction the deceased was to be found at the time of death, "special features" in a given case will justify departure from this approach, according to the principles developed in *Rantsev v. Cyprus and Russia*, 2010, §§ 243-44. However, the Court does not consider that it has to define in

abstracto which "special features" trigger the existence of a jurisdictional link in relation to the procedural obligation to investigate under Article 2, since these features will necessarily depend on the particular circumstances of each case and may vary considerably from one case to the other (*Güzelyurtlu and Others v. Cyprus and Turkey [GC]*, 2019, § 190; *Carter v. Russia*, 2021, § 132). Nevertheless, the Court recently asserted that the principles governing the establishment of a jurisdictional link between the victim(s) and the respondent State, which had already been formulated in relation to Article 2 of the Convention, are also applicable to Articles 3 and 5 of the Convention (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 157).

42. The above-mentioned principles apply only to the bringing of domestic criminal proceedings which relate to the violations alleged before the Court. By contrast, proceedings brought by the victim of the alleged violation without being directly related to the complaints before the Court do not suffice to trigger a "jurisdictional link" between the victim and the respondent State (*H.F. and Others v. France* [GC], 2022, §§ 194-195). The Court clarified this point in a case where the applicants had complained about a refusal by the French authorities to repatriate their daughters (French nationals) and their grandchildren, who were being held in Syria in Kurdish-controlled camps after the fall of the so-called "Islamic State". The applicants had alleged a violation of Article 3 of the Convention (prohibition of degrading treatment) and Article 3 § 2 of Protocol No. 4 (right to enter the State of one's nationality). The French authorities had brought proceedings against the daughters for participating in a terrorist association; however, the Court took the view that those proceedings had no bearing on whether the facts complained of under Article 3 of the Convention and Article 3 § 2 of Protocol No. 4 fell within France's jurisdiction. In that connection the Court noted the concerns expressed by the respondent Government that an interpretation to the contrary would dissuade States from opening investigations, on the basis of their domestic law or international obligations in respect of individuals involved in acts of terrorism, if they would then be required, on that basis alone, to secure Convention rights to those individuals even though they were not under their effective "control" (*ibid.*).

43. Thus in the case of *Rantsev v. Cyprus and Russia*, 2010, § 243-244) concerning the conduct of the Cypriot and Russian investigative authorities following the apparently violent death of a Russian national in Cyprus, the Court rejected the objection raised by Russia that the facts mentioned in the application fell outside its jurisdiction and therefore did not incur its responsibility. Since the alleged trafficking in human beings had begun in Russia, the Court was competent to examine the extent to which Russia could have taken steps within the limits of its own territorial sovereignty to protect the victim from trafficking, to investigate allegations of trafficking and to investigate the circumstances leading to her death, in particular by questioning witnesses living in Russia (§§ 206-208). Furthermore, assessing the merits of the complaint under the procedural head of Article 2 of the Convention, the Court concluded that Article 2 did not require member States' criminal laws to provide for universal jurisdiction in cases involving the death of one of their nationals outside their territory. Therefore, there was no free-standing obligation incumbent on the Russian authorities to investigate the victim's death in Cyprus, even if she was a Russian national – although Russia was indeed under an obligation to provide legal assistance as the State in whose territory the relevant evidence was to be found (§§ 243-245).

44. In the case of *Aliyeva and Aliyev v. Azerbaijan*, 2014, the Court had before it an application from the parents of an Azerbaijani national who had been killed in Ukraine under circumstances implicating two other Azerbaijani nationals. Pursuant to a mutual legal assistance agreement between Ukraine and Azerbaijan, the case had been transmitted to Azerbaijan, but in the absence of evidence the Azerbaijani authorities had discontinued the proceedings against the suspects. The Court raised of its own motion the issue of its jurisdiction ratione loci, considering that in so far as Azerbaijan had accepted the obligation to conduct an investigation under the 1993 Minsk Convention to continue the criminal investigation commenced by the Ukrainian authorities, it was bound to conduct such an investigation in compliance with the procedural obligation under Article 2

and had undertaken to continue the criminal investigation commenced by the Ukrainian authorities, regardless of where the death had occurred. Therefore, the jurisdiction of Azerbaijan within the meaning of Article 1 came into play only to the extent that the Azerbaijani authorities had decided to take over the proceedings previously opened by Ukraine, under the applicable international treaty and domestic law (§§ 55-57).

45. In the case of *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, concerning the murders of several former residents of the "Turkish Republic of Northern Cyprus" ("TRNC") in the territory of the Republic of Cyprus, the TRNC authorities had initiated their own investigation into those murders, thus creating a "jurisdictional link" between the applicants and Turkey, which incurred the latter's responsibility vis-à-vis the acts and omissions of the "TRNC" authorities. Moreover, there were "special features" related to the situation in Cyprus. First of all, the international community regards Turkey as being in occupation of the northern part of Cyprus, and does not recognise the "TRNC" as a State under international law. Northern Cyprus is under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the "TRNC" and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations. Having regard to those "special features" and to the initiation of the investigation by the "TRNC" authorities, the Court considered that Turkey's jurisdiction under Article 1 of the Convention was established (*ibid*., §§ 191-197).

46. In the case of *Romeo Castaño v. Belgium*, 2019, the applicants complained of the Belgian authorities' refusal to execute a European Arrest Warrant issued by the Spanish authorities against a person suspected of having been a member of the ETA terrorist organisation, who had allegedly been involved in the murder of the applicants' father in Spain and who lived in Belgium, thus preventing the commencement of criminal proceedings against her in Spain. Unlike the aforementioned cases of *Güzelyurtlu and Others* and *Rantsev*, the complaint lodged under the procedural limb of Article 2 had not been based on any alleged failure on the part of Belgium to honour a procedural obligation to investigate that murder itself. Nevertheless, the Court considered that the principles set out in the above-mentioned judgments as regards the determination of the existence of a "jurisdictional link" with the respondent should apply in that case mutatis mutandis. Given that the person suspected of the murder had fled to Belgium and that the Spanish authorities had asked their opposite numbers in Belgium to arrest and surrender her in the framework of the European Arrest Warrant system, which was binding on both States, the Court concluded that those "special features" were sufficient to hold that there was a "jurisdictional link" between the applicants and Belgium (*Romeo Castaño v. Belgium*, 2019, §§ 38-42).

47. In the case of *Hanan v. Germany* [GC], 2021, the Court considered the existence of a "jurisdictional link" in the light of the principles set out in the *Güzelyurtlu and Others* judgment. In Hanan, which solely concerned the procedural limb of Article 2, a German colonel operating within the International Security Assistance Force (ISAF) under a mandate issued by the Security Council of the United Nations pursuant to Chapter VII of the UN Charter, had ordered an airstrike on two fuel tankers that had been hijacked by Taliban insurgents in Afghanistan, killing and injuring the insurgents and also a number of civilians. A German public prosecutor had initiated an investigation, which he had finally discontinued in the absence of criminal liability on the colonel's part. The Court held that the principle that the opening of an investigation into deaths which had occurred outside that State's jurisdiction ratione loci, and not in the exercise of its extraterritorial jurisdiction, had in itself been sufficient to establish a jurisdictional link between that State and the victim, did not apply to the circumstances of the case. The deaths investigated by the German prosecution had occurred during an extraterritorial military operation in the framework of a UN Security Council mandate, outside Convention territory. Establishing a jurisdictional link based solely on the opening of an investigation could have had a deterrent effect on the opening of national-level investigations into deaths occurring during extraterritorial military operations and were liable to lead to inconsistent

application of the Convention to Contracting States participating in the same operation. Moreover, this would excessively broaden the scope of application of the Convention. However, the Court considered that the instant case comprised special features which could establish a jurisdictional link bringing the procedural obligation imposed by Article 2 into effect, even in the absence of an investigation or proceedings having been instituted in a Contracting State in respect of a death which had occurred outside its jurisdiction. First of all, Germany was obliged under customary international humanitarian law to investigate the airstrike at issue, as it concerned the individual criminal liability of members of the German armed forces for a potential war crime. Secondly, the Afghan authorities were, for legal reasons, prevented from instituting a criminal investigation themselves. By virtue of section I, subsection 3, of the ISAF Status of Forces Agreement, the troop-contributing States had indeed retained exclusive jurisdiction over the personnel they contributed to ISAF in respect of any criminal or disciplinary offences which their troops might commit on the territory of Afghanistan. Thirdly, the German prosecution authorities were also obliged, under domestic law concerning the ratification of the Rome Statute of the International Criminal Court, to institute a criminal investigation relating to the responsibility of German nationals for war crimes or wrongful deaths inflicted abroad by members of their armed forces. All those factors constituted "special features" which in combination had triggered the existence of a jurisdictional link for the purposes of Article 1 of the Convention in relation to the procedural obligation to investigate under Article 2 of the Convention (*ibid*., §§ 134-145).

48. The Court declared admissible a complaint under the procedural limb of Article 2 of the Convention concerning the murder by poisoning of a Russian defector, a former agent of the Russian security services and a political dissident. The crime had been committed in the United Kingdom by individuals acting as agents of the Russian State. The Court noted that the Russian authorities had initiated their own criminal investigation into the victim's death under domestic legal provisions giving them jurisdiction to investigate offences against Russian nationals wherever they had been committed. The pursuance of those proceedings had established a "jurisdictional link" between the victim and the Russian State. Furthermore, the persons suspected of the murder had been two Russian nationals who, since returning to Russia, had enjoyed constitutional protection from extradition, which protection had been relied upon by the Russian authorities to refuse the extradition of one of them to the United Kingdom. Consequently, the United Kingdom authorities had been prevented from pursuing the criminal prosecution of the suspects. The fact that the Government had retained exclusive jurisdiction over an individual who was accused of a serious human rights violation constituted a "special feature" of the case establishing the respondent State's jurisdiction under Article 1 . Any other finding would have undermined the fight against impunity for serious human-rights violations within the "legal space of the Convention" (*Carter v. Russia*, 2021, §§ 133-135).

49. In the case of *Israilov v. Russia*, 2023, the son of the applicant, a Russian national from Chechnya who had fled to Austria to avoid having to continue working for the secret services of Ramzan Kadyrov, President of the Chechen Republic, had been murdered in Vienna by a commando. The Austrian authorities had convicted three Russian nationals of Chechen origin for the crime. There was evidence that, a few months before the crime, the applicant's son had been contacted in Austria by an individual from Chechnya who had reportedly informed the Austrian police that he had been instructed to bring the victim back to Chechnya or to "resolve the problem". During the trial, the Austrian authorities, seeking to determine to what extent the Chechen leaders (in particular Mr Kadyrov) had been involved in the crime, had sent a letter of request for legal assistance to the Russian authorities, whose response had been belated and incomplete, according to the applicant. Before the Court, the applicant reproached the Russian authorities for failing to fulfil their positive obligation under Article 2 of the Convention, and in particular for not assisting the Austrian authorities. Without having sufficient information the Court was unable to establish whether the preliminary investigation in Russia corresponded to the first basis of jurisdiction defined in *Güzelyurtlu and Others*, 2019. However, it concluded that there had been "special features", in

particular the fact that the Austrian letter of request, far from being manifestly unreasonable, was based on precise facts, cited precise names, and was aimed at clarifying the circumstances surrounding Umar Israilov's murder and the identity of those responsible for it. The Court thus had jurisdiction to examine whether Russia, acting on its own territory, had complied with its positive obligation to investigate precise facts within the limits of its own jurisdiction (*Israilov v. Russia*, §§ 105-110).

50. Procedural obligations under Article 2 of the Convention may go beyond the conviction and sentencing of the guilty party. The Court thus established that "special features" obtained in the following factual context. While taking part in a training course in Hungary, an Azerbaijani officer decapitated an Armenian officer and threatened to kill another Armenian soldier. He was sentenced to life imprisonment in Hungary. The ethnic bias in respect of his crimes was fully investigated and highlighted by the Hungarian courts. Having served eight years of his sentence in Hungary, he was transferred to Azerbaijan under the Council of Europe Convention on Transfer of Sentenced Persons ("the Transfer Convention") with a view to serving the remainder of his sentence in his home country. However, upon his return he was welcomed as a hero, immediately released, pardoned, promoted at a public ceremony and awarded arrears in salary for the period spent in prison as well as the use of a flat. Many comments approving his conduct and pardon were made by various high-ranking Azerbaijani officials. The Court reiterated that the enforcement of a sentence imposed in the context of the right to life had to be regarded as an integral part of the State's procedural obligation under Article 2. Regardless of where the crimes were committed, in so far as Azerbaijan had agreed to and assumed the obligation under the Transfer Convention to continue the enforcement of the prison sentence commenced by the Hungarian authorities, it was bound to do so, in compliance with its procedural obligations under Article 2. In sum, there were sufficient "special features" in the case to trigger the existence of Azerbaijan's jurisdictional link in relation to those procedural obligations (*Makuchyan and Minasyan v. Azerbaijan and Hungary*, 2020, §§ 50-51).

51. All the above-mentioned cases concerned criminal proceedings which were (or should have been) commenced at the initiative of the authorities of a Contracting State in the framework of its procedural obligations under Article 2 of the Convention. On the other hand, that reasoning does not apply to the very different case of administrative proceedings – for example proceedings aimed at obtaining a visa – brought by an individual without any pre-existing connection with the State in question, where the choice of that particular State was not imposed under any treaty obligation. In particulier, as regards immigration, the Court has held that to find otherwise would amount to enshrining a near-universal application of the Convention on the basis of the unilateral choices of any individual, irrespective of where in the world they find themselves, and therefore to create an unlimited obligation on the Contracting States to allow entry to an individual who might be at risk of ill-treatment contrary to the Convention outside their jurisdiction. If the fact that a State Party rules on an immigration application is sufficient to bring the individual making the application under its jurisdiction, precisely such an obligation would be created. The individual in question could create a jurisdictional link by submitting an application and thus give rise, in certain scenarios, to an obligation under Article 3 which would not otherwise exist (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 123; *Abdul Wahab Khan v. the United Kingdom* (dec.), 2014, § 27). Such an extension of the Convention's scope of application would also have the effect of negating the well-established principle of public international law, recognised by the Court, according to which the States Parties, subject to their treaty obligations, including the Convention, have the right to control the entry, residence and expulsion of aliens (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 124, and the case-law cited therein). The Court reached the same conclusion on the subject of proceedings brought before the French urgent applications judge, on behalf of French applicants detained abroad, seeking their repatriation (*H.F. and Others v. France* [GC], 2022, §§ 195-196).

5. The particular case of Article 3 § 2 of Protocol No. 4

52. Article 3 § 2 of Protocol No. 4 provides as follows:

> "No one shall be deprived of the right to enter the territory of the State of which he is a national."

53. In the case of *H.F. and Others v. France* [GC], 2022, the Court was called upon for the first time to rule on the existence of a jurisdictional link between a State and its nationals in respect of a complaint raised under that provision. The applicants had complained about a refusal by the French authorities to repatriate their daughters (French nationals) and their grandchildren, who were being held in Syria in Kurdish-controlled camps after the fall of the so-called "Islamic State". The Court found that nationality could not constitute an autonomous basis of jurisdiction, especially as the protection by France of the applicants' family members would require negotiation with the Kurdish authorities which were holding them, or even an intervention on Kurdish-administered territory. The Court emphasised, however, that the interpretation of the provisions of Article 3 of Protocol No. 4 must take account of contemporary phenomena, especially globalisation and increasing international mobility. The right to enter a State lay at the heart of current issues related to the combat against terrorism and to national security. If Article 3 § 2 of Protocol No. 4 were to apply only to nationals who arrived at the national border or who had no travel documents, it would be deprived of effectiveness in the contemporary context. It could not be excluded that certain circumstances relating to the situation of individuals who wished to enter the State of which they were nationals, relying on the rights they derived from Article 3 § 2 of Protocol No. 4, might give rise to a jurisdictional link with that State for the purposes of Article 1 of the Convention. However, the Court did not consider that it had to define these circumstances in abstracto since they would necessarily depend on the specific features of each case and might vary considerably from one case to another. In the circumstances of that case, the Court considered that it was necessary to take into account, in addition to the legal link between the State and its nationals, the following special features which might trigger France's jurisdiction under Article 3 § 2 of Protocol No. 4. The applicants had addressed a number of official requests to the French authorities for repatriation and assistance, on the basis of the fundamental values of democratic societies, while their family members were facing a real and immediate threat to their lives and physical well-being; in view of their health situation and extreme vulnerability, the individuals concerned were unable to leave the camps in order to return to France without the assistance of the French authorities; lastly, the Kurdish authorities had indicated their willingness to hand over the female detainees of French nationality and their children to the national authorities. In view of those special features, the Court found France to have jurisdiction in respect of the family members under Article 3 § 2 of Protocol No. 4 (*ibid*., §§ 205-214).

6. Cross-border transfer or control of data

54. In the case of *Arlewin v. Sweden*, 2016, the applicant had brought, in the Swedish courts, a private prosecution for gross defamation against the anchorman of a television programme in which accusations had been made against him. His claim had been rejected for lack of jurisdiction on the grounds that the programme, even though it had been recorded in Sweden and broadcast live to a Swedish audience, had been transmitted by a company registered in the United Kingdom and was thus considered not to have emanated from Sweden. According to the Swedish courts, it was the United Kingdom, not Sweden, which had jurisdiction to deal with the applicant's defamation proceedings as, under the "country of origin principle" laid down by the EU Audiovisual Media Services Directive, jurisdiction had to be determined primarily with reference to the country where the broadcaster's head office was located and where its editorial decisions were taken. Taking the complaint under Article 6 § 1 of the Convention (right of access to a court), the Court joined the question of the respondent State's jurisdiction to the merits and examined whether the Swedish courts had had good reason to consider that they lacked jurisdiction. Rejecting their interpretation

of EU law, it found that Swedish jurisdiction was not barred by a binding provision of EU law. The Court further noted that the content, production and broadcasting of the television programme as well as its implications had very strong connections to Sweden. There had, therefore, been a prima facie obligation on Sweden to secure the applicant's right of access to court. The fact that the applicant might have had access to a court in a different country did not affect Sweden's responsibility under Article 1 of the Convention. The Court thus dismissed the admissibility objection raised by the respondent Government and, on the merits, found a violation of Article 6 § 1.

55. In the case of *Wieder and Guarnieri v. the United Kingdom*, 2023, the Court ruled for the first time on the application of the territoriality principle in cases of interception, extraction, filtering, storage, analysis and dissemination of electronic communications from and/or to a country other than the respondent State. Two researchers living in the USA and Germany had complained that such measures had been taken against them by the UK intelligence services. Referring to its analysis of the UK's bulk interception of communications in *Big Brother Watch and Others v. the United Kingdom* [GC], 2021, the Court reiterated that the principal interference with the rights of the sender or recipient was the searching, examination and use of the intercepted communications. All these actions had been carried out by the UK intelligence agencies acting within United Kingdom territory. The Court rejected the Government's contention that any interference could not be separated from the person of each applicant and would therefore have produced effects only where they themselves were located. In its case-law on Articles 6 § 1 and 8 of the Convention and Article 1 of Protocol No. 1 the Court had always considered that an interference occurred where the possession was interfered with, rather than where the owner was located. In the circumstances, the interference with the applicants' rights therefore fell within the territorial jurisdiction of the respondent State (*Wieder and Guarnieri v. the United Kingdom*, 2023, §§ 88-95).

56. The joined cases *A.L. v. France and E.J. v. France (dec.)*, 2024, concerned *EncroChat*, an encrypted mobile-phone communication tool of which 66,000 copies had been distributed covertly between 2016 and 2020 in 122 countries. The French authorities had retrieved data from terminals linked to the *EncroChat* network and had then transmitted them to the UK law-enforcement authorities pursuant to a European Investigation Order (EIO). The French Government had raised an objection of inadmissibility alleging that the facts of the case fell outside the jurisdiction of France. The Court noted that the impugned data had been retrieved by means of a remote data hack conducted in the context of investigations that had been entrusted to French investigators acting under the authority of French judges and prosecutors; the retrieval operations had been conducted from French territory and the hack had been launched from a server located there. The retrieval measure was thus attributable to France. The fact that the retrieval operation had produced part of its effects outside this territory, by enabling remote access to data from handsets located abroad, did not affect this finding. The data pertaining to EncroChat users located in the United Kingdom had been collected by the French investigators prior to their transfer to the UK National Crime Agency, on the instructions of a French prosecutor. The fact that the EncroChat users located in the United Kingdom had been identified only after enforcement of the EIO did not release France from its responsibility under Article 1. It had not been submitted that the retrieved data had been stored outside France. The facts thus fell within the respondent State's jurisdiction (*ibid.*, §§ 100-105).

B. Exceptions to the territoriality principle

57. To date, the Court has recognised a number of exceptional circumstances capable of giving rise to the exercise of jurisdiction by a Contracting State outside its own territorial boundaries. In each case, the question whether there are exceptional circumstances which require and justify a finding by the Court that the State was exercising jurisdiction extraterritorially must be determined with reference to the specific facts of the case (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 132; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, § 313). Indeed, while international law does not exclude a State's extraterritorial exercise of its jurisdiction, the suggested bases of such

jurisdiction (including nationality and flag) are, as a general rule, defined and limited by the sovereign territorial rights of the other relevant States (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 99).

58. Moreover, it should be emphasised that the mere fact that a case includes international elements is insufficient, alone, for that case to involve extraterritoriality for the purposes of Article 1 of the Convention. That is the situation with regard to cases under Article 8 concerning decisions taken with regard to individuals, irrespective of whether they were nationals, who were outside the territory of the respondent State but in which the question of that State's jurisdiction had not arisen, given that a jurisdictional link resulted from a pre-existing family or private life that that State had a duty to protect (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 109, and the case-law cited therein). Similarly, an instantaneous extraterritorial act was insufficient in this respect, as the provisions of Article 1 did not admit of a "cause and effect" notion of "jurisdiction" (*Medvedyev and Others v. France* [GC], 2010, § 64).

59. Although responsibility for an alleged violation cannot be imputed to a State on the basis of events that took place before the date of its ratification of the Convention, the Court may still, in determining the question of jurisdiction, take account of facts relating to earlier events if they are indicative of a continuing situation which persisted after that date (*Chiragov and Others v. Armenia* [GC], 2015, § 171; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, § 321).

60. As an exception to the principle of territoriality, a Contracting State's jurisdiction under Article 1 may extend to acts of its authorities which produce effects outside its own territory (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 133, and the references therein). A State's jurisdiction outside its own border can primarily be established in one of the following two ways:

a. on the basis of the power (or control) actually exercised over the *person* of the applicant (personal concept of jurisdiction or *ratione personae*);
b. on the basis of control actually exercised over the foreign *territory* in question (spatial concept of jurisdiction or *ratione loci*).

61. The Court's case-law demonstrates that an assessment as to whether a respondent State had Article 1 jurisdiction in respect of complaints about events outside that State's formal territorial borders may involve consideration of ratione loci or ratione personae jurisdiction, or both. Where the principal argument is that the respondent State exercised effective control over an area, the question that arises is, essentially, whether that area can be considered to fall within the ratione loci jurisdiction of the respondent State, with all the attendant rights and responsibilities that this entails, notwithstanding the fact that the area falls outside its territorial boundaries. Where the argument is rather that the victims fell under State agent authority and control in territory which the State did not control, the principal question will be whether the respondent State exercised ratione personae jurisdiction. Even in cases where it is established that the alleged violations occurred in an area under the respondent State's effective control (and thus within its ratione loci jurisdiction), the State will only be responsible for breaches of the Convention if it also has ratione personae jurisdiction. This means that the impugned acts or omissions must have been committed by State authorities or be otherwise attributable to the respondent State (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 548-549).

62. The Court is empowered, in so far as and only to the extent necessary for the exercise of its competence – which Article 19 of the Convention defines as to "ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto" – to determine the nature of the jurisdiction exercised by a respondent State over a given territory (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, § 341).

63. However, before successively examining the aforementioned two concepts of jurisdiction, we shall assess separately the specific issue of the jurisdiction of a State conducting a military operation in a foreign territory during the active phase of hostilities.

1. The active phase of an international armed conflict

64. A distinction should be drawn between the military operations carried out during the active phase of hostilities (the combat phase) and the other events which occurred during the "occupation" phase after the active phase of hostilities had ceased (*Georgia v. Russia (II)*, 2021, § 83).

a. The "active" State conducting a military operation in the territory of another State

65. In the case of *Georgia v. Russia (II)*, 2021, the Court held that the actions of a Contracting State carrying out a military operation in the territory of another State in the framework of an international armed conflict could not give rise to any kind of jurisdiction *ratione loci* or *ratione personae* on the part of the former State inasmuch as the actions occurred during the active phase of hostilities. Indeed, the conditions applied in its case-law to determine whether there was an exercise of extraterritorial jurisdiction by a State are not met in such a situation. First of all, in the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict one cannot generally speak of "effective control" over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. Moreover, the reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos also precludes any form of "authority and control by State agents" over individuals. In that connection, the Court contrasted isolated and specific acts involving an element of proximity (such as fire aimed by the armed forces/police of the States concerned, to which the concept of "State agent authority and control" could be applied; see below), with bombing and artillery shelling by a belligerent State seeking to put the enemy *hors de combat* and to establish control over a given area. Furthermore, the interpretation of Article 1 of the Convention as precluding the State's "jurisdiction" during the active phase of hostilities in the foreign territory is borne out by the practice of the High Contracting Parties in not derogating under Article 15 of the Convention in situations where they have engaged in an international armed conflict outside their own territory. This may be interpreted as the High Contracting Parties considering that in such situations, they do not exercise jurisdiction within the meaning of Article 1 (*ibid.*, §§ 125-139).

66. Conversely, military occupation after the cessation of active hostilities can bestow jurisdiction on the "active" State on the basis of its effective control over the territory in question and/or specific individuals (*Georgia v. Russia (II)*, 2021, §§ 161-175).

b. The "passive" State sustaining a foreign military operation in its territory

67. By the same logic, even where the "passive" State (sustaining a foreign military operation in its own territory) still formally holds "jurisdiction" over its whole territory in accordance with Article 1 of the Convention, normal exercise of such jurisdiction during the active phase of hostilities may be so impeded that the Court will declare the relevant complaints inadmissible. Clearly, the Court's case-law shows that the "passive" State is still required to adopt diplomatic, judicial, political or administrative measures to ensure respect for individual rights. On the other hand, it would be unrealistic to require the national authorities to do so during the active phase of hostilities, in a general situation of chaos and confusion. Given the ongoing massive armed conflict, such positive measures were, on the one hand, impossible to implement and, on the other, of no real value, as they could not have meaningfully contributed to the protection of the applicants' rights

(*Shavlokhova and Others v. Georgia* (dec.), 2021, §§ 32-34; *Bekoyeva and Others v. Georgia* (dec.), 2021, §§ 37-39).

c. General observation and further developments

68. In the case of *Georgia v. Russia (II)*, 2021, the Court recognised that such an interpretation of the notion of "jurisdiction" in Article 1 of the Convention might seem unsatisfactory to the alleged victims of acts and omissions by a respondent State during the active phase of hostilities in the context of an international armed conflict outside its territory but in the territory of another Contracting State, as well as to the State in whose territory the active hostilities have taken place. Nevertheless, having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations were predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court was not in a position to develop its case-law beyond the understanding of the notion of "jurisdiction" as established to date. If the Court were to be entrusted with the task of assessing acts of war and active hostilities in the context of an international armed conflict outside the territory of a respondent State, it was for the Contracting Parties to provide the necessary legal basis for such a task. That did not mean that States could act outside any legal framework, as they were obliged to comply with the very detailed rules of international humanitarian law in such a context (*ibid.*, §§ 139-143).

69. The Court circumscribed the scope of the above-mentioned principles in *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022. It pointed out that in *Georgia v. Russia (II)* [GC], there had been a clear, single, continuous five-day phase of intense fighting during which Russian troops had advanced on Georgian territory seeking to establish control ("the five-day war"); after that, a ceasefire agreement had been reached and largely observed. The Court had therefore been able to refer to "the five-day war" as a distinct "active phase of hostilities" and to separate out complaints which it had identified as concerning "military operations carried out during the active phase of hostilities". It had summarised the alleged attacks falling under this head as covering "bombing, shelling and artillery fire". Since it had found jurisdiction to exist in respect of the detention and treatment of civilians and prisoners of war even during the "five-day war", there could be no doubt that a State might have extraterritorial jurisdiction in respect of complaints concerning events which occurred while active hostilities were taking place. The Court thus clarified that the *Georgia v. Russia (II)* [GC] judgment could not be seen as authority for excluding entirely from a State's Article 1 jurisdiction a specific temporal phase of an international armed conflict (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 558).

70. Subsequently, in a number of cases against Armenia and Azerbaijan, concerning the "Four-Day War" of 2016, brought by individuals living in the war zone, either on the territory of the "Republic of Nagorno-Karabakh", or close to the line of contact (but within the internationally recognised territory of Azerbaijan), the Court reached the same conclusion as in the case of *Georgia v. Russia (II)* [GC], 2021, cited above. As regards the "Republic of Nagorno-Karabakh" it noted that Azerbaijan no longer controlled it since the first Nagorno-Karabakh war of 1992-1994. It had involved heavy shelling of towns and villages on either side of the line of contact for four days, resulting in many dead, wounded and temporarily homeless people as well as considerable damage to property and infrastructure on both sides. In these circumstances, and without any indication to the contrary, it was not a situation of "effective control" over an area. The active phase of hostilities under examination in the present case concerned bombing and artillery shelling by the armed forces on both sides of the conflict, seeking to put the enemy force hors de combat and capture territory. The factual elements of the case did not reveal any instance of control over or proximity to the alleged victims of a violation. In these circumstances, there could not be said to have been "State agent authority and control" over those individuals. The Court thus found that neither Armenia nor

Azerbaijan had "jurisdiction" within the meaning of Article 1 of the Convention (*Allahverdiyev v. Armenia* (dec.), 2023, §§ 28-33; *Aliyev v. Armenia* (dec.), 2023, §§ 24-29; *Ohanyan v. Azerbaijan* (dec.), 2023, §§ 30-37; *Hakobyan v. Azerbaijan* (dec.), 2023, §§ 28-35).

2. Authority exercised over the person of the applicant

a. General comments

71. While nationality is a factor that is ordinarily taken into account as a basis for the extraterritorial exercise of jurisdiction by a State, it cannot constitute an autonomous basis of jurisdiction. The mere fact of having the nationality of a State does not constitute a sufficient connection with that State in order to establish a jurisdictional link (*H.F. and Others v. France* [GC], 2022, §§ 198 and 206).

72. Similarly, the mere fact that decisions taken at national level had an impact on the situation of persons resident abroad is not such as to establish the jurisdiction of the State concerned over those persons outside its territory (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 112). In order to determine whether the Convention applies to an individual case, the Court must examine whether any exceptional circumstances actually exist relating to the nature of the connection between the applicant and the respondent State, such as to show whether the latter effectively exercised authority or control over him or her (*M.N. and Others v. Belgium* (dec.) [GC], 2020, §§ 112-113).

73. Unlike jurisdiction based on effective control over an area, the Court has on numerous occasions found personal jurisdiction under Article 1 of the Convention to exist outside the Convention legal space (see, among other examples, Öcalan, Medvedyev and Others, Al-Skeini and Others and Jaloud, together with *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 572).

74. In response to reliance by applicants on a test of "control over the applicant's Convention interests", the Court found that extraterritorial jurisdiction required control over the person himself or herself rather than the person's interests as such. It did not consider that the scope of extraterritorial jurisdiction could be expanded in such a manner, which would entail a radical departure from established principles under Article 1 (*Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], 2024, §§ 205-206).

b. Acts of diplomatic or consular agents

75. A State's jurisdiction may arise from the activities of its diplomatic or consular agents abroad in accordance with the rules of international law where those agents exercise authority and control over other persons or their property (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 73). In some respects, the nationals of a Contracting State fall within the latter's jurisdiction even where they live or reside abroad; in particular, diplomatic and consular representatives exercise a series of functions the fulfilment of which may incur their country's responsibility under the Convention (*X. v. Germany*, Commission decision of 25 September 1965). Even if the applicant is physically in his own State, the acts and omissions of that State's diplomatic and consular agents which occur abroad but directly concern the said applicant place him under its jurisdiction (*X. v. the United Kingdom*, Commission decision of 15 December 1977).

76. The Commission therefore found that the applicants were within the jurisdiction of the respondent State in the following cases:

- a series of acts allegedly committed by German consular agents in Morocco against the applicant (a German national who did not consider himself as such because he was a member of the *Sudetendeutsch* community) and his wife, damaging their reputation and finally, according to the applicant, triggering his expulsion from Moroccan territory (*X. v. Germany*, Commission decision of 25 September 1965);

- the alleged inaction of the British consul in Amman (Jordan) to whom the applicant, a British national, had asked for assistance in restoring custody of her child, who had been taken to Jordan by the father (*X. v. the United Kingdom*, Commission decision of 15 December 1977);
- the fact that the Danish Ambassador to the German Democratic Republic (GDR) had called the police of that State to remove a group of Germans who had taken refuge in the Danish Embassy (*M. v. Denmark*, Commission decision of 14 October 1992).

77. Conversely, the Court left open the question whether a binational (or a national of several different States) detained in one of the States whose nationality he or she held fell under the jurisdiction of the other State where the latter refused to afford him or her diplomatic protection or consular assistance (indeed, pursuant to a provision of customary international law relied on by the national authorities, a State cannot afford diplomatic protection to one of its nationals in respect of a State which he or she is also a national). Thus the Court rejected as manifestly ill-founded a complaint submitted by a Belgian-Moroccan binational concerning a refusal by the Belgian authorities to grant him consular assistance during his detention in Morocco. Even supposing that a positive obligation to act could have been deduced from the provisions of the Convention, the Court noted that the Belgian authorities had by no means remained passive or indifferent. The failure of their approaches to the Moroccan authorities had been the result not of their own inertia but of the categorical rejection of their requests by the Moroccan authorities, who at the time had had exclusive control over the applicant (*Aarrass v. Belgium* (dec.), 2021, §§ 37-41).

78. The Court found that Belgium had no jurisdiction over four Syrian nationals who had unsuccessfully applied for visas at the Belgian Embassy in Lebanon, relying on the risk of ill-treatment in their country of origin. First of all, the applicants were not Belgian nationals seeking to benefit from the protection of their embassy. Secondly, at no time did the diplomatic agents exercise *de facto* control over the applicants. The latter freely chose to present themselves at the Belgian embassy in Beirut, and to submit their visa applications there – as indeed they could have chosen to approach any other embassy; they were then free to leave the premises of the Belgian embassy without any hindrance (*M.N. and Others v. Belgium* (dec.) [GC], 2020, § 118). In this connection, it is irrelevant that the diplomatic agents had, as in the present case, merely a "letter box" role, or to ascertain who was responsible for taking the decisions, whether the Belgian authorities in the national territory or the diplomatic agents posted abroad (*ibid.*, § 114). The Court subsequently explained that its reference to "exceptional circumstances" had not been intended to establish a distinct jurisdictional test. Within the specific context of that case, in which the applicants had sought to rely on a combination of supposed substantive and procedural links to Belgium, it was noted that an assessment of any "exceptional circumstances" required the Court "to explore the nature of the link between the applicants and the respondent State and to ascertain whether the latter effectively exercised authority or control over them". In other words, the assessment was ultimately one of effective authority or control over the applicants, in line with established case-law (*Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], 2024, § 188).

79. In the case of *H.F. and Others v. France* [GC], 2022, the applicants had complained about a refusal by the French authorities to repatriate their daughters (French nationals) and their grandchildren, who were being held in Syria in Kurdish-controlled camps after the fall of the so-called "Islamic State". In so far as the applicants had alleged a violation of Article 3 of the Convention (allegation of ill-treatment in the camps), the Court found that France did not have jurisdiction, which could not be triggered by the nationality of those concerned or France's refusal to repatriate them. Such an extension of the Convention's scope found no support in the case-law. First, the mere fact that decisions taken at national level had had an impact on the situation of individuals residing abroad was not such as to establish the jurisdiction of the State concerned over them outside its territory. Secondly, neither domestic law nor international law required the State to act on behalf of its nationals and to repatriate them. Moreover, the Convention did not guarantee a

right to diplomatic or consular protection. Thirdly, in spite of the stated desire of local non-State authorities that the States concerned should repatriate their nationals, France would have had to negotiate with them as to the principle and conditions of any such operation and to organise its implementation, which would inevitably have taken place in Syria (*ibid.*, §§ 198-203).

c. Acts committed on board a ship or aircraft

80. In addition to acts performed by diplomatic and consular agents, other recognised instances of the extraterritorial exercise of jurisdiction by a State include cases involving the activities of its diplomatic or consular agents abroad and on board aircraft and ships registered in, or flying the flag of, that State. In these specific situations, customary international law and treaty provisions have clearly recognised and defined the extraterritorial exercise of jurisdiction by the relevant State (*Cyprus v. Turkey*, Commission decision of 26 May 1975; *Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 73; *Medvedyev and Others v. France* [GC], 2010, § 65); *Bakanova v. Lithuania*, 2016, § 63; *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 75).

d. Exercise of another State's sovereign authority with its agreement

81. The Court has recognised the exercise of extra-territorial jurisdiction by a Contracting State which, through the consent, invitation or acquiescence of the local Government, exercises all or some of the public powers normally to be exercised by that Government (*Banković and Others v. Belgium and Others* (dec.) [GC], 2001, § 71). Consequently, where, in accordance with custom, treaty or other agreement, authorities of the Contracting State carry out executive or judicial functions on the territory of another State, the Contracting State may be responsible for breaches of the Convention thereby incurred, as long as the acts in question are attributable to it rather than to the territorial State (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 135).

82. As regards extradition, when a State issues a European arrest warrant or and international arrest warrant issued by Interpol for the purposes of enforcing the detention of a person located in another State and the latter executes the warrant pursuant to its international obligations, the requesting State is responsible under the Convention for such detention, even if it was executed by the other State (*Vasiliciuc v. the Republic of Moldova*, 2017, §§ 23-24; *Stephens v. Malta (no. 1)*, 2009, §§ 51-54). Where the arrest warrant comprises a technical irregularity which the authorities of the requested State could not have detected, the requesting State should be ascribed responsibility under the Convention for the unlawful arrest warrant issued by its authorities pursuant to its domestic law and executed by the other State in compliance with its international obligations (*ibid.*, § 52).

83. The Commission dealt with a situation of that type in the case of *X. and Y. v. Switzerland* (Commission decision of 14 July 1977). In that case a German national complained about a prohibition on entry imposed on him by the Swiss Federal authorities, with effect both in Swiss territory and in Liechtenstein (which, at the time, had not yet ratified the Convention and therefore lay outside the scope of the latter). The decisive point for the Commission was that under an agreement between Switzerland and Liechtenstein, the latter was debarred from excluding the effects of an entry ban imposed by the Swiss authorities, whereby only the latter authorities were entitled to exclude Liechtenstein from the territorial scope of such a measure. In those conditions, Switzerland should be deemed responsible not only for the legal procedure and consequences of the prohibition on entry into its own territory, but also for the effects produced by that prohibition in Liechtenstein. Indeed, in conformity with the specific relationship between those two countries, in acting on behalf of Liechtenstein the Swiss authorities were actually acting in accordance with their national jurisdiction. According to the agreement in question, they were acting exclusively in pursuance of Swiss law, and it was merely the effect of their actions which extended to Liechtenstein territory. In other words, the prohibition had been imposed under Swiss jurisdiction, which had been extended to Liechtenstein. The Commission found that the measures implemented by the Swiss

authorities which took effect in Liechtenstein placed all persons to whom they were applicable – including the applicants – under Swiss jurisdiction for the purposes of Article 1 of the Convention.

84. The Court addressed a fairly similar issue in *Drozd and Janousek v. France and Spain*, 1992, concerning the unique relationship between the Principality of Andorra and France and Spain, especially before the 1993 reform of the Constitution (at the material time Andorra had not yet signed or ratified the Convention). The applicants had been convicted of armed robbery by the competent Andorran court (*Tribunal des Corts*), which is made up of three members: a judge (French or Spanish, appointed in turn by each of the Co-Princes of Andorra, that is to say the President of the French Republic and the Bishop of Urgell), an episcopal *veguer* (appointed by the Bishop of Urgell), and a French judge delegated by the French *veguer* (in turn appointed by the French Co-Prince). After the conviction, pursuant to Andorran law, the applicants had the option of serving their sentence in France or in Spain; they opted for France. Before the Court they complained, in particular, that they had not benefited from a fair trial; they alleged that France and Spain were responsible, at the international level, for the conduct of the Andorran authorities. The Court disagreed. It noted that while judges from France or Spain sat in the Andorran courts, they did not do so in their capacity as French or Spanish judges. Those courts discharged their duties autonomously, and their judgments and decisions were not subject to supervision by the French or Spanish authorities. Moreover, there was nothing to suggest that the respondent States had attempted to interfere with the applicants' trial in Andorra. Consequently, insofar as they complained about the proceedings before the Andorran court, the applicants were under neither French nor Spanish jurisdiction (§ 96).

85. By the same logic, the Court found that there had been no jurisdictional link in the case of *Brandão Freitas Lobato v. Portugal* (dec.), 2021, in which the applicant, a former Minister of Justice in East Timor, had been convicted in the East Timor courts by Portuguese judges seconded under a judicial cooperation programme. The Court noted that the Portuguese judges had been serving on behalf of East Timor rather than Portugal, and that the Portuguese authorities had not been empowered to uphold or invalidate the impugned decisions; they had therefore had no discretionary powers vis-à-vis the criminal charges against the applicant. Neither the fact that those judges had retained certain professional rights in Portugal and had still been subject to the disciplinary power of the Portuguese Supreme Council of the Judiciary (including in respect of offences committed abroad), nor even the fact that the Council had actually launched an inquiry and commenced two sets of disciplinary proceedings concerning the judges' conduct in East Timor, had been sufficient to establish any jurisdictional link in the framework of the impugned criminal proceedings. Conversely, the applicant had herself come under Portuguese jurisdiction inasmuch as she considered that her procedural rights had been breached in the framework of the proceedings commenced by the Supreme Council following her complaint.

86. Another example of a Court finding that the respondent State lacks "jurisdiction" was in the case of *Gentilhomme, Schaff-Benhadji and Zerouki v. France*, 2002. The applicants were three French women who were married to Algerian men and lived in Algeria. Pursuant to an agreement concluded by France and Algeria in 1962, French children – including those with dual Franco-Algerian nationality under French law – could attend French public schools in Algeria managed by the French Academic and Cultural Office for Algeria ("OUCFA"). In 1988, however, the Algerian Government sent the French Embassy in Algiers a *note verbale* informing it that Algerian children could no longer be enrolled or (re-enrolled in French schools; that included the applicants' children, since dual nationality was not recognised under Algerian law. The applicants lodged applications with the Court against France, alleging, *inter alia*, a breach of Article 2 of Protocol No. 1 and Articles 8 and 14 of the Convention. The Court noted that the impugned situation had stemmed directly from a unilateral decision by Algeria. Whether or not that decision had been in conformity with public international law, it basically amounted to a refusal on the part of Algeria to comply with the 1962 agreement. The French authorities, whose exercise of "jurisdiction" in Algerian territory in the present case had

been based solely on that agreement, could only note the consequences of the Algerian decision for the education of children in the same situation as those of the applicants. In short, the facts complained of had been caused by a decision imputable to Algeria, which had thus taken a discretionary decision within its own territory, outside the scope of any French scrutiny. In other words, in the specific circumstances of the case, those facts could not be imputed to France (§ 20).

e. Use of force by a State's agents operating outside its territory

87. In some cases, the use of force by a State's agents operating outside its territory – whether lawfully or unlawfully – may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 136). A typical example of such a case is where an individual has been handed over to a State's agents outside its territory, even if they are only presumed agents (*Razvozzhayev v. Russia and Ukraine and Udaltsov v. Russia*, 2019, § 161). Similarly, the control exercised over an individual on account of an incursion or a targeted operation by the armed forces or the police of a State operating beyond its own borders might be sufficient to bring the affected persons under the authority and/or effective control of that State, particularly as such targeted violations of the human rights of an individual by one Contracting State in the territory of another Contracting State undermine the effectiveness of the Convention both as a guardian of human rights and as a guarantor of peace, stability and the rule of law in Europe (*Carter v. Russia*, 2021, §§ 127-128). In Carter, that principle was applied to a premeditated, targeted extrajudicial killing by agents of one State acting in the territory of another State outside the context of a military operation (*Carter v. Russia*, 2021, § 130). In situations of that kind, the Court has emphasised that Article 1 of the Convention cannot 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 (*Issa and Others v. Turkey*, 2004, § 71).

88. The Court thus acknowledged that the applicants were under the "jurisdiction" of the relevant respondent States in the following situations:

- The applicant, the leader of the PKK (the Kurdistan Workers' Party), who had been arrested by Turkish security agents in the international zone of Nairobi airport (Kenya) and flown back to Turkey. The Court noted – and the Turkish Government did not dispute – that, directly after being handed over to the Turkish officials by the Kenyan officials, the applicant was effectively under Turkish authority and therefore within the "jurisdiction" of that State, even though in this instance Turkey exercised its authority outside its territory. It is true that the applicant was physically forced to return to Turkey by Turkish officials and was under their authority and control following his arrest and return to Turkey (*Öcalan v. Turkey* [GC], 2005, § 91).
- The applicants, two Iraqis who had been charged with involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003, been held in a British detention facility near Baghdad, and had complained that their imminent handover to the Iraqi authorities would expose them to a real risk of execution by hanging. The Court held that inasmuch as the control exercised by the United Kingdom over its military detention facilities in Iraq and the individuals held there had been absolute and exclusive *de facto and de jure*, the applicants should be deemed to have been within the respondent State's jurisdiction (*Al-Saadoon and Mufdhi v. the United Kingdom* (dec.), 2009, §§ 86-89).
- The applicants, crew members of a cargo ship registered in Cambodia and intercepted off the Cape Verde islands by the French navy under suspicion of transporting large quantities of drugs, were confined to their quarters under military guard until the ship's arrival in Brest. The Court found that as France had exercised full and exclusive control over the ship and its crew, at least *de facto*, from the time of its interception, in a continuous and uninterrupted manner until they were tried in France, the applicants had been effectively

within France's jurisdiction for the purposes of Article 1 of the Convention (*Medvedyev and Others v. France* [GC], 2010, § 67). The Court reached the same conclusion in a case concerning a group of Greenpeace activists confined to their ship, which had been intercepted by the Russian coastguard and escorted to the Russian port of Murmansk (*Bryan and Others v. Russia*, 2023, § 37).

- The applicants, a group of Somali and Eritrean nationals, who had been attempting to reach the Italian coast on board three vessels, were intercepted at sea by Italian Revenue Police and Coastguard ships, transferred on to Italian military ships and taken back to Libya, from whence they had departed. Reiterating the principle of international law stating that a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying, the Court rejected the designation "rescue on the high seas" used by the Government to describe the events, and attached no importance to the allegedly low level of control exercised over the applicants by the agents of the Italian State. Indeed, the whole series of events had occurred on board Italian military ships, with crews made up exclusively of national servicemen. From the time of their arrival on board those ships until their handover to the Libyan authorities the applicants had been under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities (*Hirsi Jamaa and Others v. Italy [GC]*, 2012, §§ 76-82).

89. The Court also determined Turkey's responsibility for the actions of the "Turkish Republic of Northern Cyprus" ("TRNC") in three cases concerning a single series of events linked to a Greek Cypriot demonstration against the Turkish occupation of the northern part of Cyprus. One of the demonstrators had been beaten to death in the UN buffer zone. Three days later, after his funeral, another man entered the buffer zone near the place where the first man had died, climbed up a flagpole as a sign of protest and was shot down. Turkish, or Turkish-Cypriot, soldiers opened fire on the crowd gathered in the buffer zone, injuring, in particular, a woman who had remained outside the zone, in undisputed Cypriot territory. The Court therefore had to establish whether all three victims had come under the authority and/or effective control – and therefore the jurisdiction – of Turkey in relation to the actions of the Turkish and "TRNC" soldiers and agents. To that end, the Court relied on the statements of the police officers operating under the UN Forces in Cyprus, the reports drawn up by the latter and by the UN Secretary General, as well as the video recordings and photographs submitted by the applicants. The Court noted that the victim in the first case had died as a result of the aggressive attitude of the Turkish Cypriot police officers and soldiers towards the civilian demonstrators, and that despite the presence of the Turkish armed forces and the Turkish Cypriot police in the buffer zone, no action had been taken to prevent or put an end to the attacks or to help the victim (*Isaak v. Turkey* (dec.), 2006). As regards that man who had been the direct victim in the second case, the Court noted that he had entered the buffer zone tampon, that the flagpole which he had scaled had been in TRNC territory and that the bullets which had killed him had been shot by the TRNC forces (*Solomou and Others v. Turkey*, 2008, §§ 48-50). Lastly, although the applicant in the third case had sustained her injuries in a territory covered by the Convention, albeit one over which Turkey had not exercised any control, the injuries had been caused by gunfire from the TRNC forces (*Andreou v. Turkey* (dec.), 2008). Accordingly, the impugned facts had occurred under the "jurisdiction" of Turkey within the meaning of Article 1 of the Convention, and had engaged that State's responsibility under the Convention.

90. The Court also found that Russia had jurisdiction in the case of a man who had been shot dead on Georgian territory near the de facto border with Abkhazia (entity not recognised as a State by the international community) by an Abkhazian "border guard" who had crossed the border and was outside Abkhazian territory. Having previously found that the acts of agents of the de facto Abkhazian authorities fell within the jurisdiction of Russia and were attributable to the latter without it being necessary to provide proof of "detailed control" of each of their actions, the Court found

that the direct victim fell within the respondent State's jurisdiction even though he had been killed on territory over which it had no control (*Matkava and Others v. Russia*, 2023, §§ 100-105).

91. In a decision where the issue of the jurisdiction of the respondent State had not been questioned, the Court held that there was no need to determine the exact location of the impugned events, given that the Government had already admitted that the fire discharged from the helicopters had caused the killing of the applicants' relatives, who had been suspected of being terrorists (*Pad and Others v. Turkey* (dec.), 2007, § 54).

92. The Court declared admissible an application concerning the targeted killing of a defector, a Russian former security service agent and dissident, carried out in the United Kingdom by individuals acting as agents of the Russian State. The public investigation established beyond any reasonable doubt that the victim had been poisoned with polonium 210, a rare radioactive isotope, and that that he had been administered that poison by two Russian nationals who had arrived in the United Kingdom on the instructions of the Federal Security Service of the Russian Fédération (those persons had subsequently been charged with murder by the United Kingdom police). The Court attempted to determine whether the murder had amounted to the exercise of physical power and control over his life in a situation of proximate targeting. The evidence of premeditation strongly indicated that the victim's death had been the result of a planned and complex operation; he had not been an accidental victim of the operation and he could not have ingested polonium 210 by accident. Accordingly, the Court found that the victim had been under the physical control of the two Russian agents, who had had power over his life, thus establishing a sufficient jurisdictional link for the purposes of Article 1 of the Convention (*Carter v. Russia*, 2021, §§ 158-161 and § 170).

93. Whenever the State, through its agents, exercises control and authority, and thus jurisdiction, over an individual, 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. In this sense, therefore, the Convention rights can be "divided and tailored" (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 137); *Hirsi Jamaa and Others v. Italy* [GC], 2012, § 74); *Carter v. Russia*, 2021, § 126).

f. Other situations

94. There can be other situations where the nature of the link between the applicant and the respondent State are such as to permit a finding that that State had indeed exercised its authority or control over the applicant. Thus the Court found that the drowning of an underage Moldovan national during his stay in a summer camp in Romania had fallen under the jurisdiction of Moldova, since his stay on the Romanian coast had been organised by the Moldovan Ministry of Youth and Sport and that Ministry had appointed and mandated three of its officials as group leaders responsible for the young people. Furthermore, it did not transpire from the case file that any Romanian officials had been involved in looking after the young Moldovans, including the victim (*Veronica Ciobanu v. the Republic of Moldova*, 2021, § 26).

3. Power exercised in a specific territory

95. As regards the "effective control" principle of jurisdiction over a specific territory, it should be noted from the outset that that principle does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, "with due regard ... to local requirements", to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term "jurisdiction" in Article 1. The situations covered by the "effective control" principle are

clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 140; *Cyprus v. Turkey*, Commission decision of 26 May 1975).

96. The Convention is a constitutional instrument of European public order. It does not govern the actions of States not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on such other States (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 141). Clearly, therefore, in the two situations mentioned above, the Court's jurisdiction *ratione personae* can only extend to one State Party to the Convention. Indeed, where the territory of one Convention State is occupied by the armed forces of another, the occupying State should in principle be held accountable under the Convention for breaches of human rights within the occupied territory, because to hold otherwise would be to deprive the population of that territory of the rights and freedoms hitherto enjoyed and would result in a "vacuum" of protection within the "legal space of the Convention". However, the importance of establishing the occupying State's jurisdiction in such cases does not imply, *a contrario*, that jurisdiction under Article 1 of the Convention can never exist outside the territory covered by the Council of Europe member States. The Court has not in its case-law applied any such restriction (*ibid.*, § 142, and the references therein).

97. All the cases which the Court has hitherto considered from this angle concerned the control of the territory of a Contracting State by another Contracting State in the context of an armed conflict. In such situations, the issue of "jurisdiction" arises where a State loses effective control of all or part of its internationally recognised territory. The issue of a State's jurisdiction and responsibility may arise in two different manners in such cases. Where a State attacks the territorial and political integrity of another State, the complaints brought before the Court may be directed against:

1. the "active" Contracting Party, which is exercising its authority outside its own territory; this may take three different forms:
    a. complete or partial military occupation of another State;
    b. support for an insurrection or a civil war in another State;
    c. installation (or assistance with installation), on the territory of another State, of a separatist regime in the form of an entity which is not recognised as a sovereign State by the international community;
2. the "passive" Contracting Party, which is undergoing any of the above actions.

98. As shall be seen below, in each of the two cases the responsibility of the respondent State follows a different logic.

a. Jurisdiction of the "active" State on the grounds of its military action outside its territory

99. As regards the "active" State, the Court must first of all establish whether the alleged facts actually fall within its "jurisdiction" for the purposes of Article 1 of the Convention.

100. One exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention, derives from the fact of such control, whether it be exercised directly, through the Contracting State's own armed forces, or through a subordinate local administration (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 106, and the references therein).

101. Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. For the purposes of Article 1 the area in question is therefore regarded as indistinguishable from areas within the controlling State's sovereign borders. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights exactly in the same way as if those violations had occurred strictly speaking on its own territory (*Cyprus v. Turkey* [GC], 2001, §§ 76-77; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 138; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 106; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 561). Furthermore, where a Contracting State exercises overall control over an area outside its national territory, its responsibility is not confined to the acts of its soldiers or officials in that area but also extends to acts of the local administration which survives there by virtue of its military and other support (*Cyprus v. Turkey* [GC], 2001, § 77; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 316). In such a case, where there is effective control over an area, the State will have jurisdiction ratione loci (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 561).

102. A finding of spatial jurisdiction brings within the jurisdiction of the respondent State all complaints which concern events occurring wholly within the relevant area. Such a finding does not, however, bring within the respondent State's jurisdiction events which took place outside that area. Moreover, even if the events occurred wholly within the relevant area, the impact, if any, of the exclusion from jurisdiction of "military operations carried out during the active phase of hostilities", in the sense of "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos" (see paragraphs 58-61 above) must also be considered (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 698).

103. The Court has never said that there can only be effective control over an area outside a State's sovereign borders if the area in question falls within the territory of one of the High Contracting Parties. However, this would appear to be the rationale behind its conclusion that the controlling State should in principle be held to account for all breaches of negative and positive obligations under the Convention within the controlled territory. After all, as the Court has explained, to hold otherwise would be to deprive the population of that territory of the rights and freedoms previously enjoyed and to which they are entitled, and would result in a vacuum of protection within the legal space of the Convention. It has moreover emphasised that the Convention is a constitutional instrument of European public order: it does not govern the actions of States which are not Parties to it, nor does it purport to be a means of requiring the Contracting States to impose Convention standards on other States. The Court has accordingly concluded that extraterritorial ratione loci jurisdiction existed in a number of such cases concerning territory inside the Convention legal space. However, to date, the Court has never found there to be extraterritorial jurisdiction on account of ratione loci jurisdiction over an area outside the sovereign territory of the Council of Europe member States (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 562-563).

104. The question whether a Contracting State is genuinely exercising effective control over a territory outside its borders is one of fact. In seeking to answer that question the Court primarily has regard to the following two criteria:

- the number of soldiers deployed by the State in the territory in question; this is the criterion to which the Court had hitherto attached the greatest importance (*Loizidou v. Turkey* (merits), 1996, §§ 16 and 56; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 387);

- the extent to which the State's military, economic and political support for the local subordinate administration provides it with influence and control over the region (*ibid*., §§ 388-394; *Al-Skeini and Others v. the United Kingdom* [GC], 2011, § 139).

105. Where the Court establishes that the facts of the case are within the respondent State's "jurisdiction", the latter has two main obligations:

- a negative obligation to refrain from actions incompatible with the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 320-321);
- a positive obligation to guarantee respect for the rights and freedoms secured under the Convention – at least as set out in the Court's general case-law (*ibid*., § 322).

106. The cases considered by the Court in the light of the above-mentioned principles may be broken down into two sub-categories:

a. cases concerning military "occupation" in the traditional sense as defined in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land, which reads as follows: "territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised";

b. cases concerning the creation, within the territory of a Contracting State, of an entity which is not recognised by the international community as a sovereign State, with the military, economic and political support of another Contracting State.

i. "Traditional" military occupation

107. The question of the occupying power's responsibility in the framework of "traditional" military occupation arose in a number of cases concerning *Iraq*. On 20 March 2003 the armed forces of the United States, the United Kingdom and their allies entered Iraq with a view to overthrowing the Ba'athist regime in power at the time. On 1 May 2003 the allies declared that the primary combat operations were completed, and the United States and the United Kingdom became the occupying powers. They set up the Coalition Provisional Authority to "exercise powers of government temporarily", including restoring security in Iraq. The security role taken on by the occupying powers was recognised in Resolution 1483 of the United Nations Security Council, adopted on 22 May 2003, which called on the Authority "to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability ...". The occupation ended on 28 June 2004 with the dissolution of the Coalition Provisional Authority and the transfer of authority to the interim Iraqi government. During the period of occupation, the United Kingdom had been in command of the Multinational Division (South-East) (*Al-Skeini and Others v. the United Kingdom* [GC], 2011, §§ 9-23).

108. The case of *Al-Skeini and Others v. the United Kingdom* [GC], 2011, concerned the deaths of six of the applicants' relatives in Basra in 2003, when the United Kingdom had held occupying power status there. Three of them had been killed or fatally wounded by gunfire from British soldiers; another victim had been fatally injured during an exchange of fire between a British patrol and unidentified gunmen; another had been shot by British soldiers and then forced to jump into a river, where he had drowned; and 93 wounds had been found on the body of the last victim, who had died in a British military base. The Court noted that following the removal from power of the Ba'ath regime and until the accession of the interim Iraqi government, the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom had assumed power and responsibility for maintaining security in the south-west of the country. In these exceptional circumstances, there was a jurisdictional link, for the purposes of Article 1 of the Convention, between the United Kingdom and the persons killed during security operations

conducted by British troops between May 2003 and June 2004. In the light of that conclusion, the Court considered it unnecessary to assess whether the United Kingdom's jurisdiction was also established because that State had exercised effective military control over South-East Iraq during that period (§§ 143-150). That having been said, as the Court subsequently pointed out, the statement of facts in *Al-Skeini and Others* had included material which tended to demonstrate that the United Kingdom was far from being in effective control of the south-eastern area which it occupied, and this had also been the finding of the Court of Appeal, which had heard evidence on this question in the domestic proceedings (*Hassan v. the United Kingdom* [GC], 2014, § 75, referring to *Al-Skeini and Others v. the United Kingdom* [GC], 2011, §§ 20-23 and 80).

109. The Court delivered its judgment in the case of *Al-Jedda v. the United Kingdom* [GC], 2011, on the same day as the *Al-Skeini and Others* judgment. That case concerned the internment of an Iraqi civilian for over three years (2004-2007) in a detention centre run by the British forces in Basra. Unlike in *Al-Skeini and Others*, the facts of this case had taken place after the end of the occupation regime, when power had already been transferred to the interim government; however, the multinational force, including British forces, were still stationed in Iraq at the Government's request and with the authorisation of the United Nations Security Council. The respondent Government had denied that the detention at issue fell within the United Kingdom's jurisdiction, because the applicant had been interned at a time when the British forces had been operating as part of a Multinational Force authorised by the Security Council and subject to the ultimate authority of the United Nations; they had submitted that in detaining the applicant, the British troops had not been exercising the sovereign authority of the United Kingdom but the international authority of the Multinational Force, acting pursuant to the binding decision of the United Nations Security Council. The Court rejected that argument. It noted that at the time of the invasion of Iraq, no Security Council resolution had specified how the roles should be distributed in Iraq should the regime be overthrown. In May 2003 the United Kingdom and the United States, having removed the former regime, had taken control of security in Iraq; the UN had been assigned a role in the fields of humanitarian aid, supporting the reconstruction of Iraq and assistance in setting up an Iraqi provisional authority, but not in the security sphere. The Court took the view that the subsequent resolutions had not altered that situation. Since the Security Council had had neither effective control nor ultimate authority and control over the acts and omissions of troops within the Multinational Force, the applicant's detention was not attributable to the United Nations. The internment decision against the applicant had been taken by the British officer in command of the detention facility, and he had been interned in a detention facility in Basra City, controlled exclusively by British forces. Although the decision to keep the applicant in internment had, at various points, been reviewed by committees including Iraqi officials and non-The United Kingdom representatives from the Multinational Force, the existence of these reviews had not operated to prevent the detention from being attributable to the United Kingdom. Mr Al-Jedda had therefore been under the authority and control of the United Kingdom for the duration of his detention. In conclusion, the Court found that the internment of the applicant had been attributable to the United Kingdom and that during his internment the applicant *had fallen within the jurisdiction of the United Kingdom* for the purposes of Article 1 of the Convention (§§ 76-86). The Court had thus concentrated on whether the applicant had been effectively subject to the power of the respondent State rather than assessing the extent and nature of the controlee exercised by the United Kingdom over the territory in question.

110. The same approach had been adopted in the case of *Hassan v. the United Kingdom* [GC], 2014, concerning the capture of the applicant's brother by the British armed forces and his detention in Camp Bucca in south-eastern Iraq during the hostilities in 2003. The applicant submitted that his brother had been under the control of the British forces and that his corpse, when subsequently found, had borne traces suggesting that he had been tortured and executed. As in the *Al-Skeini and Others* judgment, the Court did not deem it necessary to determine whether the United Kingdom had indeed been in control of the area in question during the relevant period because the direct

victim had fallen under that country's jurisdiction for another reason. In that connection the Court rejected the Government's argument to the effect that no jurisdiction had applied because as regards the period subsequent to his admission to Camp Bucca, the applicant's brother had been transferred from the authority of the United Kingdom to that of the United States. Having regard to the arrangements operating at Camp Bucca, the Court held that the United Kingdom had retained authority and control over the direct victim. That authority and that control had extended from the admission of the applicant's brother to the Camp through the period following his admission, when he had been taken to the Joint Forward Interrogation Team compound, which was under the exclusive control of the British forces. Following the interrogation the British authorities had placed him on one of the categories set out in international humanitarian law, deciding that he was a "civilian" who did not pose a threat to security, and ordered that he should be released as soon as practicable. Finally, it was clear that when he had been taken to the civilian holding area with a view to his release, the applicant's brother had remained in the custody of armed military personnel and under the authority and control of the United Kingdom until the moment he was let off the bus that took him from the Camp. He *had therefore been within the jurisdiction of the United Kingdom* throughout the period in question (§§ 75-80).

111. In the case of *Jaloud v. the Netherlands* [GC], 2014, the Court broadened the concept of extraterritorial jurisdiction as compared with *Al-Skeini and Others* and *Al-Jedda*, explicitly stating that the "occupying power" status mentioned in Article 42 of the Hague Convention respecting the Laws and Customs of War on Land was not in itself decisive *vis-à-vis* the question of jurisdiction for the purposes of Article 1 of the Convention (§ 142). Following the Iraq invasion, the Netherlands Government had provided troops which had been based in south-east Iraq between July 2003 and March 2005, as part of a multinational division under the command of an officer of the British armed forces. In the instant case the applicant's son had been fatally wounded by gunfire in April 2004, when he had been attempting to pass a checkpoint which was controlled by the Iraqi Civil Defence Corps (ICDC) but which also involved members of the Netherlands Royal Army operating under the command and direct supervision of a Royal Army officer; the shots had been fired by a Dutch lieutenant. The Court noted that the Netherlands had not forfeited jurisdiction by the mere fact of accepting the operational control of a British officer. As the evidence on file demonstrated, not only had the Netherlands retained full command of their military personnel in Iraq, but also the establishment of separate rules on the use of force in Iraq remained the reserved domain of individual sending States. The Court therefore concluded, in the circumstances of the case, that the Netherlands forces had not been placed at the disposal of any other State, be it Iraq or the United Kingdom, and that the death of the applicant's brother *had occurred under the jurisdiction of the Netherlands* (§ 142).

112. However, the Court reached the *opposite conclusion* in the case of *Issa and Others v. Turkey*, 2004, which concerned Iraqi Kurdish shepherds who had allegedly been arrested by Turkish soldiers during a Turkish military operation in northern Iraq in 1995, and then been taken to a cave and killed. In the Court's view, notwithstanding the large number of soldiers involved in that operation, it did not appear that Turkey had exercised effective overall control of the entire area in question. Moreover, it had not been sufficiently established by the evidence on file that the Turkish armed forces had been conducting operations in the geographical area in question when the victims had been present there. Consequently, the direct victims *could not be considered to have been within the jurisdiction of the Turkish State* (§§ 71-82).

113. In an inter-State case against Russia, the Ukrainian Government had raised a series of complaints concerning events which had occurred between 27 February 2014 and 26 August 2015, in the course of which the Crimean region (including the city of Sebastopol) had been incorporated into the Russian Federation. The Court examined the question of the respondent State's "jurisdiction", dealing separately with two different periods: the period preceding 18 March 2014, when the Russian Federation, the "Crimean Republic" and the City of Sebastopol had signed a

"unification treaty" incorporating Crimea into Russia, and the period since that date. As regards the former period, the Court followed its usual approach as defined in *Al-Skeini and Others v. the United Kingdom* [GC], 2011 (§§ 133-140), exceptionally recognising the extraterritorial exercise of jurisdiction based on the "effective control" by Russia of the area in question. The Court based it finding on a detailed appraisal of the evidence relating to the circumstances of the case, assessing both the power and the actual conduct of the Russian military forces in Crimea. Regarding the former aspect Sur le premier point (military power), the Court considered that the question whether the reinforcement of the Russian military presence in Crimea at the time had been in compliance with the bilateral agreements in force between the two States could not be decisive: it attached greater importance to the relative size and strength of the respondent State's armed forces in the area in question than to their combat potential, also focusing on the reasons given for increasing the military presence. In connection with the second aspect (the army's actual behaviour), the Court had regard to the level of the Russian soldiers' active involvement in the impugned events in Crimea, as well as the public statements made by various high officials in the respondent State. Having regard to all the available evidence, the Court concluded that Russia had exercised effective control over Crimea during the period in question. That being the case, it was unnecessary to determine whether the respondent State had exercised specific control over the policies and actions of the local authorities. The fact that Ukraine had not availed itself of the right of derogation from its Convention obligations in respect of Crimea regarding the period in question is irrelevant for the above findings concerning the respondent State's jurisdiction under Article 1 of the Convention. In short, the alleged victims of the administrative practice complained of by the Ukrainian Government had fallen under the "jurisdiction" of the Russian State during the period in question, without any need to ascertain whether such jurisdiction had also been based on the principle of "State agent authority" (*Ukraine v. Russia (*re *Crimea)* (dec.) [GC], 2020, §§ 308-352). No information to the contrary having been provided by the Russian Government, this conclusion was also valid for the period following 26 August 2015, especially as Russia had expressly claimed territorial jurisdiction over Crimea after that date (*Ukraine v. Russia (Crimea)* [GC], 2024, § 873).

114. A different inter-State application against Russia concerned complaints related to the conflict, involving pro-Russian separatists, which had broken out in eastern Ukraine in the same period as in the previously mentioned case. One of the applicant Governments, that of Ukraine, had complained mainly about the ongoing patterns ("administrative practices") of violations of a number of Convention Articles which had allegedly been committed by separatists of the "Donetsk People's Republic" (DPR) and "Lugansk People's Republic" (LPR) and by Russian army personnel. The other applicant Government, that of the Netherlands, had complained about the downing of the Malaysia Airlines aircraft operating flight MH17 over eastern Ukraine on 17 July 2014, killing 298 including 196 Dutch nationals. The applicant Governments had argued that their complaints fell within the jurisdiction of the Russian Federation. The Court concluded, in particular, that at least from 11 May 2014 to 26 January 2022, the areas in eastern Ukraine that were under separatist control fell within the jurisdiction of the Russian Federation. It noted the presence of Russian military personnel in eastern Ukraine, from April 2014 onwards, and the mass deployment of Russian troops from August 2014 at the latest. It also noted the decisive degree of influence and control Russia enjoyed over the separatist military strategy; that from the earliest days of the DPR and LPR administrations and over the ensuing months and years the Russian Federation had provided weapons and other military equipment to the separatists in eastern Ukraine on a significant scale; and that the separatists had relied on the Russian military for artillery cover and that political and economic support had been provided to them by Russia. In those circumstances the Court arrived at the conclusion that there was sufficient evidence to satisfy the "beyond reasonable doubt" standard required at the admissibility stage in respect of administrative practices alleged to breach certain Convention Articles. It declared admissible the majority of the complaints submitted by the Ukrainian Government as the territory in question did fall within the respondent State's Article 1 "jurisdiction". It also decided that the same evidence test was met in respect of the complaints of the Netherlands

Government about flight MH17 (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 576-706).

ii. Creation of an entity unrecognised by the international community

115. The Court has considered this type of situation in four different historical-political contexts: Turkey's responsibility for breaches of the Convention in *Northern Cyprus*, Russia's responsibility for violations committed in *Transdniestria* and in *South Ossetia and Abkhazia*, respectively and Armenia's responsibility for violations in *Nagorno-Karabakh*.

116. The acquiescence or connivance of the authorities of a Contracting State in the acts of private individuals which violate the Convention rights of other individuals within its jurisdiction may engage the State's responsibility under the Convention. That is particularly true in the case of recognition by the State in question of the acts of self-proclaimed authorities which are not recognised by the international community (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 318).

117. The *first* series of cases concerns the situation which has prevailed in Northern Cyprus since *Turkey* conducted military operations there in July and August 1974, and the continuing division of the territory of Cyprus. Before the organs of the Convention Cyprus affirmed that Turkey was responsible under the Convention for the alleged violations despite the proclamation of the "Turkish Republic of Northern Cyprus" ("TRNC") in November 1983, followed by the adoption of the "Constitution of the TRNC" in May 1985. Cyprus submitted that the "TRNC" was an illegal entity under international law, stressing that the international community had condemned its creation. Turkey, for its part, stated that the "TRNC" was a constitutional and democratic State politically independent from any other sovereign State, including Turkey. For that reason Turkey emphasised that the alleged violations were exclusively imputable to the "TRNC" and that it could not be held responsible under the Convention for the acts or omissions which had led to the complaints (*Cyprus v. Turkey* [GC], 2001, §§ 13-16).

118. The Commission and the Court reaffirmed that having regard to international practice and the condemnations set out in the Resolutions of the UN Security Council and of the Committee of Ministers of the Council of Europe, it was clear that the international community did not recognise the "TRNC" as a State under international law. Only the Republic of Cyprus, a High Contracting Party to the Convention, constituted the legitimate government of Cyprus (*Cyprus v. Turkey*, Commission decision of 26 May 1975; *Loizidou v. Turkey* (preliminary objections), 1995, § 40; *Loizidou v. Turkey* (merits), 1996, § 44; *Cyprus v. Turkey* [GC], 2001, § 61 ; *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], 2019, § 193).

119. The Court acknowledged that the alleged violations in the North of Cyprus *fell within Turkey's jurisdiction* in the following cases:

- In two initial inter-State cases examined in its decision of *Cyprus v. Turkey*, the Commission held that the Turkish armed forces in Cyprus were representatives of Turkey, which meant that all the military property and personnel present in Cyprus fell within the jurisdiction of that State, insofar as that military personnel exercised their authority over such persons and property.
- In the case of *Loizidou v. Turkey* (preliminary objections), 1995, where the applicant, a Greek Cypriot, complained that she had been deprived of access to her property in northern Cyprus, the Court noted, at the preliminary objections stage, that the applicant's loss of control of her property stemmed from the occupation of the northern part of Cyprus by Turkish troops and the establishment there of the "TRNC", and that the applicant had been prevented by Turkish troops from gaining access to her property. The impugned acts were therefore capable of falling within Turkish "jurisdiction" within the meaning of Article 1 of the Convention (*ibid.*, §§ 63-64). In the judgment on the merits of the same case, the Court, considering the "imputability" of the alleged violations to Turkey, held that

it was unnecessary to determine whether that country actually exercised detailed control over the policies and actions of the authorities of the "TRNC", because it was obvious from the large number of troops engaged in active duties in the disputed area that the Turkish army exercised effective overall control over that part of the island; such control incurred Turkish responsibility for the policies and actions of the "TRNC". Persons affected by those policies and actions therefore fell within the “jurisdiction” of Turkey, and the alleged violations were consequently “imputable” to that State (*Loizidou v. Turkey* (merits), 1996, §§ 52-57).

- In the inter-State case of *Cyprus v. Turkey* [GC], 2001, the Court reiterated its general finding in *Loizidou* that Turkey in practice exercised overall control in northern Cyprus via its military presence on the ground; consequently, its responsibility under the Convention was incurred for the policies and actions of the “TRNC” authorities. The Court emphasised that Turkey’s responsibility under the Convention could not be confined to the acts of its own soldiers or officials in northern Cyprus but had also to be engaged by virtue of the acts of the local administration which survives by virtue of Turkish military and other support. Turkey’s “jurisdiction” should be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which Turkey has ratified, and violations of those rights were imputable to it (§§ 76-77).
- In the case of *Güzelyurtlu and Others v. Cyprus and Turkey [GC]*, 2019, concerning the murders of several former residents of the “Turkish Republic of Northern Cyprus” (“TRNC”) in the territory of the Republic of Cyprus and the investigations conducted into those facts by the “TRNC” authorities, the Court pointed out that the international community regarded Turkey as being in occupation of the northern part of Cyprus, and did not recognise the “TRNC” as a State under international law. Northern Cyprus was under the effective control of Turkey for the purposes of the Convention. Secondly, the murder suspects had fled to the “TRNC” and as a consequence, the Republic of Cyprus had been prevented from pursuing its own criminal investigation in respect of those suspects and thus from fulfilling its Convention obligations (§ 193).

120. The *second* series of cases concerns the responsibility of *Russia* for acts committed in the “Moldovan Republic of Transdniestria”, an entity set up in Moldavan territory. In the case of *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, the applicants, who had been sentenced variously to death and heavy prison sentences by the “supreme court” of that entity, complained of a series of violations of their fundamental rights which they alleged were imputable to Russia. The Court noted that in 1991-1992, forces of the former 14th Army (which had belonged successively to the USSR and Russia), stationed in Transdniestria, had fought with and for the Transdniestrian separatist forces. Large quantities of weapons from the 14th Army’s arsenal had been transferred voluntarily to the separatists, who had, moreover, been able to secure further arms, unopposed by the Russian military. Furthermore, throughout the confrontations between the Moldovan authorities and the Transdniestrian separatists, the Russian leaders had issue political statements in support of the separatist authorities. Even after the ceasefire agreement, Russia had continued to provide military, political and economic support to the separatist regime, thus enabling it to survive by strengthening itself and by acquiring a certain amount of autonomy *vis-à-vis* Moldova. In the Court’s view, all the acts committed against the applicants by the Russian military authorities, including their handover to the separatist regime, in the context of collaboration between the Russian authorities and that unlawful regime, which was not recognised by the international community, had been such as to create responsibility for the consequences of the acts of that regime. The whole case-file proved that the Transdniestrian region remained under Russia’s effective authority, or at least under its decisive influence, and at any event that it survived thanks to the military, economic, financial and political support provided by Russia both before and after its ratification of the Convention. In those circumstances, the applicants were within the “jurisdiction” of Russia, whose responsibility was incurred in relation to the impugned acts (§§ 377-394).

121. This conclusion as regards *Russia's responsibility vis-à-vis* Transdniestria was reiterated in the following cases:

- In the case of *Ivanţoc and Others v. Moldova and Russia*, 2011, concerning the continued detention of two of the four applicants in *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, after and despite the delivery of the Grand Chamber judgment in this case. The Court sought to establish whether Russia's policy of supporting the Transdniestrian separatist regime had changed between 2004 and 2007, the date of the applicants' release. It noted that Russia continued to enjoy a close relationship with the "Moldovan Republic of Transdniestria", amounting to providing political, financial and economic support to the separatist regime. Moreover, the Court found that the Russian army (troops, equipment and ammunition) had, at the date of the applicants' release, still been stationed on Moldovan territory in breach of the Russian Federation's undertakings to withdraw completely and in breach of Moldovan legislation. The applicants had therefore fallen within Russia's "jurisdiction" for the purposes of Article 1 of the Convention (*Ivanţoc and Others v. Moldova and Russia*, 2011, §§ 116-120).
- In the case of *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, concerning a complaint lodged by children and parents belonging to the Moldovan community in Transdniestria regarding the effects of a language policy adopted in 1992 and 1994 by the separatist regime prohibiting the use of the Latin alphabet in schools, as well as the subsequent measures to implement that policy. Having reiterated its finding already set out in the *Ilaşcu and Others v. Moldova and Russia* [GC] (2004) and *Ivanţoc and Others v. Moldova and Russia* (2011) judgments, the Court noted that Russia was continuing to provide military, economic and political support to the Transdniestrian separatists (gas supplies, payment des pensions, etc.). The impugned facts therefore fell within the jurisdiction of Russia, even if no Russian agents had been directly involved in the measures adopted against the applicants' schools (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 116-123).
- In the case of *Mozer v. the Republic of Moldova and Russia* [GC], 2016, concerning the detention of a man suspected of fraud, as ordered by the courts of the "Moldovan Republic of Transdniestria" ("MRT"). Given the absence of any relevant new information to the contrary, the Court considered that its conclusion concerning Russia's jurisdiction expressed in all the above-mentioned judgments continued to be valid for the period under consideration in that case (§§ 109-111); see the same reasoning in respect of a subsequent period in *Apcov v. the Republic of Moldova and Russia*, 2017, § 24; *Eriomenco v. Republic of Moldova and Russia*, 2017, § 47; *Lypovchenko and Halabudenco v. Republic of Moldova and Russia*, 2024, § 87).

122. The third case examined by the Court was that of the two separatist entities established in Georgia, that is to say South Ossetia and Abkhazia, especially during and after the armed conflict between Georgia and Russia in August 2008, the climax of a long series of tensions, provocations and incidents between the two countries. In its observations, the Russian Government had acknowledged a substantial Russian military presence after the cessation of hostilities and provided numerous indications showing the extent of the economic and financial support that the Russian Federation had provided and continued to provide to South Ossetia and to Abkhazia. the EU's Fact-Finding Mission also emphasised the relationship of dependency not only in economic and financial, but also in military and political terms; the information provided was also revealing as to the pre-existing relationship of subordination between the separatist entities and the Russian Federation, which had lasted throughout the active phase of the hostilities and after the cessation of hostilities. In its report, the EU's Fact-Finding Mission had spoken of "creeping annexation" of South Ossetia and Abkhazia by Russia. The Court considered that the Russian Federation had exercised effective control over South Ossetia and Abkhazia (as well as a "buffer zone" located in undisputed Georgian

territory) during the period from the date of cessation of active hostilities and the date of the official withdrawal of Russian troops. Even after that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival depended, as was shown particularly by the cooperation and assistance agreements signed with the latter, indicated that there had been continued "effective control" over the two territories. The events which had occurred after the ceasefire had therefore fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention (*Georgia v. Russia (II)*, 2021, §§ 161-175; *Georgia v. Russia (IV)* (dec.), 2023, §§ 43-45; *O.J. and J.O. v. Georgia and Russia*, 2023, § 61).

123. With specific regard to the alleged ill-treatment of prisoners of war, even if the direct participation of the Russian forces had not been clearly demonstrated in all cases, the Russian Federation had also been responsible for the actions of the South Ossetian forces, without it being necessary to provide proof of "detailed control" of each of those actions (*Georgia v. Russia (II)*, 2021, § 276). As regards the large number of Georgian nationals who had fled the conflict and been unable to return to South Ossetia, they had also come under Russia's jurisdiction. Indeed, the fact that their respective homes, to which they were prevented from returning, were situated in areas under the "effective control" of the Russian Federation, and the fact that the Russian Federation exercised "effective control" over the administrative borders, are sufficient to establish a jurisdictional link for the purposes of Article 1 (*ibid*., §§ 293-295).

124. Concerning Abkhazia, the Court has also recognised the existence of "effective control" by Russia over its territory for a period preceding the armed conflict of 2008. It found in the relevant case that since the armed conflict between Georgians and Abkhazians in 1992, Russia had not ceased to extend and strengthen its influence over this region militarily, politically, economically and culturally. In its assessment the Court relied on a long series of factual circumstances; for example, the fact that the peace-keeping forces in Abkhazia were made up of Russian military personnel; that the majority of the population of Abkhazia had been given Russian nationality after 2002; that Abkhazia used Russian currency as its means of payment and was economically heavily dependent on Russia; lastly, according to the repeated statements of its (de facto Abkhazian) leaders, Abkhazia had in some ways become part of Russia. In sum, Abkhazia was only able to survive because of Russia's sustained and substantial political and economic support, and of Russia's military influence, which was sufficient for it to be considered "dissuasive" and as such decisive in practice. It followed that the conduct of the de facto authorities of that region fell within Russia's jurisdiction under Article 1 of the Convention (*Mamasakhlisi and Others v. Georgia and Russia*, 2023, §§ 323-340; *Taganova and Others v. Georgia and Russia*, 2024, § 216). The same was true for actions of members of the Abkhazian armed forces, which were imputable to Russia without it being necessary to provide proof of "detailed control" of each of those actions (*Matkava and Others v. Russia*, 2023, § 96).

125. Finally, the *fourth* situation examined by the Court concerned the responsibility of *Armenia* for acts committed in the former "Republic of Nagorno-Karabakh" established in an area of Azerbaijan. At the time of the dissolution of the Soviet Union in December 1991, the Nagorno-Karabakh Autonomous Oblast (the "NKAO") had been an autonomous province situated within the Azerbaijan Soviet Socialist Republic ("the Azerbaijan SSR"). There had been no common border between the NKAO and the Armenian Soviet Socialist Republic ("the Armenian SSR"), which had been separated by Azerbaijani territory. In 1988 armed hostilities broke out in this region. In September 1991 – shortly after Azerbaijan had proclaimed its independence from the Soviet Union – the NKAO *soviet* announced the foundation of the "Nagorno-Karabakh Republic" ("the NKR"), comprising the NKAO and the Shahumyan district of Azerbaijan. Following a referendum held in December 1991 (and boycotted by the Azeri population) in which 99.9 % of voters had come down in favour of the secession of the "NKR", the latter reaffirmed its independence from Azerbaijan in January 1992. After that the conflict gradually escalated into full-scale war. By the end of 1993 the ethnic Armenian

troops had gained control over almost the entire territory of the former NKAO and seven adjacent Azerbaijani regions. In May 1994 the belligerents signed a ceasefire agreement. The self-proclaimed independence of the "NKR" had not been recognised by any State or international organisation (*Chiragov and Others v. Armenia* [GC], 2015, §§ 12-31; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 14-28). Later on, in the night of 1 to 2 April 2016, violent armed clashes broke out near the contact line between the "NKR" and Azerbaijan (sometimes referred to as the "Four-Day War"). They lasted until 5 April 2016, but other clashes occurred later in the month (*Allahverdiyev v. Armenia* (dec.), 2023, § 5; *Hakobyan v. Azerbaijan* (dec.), 2023, § 5).

126. On 27 September 2020 a new war broke out in Nagorno-Karabakh. It lasted 44 days until 10 November 2020 when a ceasefire agreement, signed the previous day, entered into force. Subsequent events led to the official dissolution of the "NKR" on 28 September 2023 with effect from 1 January 2024. The Court has taken note of those changes; however, the cases it has examined to date concern events that predate this fresh conflict (*Nana Muradyan v. Armenia*, 2022, §§ 91; *Hamzayan v. Armenia*, 2024, § 26; *Varyan v. Armenia*, 2024, § 70; *Petrosyan v. Armenia*, 2025, § 98).

127. In the case of *Chiragov and Others v. Armenia* [GC], 2015, the applicants, Azerbaijani Kurds from the Lachin district (which is part of Azerbaijan, separating Nagorno-Karabakh from Armenia), complained of their inability to accede to their homes and property since having been forced to leave the district by the armed conflict between the two countries. Under Article 1 of the Convention, the Court had regard to a whole series of reports and public statements – particularly from present and former members of the Armenian Government – and concluded that Armenia, through its military presence and its provision of military material and advice, had been involved in the Nagorno-Karabakh conflict from the very early stages. In the Court's view, that military support was decisive for the control over the territories in issue, and moreover, it was obvious from the facts of the case that Armenia provided substantial political and financial support to the "NKR" ("Nagorno-Karabakh Republic"). Furthermore, the residents of the "NKR" were required to obtain Armenian passports to travel abroad. The Court found that Armenia and the "NKR" had been highly integrated in virtually all important matters, and that the NKR and its administration survived thanks to the military, political, financial and other supported provided by Armenia, which, accordingly, exercised effective control over Nagorno-Karabakh and the adjacent territories. The alleged facts *had therefore occurred within the jurisdiction of Armenia* (§§ 169-186).

128. The Court reached the same conclusion concerning Armenian jurisdiction in the following cases:

- a community of Jehovah's Witnesses to whom the "NKR" had denied registration as a religious organisation (*Christian Religious Organization of Jehovah's Witnesses in the NKR v. Armenia*, 2022, §§ 47-49) and a member of the Jehovah's Witnesses on whom the "NKR" had imposed an administrative fine for discussing the Bible with another person at the latter's home (*Hamzayan v. Armenia*, 2024, §§ 26-27);
- an Armenian national convicted by the "NKR" courts for refusing to perform compulsory military service in that entity (*Avanesyan v. Armenia*, 2021, §§ 36-37);
- Armenian nationals who were ill-treated or killed during compulsory military service in the "NKR" (*Zalyan and Others v. Armenia*, 2016, §§ 213-215; *Muradyan v. Armenia*, 2016, §§ 123-127; *Mirzoyan v. Armenia*, 2019, § 56; *Nana Muradyan v. Armenia*, 2022, §§ 88-92; *Hovhannisyan and Karapetyan v. Armenia*, 2023, §§ 59-63; *Dimaksyan v. Armenia*, 2023, §§ 42-44; *Varyan v. Armenia*, 2024, §§ 67-70; *Petrosyan v. Armenia*, 2025, §§ 97-102). In *Mirzoyan v. Armenia*, 2019, the Court applied both jurisdictional criteria – territorial and personal –, as the direct victim had been killed in Armenian-controlled territory by an Armenian officer (*ibid*., § 56), whereas in those other cases, the territorial criterion alone had been sufficient (see the comparison between the two cases in *Nana Muradyan*

v. Armenia, 2022, §§ 91-92, and in *Varyan v. Armenia*, 2024, § 70). In *Hovhannisyan and Karapetyan v. Armenia*, the Court refused to draw a distinction between the substantive and procedural limbs of Article 2 of the Convention, finding that the facts of the case fell within the jurisdiction of the respondent State, with regard both to the substantive limb (the killing of the applicants' sons by an Armenian soldier in the service of the "NKR") and to the procedural limb (investigation by Armenian authorities; *ibid*., §§ 57-63).

b. Jurisdiction of a State undergoing foreign military action (or military action unrecognised by the international community) within its territory

129. The responsibility of a "passive" Contracting State, that is to say a State which is undergoing military action launched by another State (whether or not a Party to the Convention) or by a local regime unrecognised by the international community, follows a different logic from that of an "active" State. The Court does not seek to establish whether or not that State holds "jurisdiction", because it is deemed to exercise the latter normally throughout its territory; the Court therefore always starts from the presumption that the facts of the case fall within the jurisdiction of the "passive" State (*Ioannides v. Cyprus**, 2025, § 75). On the other hand, in exceptional circumstances, where the State is unable to exercise its authority in a part of its territory, that presumption may be *limited*. In other words, there is a presumption of jurisdiction (or competence), and the Court must determine whether there are any valid reasons to rebut that presumption (*Assanidze v. Georgia* [GC], 2004, § 139).

130. The respondent State's jurisdiction may be limited because of a military occupation by the armed forces of another State effectively controlling the territory in question, because of acts of war or rebellion, or because of the actions of a foreign State supporting the installation of an unrecognised regime in the territory of the State concerned. In order to be able to conclude that such an exceptional situation exists, the Court must examine, on the one hand, all the objective facts capable of limiting the effective exercise of a State's authority over its territory, and on the other, the State's own conduct. The undertakings given by a Contracting State under Article 1 of the Convention include, in addition to the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, positive obligations to take appropriate steps to ensure respect for those rights and freedoms within its territory. Those obligations remain even where the exercise of the State's authority is limited in part of its territory, so that it has a duty to take all the appropriate measures which it is still within its power to take (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 312-313; *Sargsyan v. Azerbaijan* [GC], 2015, §§ 127-129). The respondent State's obligation under Article 1 of the Convention, to "secure to everyone within their jurisdiction the [Convention] rights and freedoms", was, however, limited in the circumstances to a positive obligation to take the diplomatic, economic, judicial or other measures that were both in its power to take and in accordance with international law (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 109; *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 331).

131. Drawing on the above principles, the Court recognised Moldova's "jurisdiction" over the violations committed in Transdniestria, despite the fact that the Moldovan State had been prevented from exercising effective control over the relevant part of its territory (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 322-331; *Ivanţoc and Others v. Moldova and Russia*, 2011, §§ 105-106; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, §§ 109-110; *Mozer v. the Republic of Moldova and Russia* [GC], 2016, § 99-100). The fact that under public international law the region is recognised as part of the territory of Moldova bestows on the latter a positive obligation, based on Article 1 of the Convention, to use all the legal and diplomatic means at its disposal to continue to ensure that the persons living in the region can benefit from the rights and freedoms set forth in the (see, for a reminder of the principles, *Pocasovschi and Mihaila v. the Republic of Moldova and Russia*, 2018, §§ 43-44). It is noted that this case concerned a specific situation. Prisoners being held in unacceptable conditions in a Moldavan prison complained that

water and electricity supplies had been cut off by the separatist entity. Even if the municipal authority which had ordered the cutting off of the water, heating and electricity supplies had operated under the control of that entity, unlike in the other cases, the Moldavan authorities had exercised effective control over the prison in which the alleged violations had occurred, as well as over its inmates. The latter authorities could therefore have intervened directly (§ 46).

132. In the case of *Sargsyan v. Azerbaijan* [GC], 2015, an Armenian refugee who had had to flee his home in the Shahumyan region of Azerbaijan in 1992, during the conflict between Armenia and Azerbaijan over Nagorno-Karabakh (see above), complained that he had been unable to return to his village in order to access and use his property there. This was the first case in which the Court was called upon to determine a complaint against a State which had lost control of part of its territory as a result of a war and occupation, but which was alleged to have been responsible for refusing to allow a displaced person to accede to his property situated in a region which was still under its control. The Court first of all noted that the village in question was located in the internationally recognised territory of Azerbaijan and that, accordingly, the presumption of Azerbaijan's jurisdiction applied. It was therefore incumbent on the Azerbaijani Government to demonstrate the existence of exceptional circumstances liable to limit its responsibility under Article 1 of the Convention. Having regard to the facts before it, the Court noted that it was impossible to determine with any certainty whether the Azerbaijani military forces had been present in the village during its period of temporary jurisdiction (that is to say since the ratification of the Convention by Azerbaijan). Moreover, it observed that no party had alleged that the "Republic of Nagorno-Karabakh" had had any troops in the village. The Court was not convinced by the Government's argument to the effect that because the village had been located in a disputed are and was surrounded by mines and military positions, Azerbaijan's responsibility under the Convention had been limited. Indeed, unlike in other similar cases concerning Transdniestria or Northern Cyprus, the territory in question had not been occupied by the armed forces of a third State. The facts of the case *had therefore fallen within the jurisdiction of Azerbaijan* (§§ 132-151).

133. The case of *Assanidze v. Georgia* [GC], 2004, concerned an unusual situation. The applicant complained that he had been retained in the custody of the authorities of the Ajarian Autonomous Republic, an autonomous territorial unit of Georgia, despite having received a presidential pardon for a first offence and been acquitted of a second by the Supreme Court of Georgia. The Court noted that Georgia had ratified the Convention for the whole of its territory, and that no other State exercised effective overall control in Ajaria. On ratifying the Convention, Georgia did not make any specific reservation under Article 57 of the Convention with regard to Ajaria or to difficulties in exercising its jurisdiction over that territory. Such a reservation would in any event have been ineffective, as the case-law precludes territorial exclusions other than in the instance referred to in Article 56 § 1 of the Convention (dependent territories). Therefore, the impugned facts had fallen within the "jurisdiction" of Georgia for the purposes of Article 1 of the Convention (§§ 139-143). The Court then considered the "imputability" to the Georgian State of the alleged violations. It noted that the central authorities had taken all the procedural steps possible under domestic law to secure compliance with the judgment acquitting the applicant, sought to resolve the dispute by various political means, and repeatedly urged the Ajarian authorities to release him, all in vain. Consequently, the facts complained of by the applicant had been directly imputable to the local Ajarian authorities. However, even though it is not inconceivable that States will encounter difficulties in securing compliance with the rights guaranteed by the Convention in all parts of their territory, each State Party to the Convention nonetheless remains responsible for events occurring anywhere within its national territory. The Court therefore found that *the responsibility of the Georgian State had been incurred* under the Convention (§§ 144-150).

134. When a Contracting State is prevented from exercising authority over its whole territory due to an exceptional factual situation, it does not cease to have jurisdiction within the meaning of Article 1 of the Convention over the part of its territory which is temporarily beyond its control (*Sargsyan*

v. Azerbaijan [GC], 2015, § 130; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, § 317; *O.J. and J.O. v. Georgia and Russia*, 2023, § 60; *Taganova and Others v. Georgia and Russia*, 2024, § 213 ; *Ioannides v. Cyprus**, 2025, § 75). Thus, in a case concerning the inability of the applicants to dispose of their property in the region of Abkhazia, after leaving it behind when the hostilities began in that region in the early 1990s, the Court found that, as it was recognised in international law as being part of Georgia, Abkhazia fell within the jurisdiction of that State (*Taganova and Others v. Georgia and Russia*, 2024, §§ 213-214). Such a factual situation nonetheless has the effect of reducing the scope of that jurisdiction, in that the commitment entered into by the Contracting State under Article 1 must be examined by the Court solely in the light of the State's positive obligations in respect of persons present in its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention. Although it is not for the Court to indicate which measures the authorities should take in order to comply with their obligations most effectively, it must verify that the measures actually taken were appropriate and sufficient in the present case. When faced with a partial or total failure to act, the Court's task is to determine to what extent a minimum effort was nevertheless possible and whether it should have been made. Determining that question is especially necessary in cases concerning an alleged infringement of absolute rights such as those guaranteed by Articles 2 and 3 of the Convention (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 333-334).

135. Generally speaking, the following *six positive obligations* incumbent on the "passive" State can be identified in the Court's existing case-law:

a. Three general obligations
    i. to affirm and reaffirm its sovereignty over the territory in issue (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 339-341 and 343; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 108);
    ii. to refrain from providing any kind of support to the regime unrecognised by the international community (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 345);
    iii. to actively attempt to *(re*-establish control over the disputed territory (*ibid*., § 341-344; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 108; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, §§ 400-401; *O.J. and J.O. v. Georgia and Russia*, 2023, § 79).
b. Three special obligations relating to individual applicants
    i. to attempt to resolve the applicants' situation by political and diplomatic means (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 109; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, §§ 401-403; *O.J. and J.O. v. Georgia and Russia*, 2023, § 80);
    ii. to attempt to resolve the applicants' situation by appropriate practical and technical means (*Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 147; *Mamasakhlisi and Others v. Georgia and Russia*, 2023, §§ 405-406);
    iii. to take the appropriate judicial action to protect the applicants' rights (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 346-347; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 110).

136. Furthermore, the Court has held that the efforts expended by the "passive" State in question to honour the six above-mentioned obligations should be constant and relevant (*Ilaşcu and Others v. Moldova and Russia* [GC], 2004, §§ 348-352; *Ivanţoc and Others v. Moldova and Russia*, 2011, § 111; *Catan and Others v. the Republic of Moldova and Russia* [GC], 2012, § 148). However, the question whether the State in question has fulfilled its positive obligations as defined by the Court's case-law must be decided in the light of the individual case rather than with reference to Article 1 of

the Convention (see, for example, *Mamasakhlisi and Others v. Georgia and Russia*, 2023, §§ 398-410; *O.J. and J.O. v. Georgia and Russia*, 2023, § 60). *Ioannides v. Cyprus*, 2025, § 79).

137. Thus for example in the case of *Ioannides v. Cyprus*, 2025, the applicant was the owner of a house situated in the buffer zone (created after the invasion of Cyprus by Turkey in 1974) inaccessible to the public and not under the effective control of Cyprus. This house had been, at least for a while, occupied by the UN peacekeeping force (UNFICYP). The Court found that the property had, without doubt, fallen within the jurisdiction of Cyprus. However, the scope of that jurisdiction had to be assessed in relation to each of the applicant's specific complaints and by making a distinction between situations where the lack of effective control by the State over part of its territory left only positive obligations there, and situations where the existence of full control over the individuals concerned entailed its direct responsibility (*ibid.*, §§ 79-80). Ruling on the merits, the Court found no violation of Article 1 of Protocol No. 1 (right to the protection of property) on account of the applicant's inability to access the house in question, on the ground that, having only positive obligations as described above, Cyprus had taken all the measures which were still in its power and in accordance with its obligations under international law, in particular by cooperating with UNFICYP (*ibid.*, §§ 101-104). However, the Court found a violation of the same provision on account of the refusal by Cyprus to pay the applicant any rent for the occupation of her house by UNFICYP, Cyprus having agreed to the use of the house and having remained free to decide on the conditions. The alleged interference was thus directly attributable to the respondent State (*ibid.*, §§ 105-107).

138. Moreover, failings of a legal system and decisions of de facto "courts" of entities not recognised by the international community cannot be imputed to the "passive" State (*O.J. and J.O. v. Georgia and Russia*, 2023, § 88).

4. Specific case of climate change

139. In the case of *Duarte Agostinho and Others v. Portugal and 32 Others* (dec.) [GC], 2024, a group of Portuguese nationals resident in Portugal alleged a violation of various Articles of the Convention owing to the existing, and serious future, impacts of climate change imputable to their home country and thirty-two other Contracting States, and specifically those in relation to heatwaves, wildfires and smoke from wildfires, which affected their lives, well-being, mental health and the amenities of their homes. The Court found that all the applicants were under the (territorial) jurisdiction of Portugal but not under that of the other respondent States. The existing case-law provided no basis for establishing extraterritorial jurisdiction of the other States, even taking account of developments in the existing case-law on such jurisdiction as put forward by the applicants, relying on a number of "exceptional circumstances" and "special features". Noting the specific characteristics of climate-change cases as a universal and cross-border issue, the Court found that they could not in themselves serve as a basis for creating by way of judicial interpretation a novel ground for extraterritorial jurisdiction or as justification for expanding on the existing grounds.

First, it was not possible to consider that the proposed positive obligations of States in the field of climate change could be a sufficient ground for holding that the State had jurisdiction over individuals outside its territory or otherwise outside its authority and control. Further, the fact that through their Portuguese nationality the applicants also enjoyed EU citizenship could not serve to establish a jurisdictional link between them and the twenty-six respondent States that were also EU member States. Secondly, the Convention was not designed to provide general protection of the environment as such or specifically adapted to deal with this particular aspect. Accepting the applicants' argument to the contrary would entail a radical departure from the rationale of the Convention protection system, which was primarily and fundamentally based on the principles of territorial jurisdiction and subsidiarity. Thirdly, as regards the applicants' reliance on a test of "control over the applicants' Convention interests", according to the Court's established case-law, extraterritorial jurisdiction as conceived under Article 1 of the Convention required control over the

person himself or herself rather than the person's interests as such. Reliance on such a criterion for establishing the State's extraterritorial jurisdiction would lead to a critical lack of foreseeability of the Convention's reach and to an untenable level of uncertainty for States (*ibid.*, §§ 181-213).

II. Delegation of State powers or joint exercise of the latter with other States

140. The fact that a Contracting State executes a decision or an order given by an authority of a foreign State is not in itself sufficient to relieve a Contracting State of the obligations which it has taken upon itself under the Convention (*Jaloud v. the Netherlands* [GC], 2014, § 143).

141. The mere fact that a State exercises the right to vote in an inter-State entity is not sufficient for the persons affected by the decisions of that entity to be deemed to fall within the jurisdiction of that State for the purposes of Article 1 of the Convention. The first case in which the Commission had to consider this kind of situation was that of *Hess v. the United Kingdom*, Commission decision of 28 May 1975. Rudolf Hess, the former head of the chancellery of the German National-Socialist Party, who had been sentenced to life imprisonment by the Nuremberg International Military Tribunal, was incarcerated in the Allied Military Prison in Berlin-Spandau. That prison was jointly administered by the four occupying powers (the United Kingdom, the United States, France and the Soviet Union), and all decisions concerning the administration of the prison could only be taken in agreement with the representatives of all four States. The United Kingdom had therefore been acting as a partner, sharing authority and responsibility with the other three powers. The Commission ruled that that shared authority could not be divided up into four separate jurisdictions and that, therefore, the United Kingdom's participation in the administration of the prison had not fallen under that State's jurisdiction. The application was therefore declared incompatible *ratione personae* with the Convention.

A. Imputability to the European Union of an alleged violation: the *Bosphorus* presumption or the principle of equivalent protection

142. In *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], 2005, concerning the implementation in the respondent State of an EU Regulation adopted on the basis of a UNSC Resolution, the Court created a nuanced case-law mechanism which may be summarised as follows:

- States are responsible under the Convention for measures which they adopt pursuant to international legal obligations, including where such obligations stem from their membership of an international organisation to which they have transferred part of their sovereignty.
- However, a measure adopted pursuant to such obligations must be deemed justified provided that the organisation in question affords fundamental rights protection at least equivalent – that is to say comparable – to that provided by the Convention.
- Nevertheless, such justification lapses in two situations:
  - where the impugned acts do not fall strictly within the ambit of the respondent State's international legal obligations, in particular where that State has exercised discretionary powers;

  or else
  - where the protection of the rights in issue, guaranteed by the Convention, is manifestly deficient.

143. In the case of *M.S.S. v. Belgium and Greece* [GC], 2011, the Belgian Government invoked the Bosphorus presumption on the grounds that by sending the applicant back to Greece they were merely complying with the "Dublin II" Regulation, to which the Court replied that under the so-called "sovereignty clause" set out in Article 3 § 2 of the Regulation, that Government had had the discretionary power not to expel the applicant and thus to comply with the Convention. Consequently, the presumption had not been applied (§§ 339-340).

B. Imputability to the UN of alleged violations

144. As regards the UN, there are two different hypotheses:

1. international military operations, and
2. international sanctions imposed by the UN Security Council (UNSC).

1. International military operations

145. As regards alleged violations of human rights in the framework of international military operations, the Court has concentrated on identifying the entity responsible for the military operation or action in question, that is to say the entity which held ultimate authority and control.

146. In the case of *Behrami and Behrami v. France and Saramati v. France, Germany and Norway* (dec.) [GC], 2007, the applicants had been victims of airstrikes and deprivation of liberty, respectively, in the framework of NATO military operations in Yugoslav territory in 1999. A UNSC Resolution had provided for the provision of a security presence (KFOR) by "Member States and relevant international institutions", "under UN auspices", with "substantial NATO participation" but "under unified command and control". That Resolution had also provided for the deployment, under UN auspices, of an interim administration for Kosovo (MINUK).

147. In its decision, the Court considered whether the material facts had been attributable to the UN. It noted the delegation by the UNSC of its powers under Section VII of the UN Charter, and concluded that the decisive question was whether the UNSC had retained "ultimate authority and control" over the armed forces. Applying that criterion, the Court ruled that the UNSC had indeed retained "ultimate authority and control". Having established that the acts and omissions of the MINUK and KFOR had been attributable to the UN, the Court declared the applications incompatible *ratione personae* with the Convention.

148. The case of *Al-Skeini and Others v. the United Kingdom* [GC], 2011, concerned the deaths of six Iraqis who had been killed or fatally wounded by British troops during the invasion of Iraq, where the United Kingdom had held occupying power status. The Court conducted a traditional analysis under Article 1 of the Convention in order to determine whether the victims had been within the "jurisdiction" of the United Kingdom. It noted that at the material time the United Kingdom (together with the United States of America) had assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In such exceptional circumstances, there had been a "jurisdictional link" between the United Kingdom and the persons killed. As regards the UNSC, it had merely acknowledged the role and status of the occupying powers in Iraq.

149. In the *Al-Jedda v. the United Kingdom* [GC] (2011) judgment delivered on the same day as *Al-Skeini and Others*, the Court adjudicated on an application lodged by an Iraqi civilian who had been interned for over three years in a detention centre run by the British forces in Iraq. The defendant Government submitted that that internment had been imputable to the UN rather than to the United Kingdom. The Court rejected that plea. It noted that there had been no UNSC resolution stipulating the distribution of powers in Iraq under the occupation regime. The only role assigned to the UN had been in the areas of humanitarian aid, support for reconstruction, etc., but not in the security field. However, since the UNSC had not exercised effective control or ultimate

authority and control over the acts and omissions of the troops of the multinational force, the applicant's internment was not deemed imputable to the UN.

150. The United Kingdom's second argument in this case was that UNSC Resolution 1546 had required it to resort to internment in Iraq and that, pursuant to Article 103 of the UN Charter, the obligations laid down in that Resolution had taken precedence over those stemming from the Convention. Nevertheless, the Court noted that the UN had not been set up for the sole purpose of ensuring peace and security at the international level, but also in order to "achieve international cooperation in ... promoting and encouraging respect for human rights and for fundamental freedoms." Article 24 § 2 of the Charter required the UNSC to act "in accordance with the Purposes and Principles of the Untitled Nations". The Court concluded that in in interpreting UNSC resolutions, there must be a presumption that the Security Council does not intend to impose any obligation on member States to breach fundamental principles of human rights. In the event of any ambiguity in the terms of a United Nations Security Council resolution, the Court must therefore choose the interpretation which is most in harmony with the requirements of the Convention and which avoids any conflict of obligations.

151. Moreover, the Court has recently confirmed the *Al-Jedda* principles in its *Hassan v. the United Kingdom* [GC] (2014) judgment concerning the capture of an Iraqi national by the British armed forces and his detention in a camp during the hostilities in 2003. This was the first case in which a respondent State had relied on international law to request the Court to find inapplicable its obligations under Article 5 of the Convention or, failing that, to interpret them in the light of the powers of detention conferred on it by international humanitarian law. The Court unanimously found that the victim had been within the United Kingdom's jurisdiction rather than that of the United States, as contended by the British Government. The Court rejected the latter's submissions denying the application of any jurisdiction during the active hostilities phase of an international armed conflict, when the agents of the Contracting State are acting within a territory of which the latter is not the occupying power and the conduct of the Contracting State is instead governed by the provisions of international humanitarian law. The Court considered that such a conclusion would be contrary to its previous case-law. It also held that even after the area in question had been transferred from British to US authority, the United Kingdom had retained authority and control over all the aspects of the complaints raised by the applicant.

2. International sanctions ordered by the UN Security Council

152. The issue of sanctions ordered by the UNSC was dealt with in the case of *Nada v. Switzerland* [GC], 2012, which concerned a ban on the applicant transiting through Swiss territory, which was the only way out of the small Italian enclave where he lived. That restriction had been imposed by the Swiss authorities in pursuance of a number of UNSC resolutions relating to the fight against terrorism (particularly the Taliban and al-Qaeda). The Court first of all acknowledged the admissibility of the application *ratione personae*: even though the case concerned the application of a UNSC resolution, the impugned decisions had not been taken by the Swiss authorities. On the merits of the case, the Court observed that the terms of the resolution had been clear and explicit, imposing on Switzerland an obligation to take measures capable of breaching human rights. The Court deduced that there had been a rebuttal of the presumption that a UNSC resolution could not be interpreted as imposing on member States an obligation contravening the fundamental principles relating to human rights protection. Furthermore, the Court did not contest the binding force of the UNSC resolution, although it did note that Switzerland had some limited, but nonetheless real, discretion in the application of such resolutions (see, in particular, § 179). Under those circumstances, the State could no longer hide behind the binding nature of the resolutions; on the contrary, it should have persuaded the Court that it had taken – or at least had attempted to take – "all possible measures to adapt the sanctions regime to the applicant's individual situation" (§ 96).

153. The Court reached a similar conclusion in *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], 2016. The applicant was an Iraqi national who had been responsible for the finances of the Iraqi secret services under Saddam Hussein's regime and for a company which he had owned. The applicants having been included on the lists of sanctions appended to UNSC Resolution 1483 (2003) concerning Iraq, their assets in Switzerland had been frozen and made subject to a confiscation procedure. The Swiss Federal Court had merely checked whether the applicants' names duly appeared on the lists drawn up by the Sanctions Committee and whether the assets in questions belonged to them. That court had, on the other hand, refused to consider their allegations regarding the compatibility of the procedure used to confiscate their assets with the fundamental safeguards on a fair trial set out in the Convention. The Federal Court had invoked the absolute precedence of the obligations stemming from the UN Charter and the decisions taken by the UNSC under that Charter over any other standard of international law, and the very precise and detailed nature of the obligations imposed on States by the Resolution, which left them no margin of discretion. The Court considered that such resolutions should always be interpreted on the basis of the (rebuttable) presumption that the UNSC does not intentionally impose on States an obligation contravening the fundamental principles of human rights. Therefore, when a resolution contains no clear and explicit exclusion or limitation of respect for human rights in the framework of the implementation of sanctions, it must always be understood as authorising the courts of the respondent State to exercise sufficient scrutiny to avoid any arbitrariness. Consequently, to that extent, Switzerland had been responsible for a possible violation of the right to a fair trial.

C. Imputability of the alleged violation to other international organisations

154. As regards other international organisations, the Court has always adopted a differential approach, drawing a distinction between two types of case.

155. Where the applicant complains about a *structural deficiency* in the internal workings of the international organisation in question, the Court applies the *Bosphorus* presumption, which involves verifying whether the States, when transferring some of their sovereign powers to the relevant international organisation, ensured that the rights secured under the Convention were afforded protection equivalent to that of the Convention (*Gasparini v. Italy and Belgium* (dec.), 2009; *Rambus Inc. v. Germany* (dec.), 2009; *Klausecker v. Germany* (dec.), 2015).

156. On the other hand, where the applicant complains not about of a structural deficiency in the internal machinery of the international organisation in question but about a *specific decision* taken within that organisation, the application is incompatible *ratione personae* with the provisions of the Convention (*Boivin v. 34 member States of the Council of Europe* (dec.), 2008; *Connolly v. 15 member States of the European Union* (dec.), 2008 ; *Beygo v. 46 member States of the Council of Europe* (dec.), 2009; *López Cifuentes v. Spain* (dec.), 2009). The mere fact that the respondent State, in accordance with the relevant procedural rules of the organisation in question, avails itself of submitting observations in the case which led to the impugned decision cannot as such engage that State's liability under the Convention (*Konkurrenten.no AS v. Norway* (dec.), 2019, § 41).

III. Burden and standard of proof as regards jurisdiction

A. The burden of proof and possibility of drawing inferences

1. The burden of proof

157. As a general principle of law, the initial burden of proof in relation to an allegation is borne by the party which makes the allegation in question (affirmanti incumbit probatio). However, a strict application of this principle is not always appropriate. Where the respondent State alone has access to information capable of corroborating or refuting the applicant's allegations but fails to provide a satisfactory and convincing explanation in respect of events that lie wholly, or in large part, within the exclusive knowledge of the State's authorities, the Court can draw inferences that may be unfavourable for that Government. Before it can do so, however, there must be concordant elements supporting the applicant's allegations (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 255-256 ; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 435-436).

2. The possibility of drawing inferences

158. Article 38 of the Convention requires the Contracting States to furnish all necessary facilities to the Court, whether it is conducting a fact-finding investigation or performing its general duties as regards the examination of applications. The conduct of the parties when evidence is being obtained may therefore also be taken into account and inferences may be drawn from such conduct (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 256 and 380, *Georgia v. Russia (II)* [GC], 2021, § 341; *Ukraine and the Netherlands v. Russia* [GC] (dec.), § 437). In the past the Court has drawn inferences from a failure by the respondent Government to supply the documents requested of them (*Timurtaş v. Turkey*, 2000, §§ 66-72; *Akkum and Others v. Turkey*, 2005, §§ 185-190 and 225; *Çelikbilek v. Turkey*, 2005, §§ 56-63; *El-Masri v. former Yugoslav Republic of Macedonia* [GC], 2012, §§ 152-167). In the case of El-Masri, the Court found that the burden of proof should shift to the Government once it had established prima facie evidence in favour of the applicant's version of events. The Government had failed to provide documents or a satisfactory explanation of how the events in question had occurred. In such circumstances, the Court could draw inferences from the available material and the authorities' conduct and found the applicant's allegations sufficiently convincing and established beyond reasonable doubt (*ibid.*, §§ 165-167). In the case of *Matkava and Others v. Russia*, 2023, the Court drew conclusions from the refusal by the Russian authorities to open an investigation and provide documents relating to the investigation by the de facto authorities of the "Republic of Abkhazia", an entity not recognised as a State under international law and controlled by Russia (*ibid.*, §§ 102-103).

159. Reference is made in this connection to Rule 44A of the Rules of Court, which provides that the parties have a duty to cooperate fully in the conduct of the proceedings and to take such action within their power as the Court considers necessary for the proper administration of justice. Moreover, pursuant to Rule 44C § 1, where a party fails to adduce evidence or provide information requested by the Court or to divulge relevant information of its own motion or otherwise fails to participate effectively in the proceedings, the Court may draw such inferences as it deems appropriate. Rule 44C § 2 plainly states that the failure or refusal by a respondent Contracting Party to participate effectively in the proceedings shall not, in itself, be a reason to discontinue the examination of the application. It is clear from the well-established case-law of the Court and from Rules 44A and 44C that if a respondent Government fail to comply with a request by the Court for material which could corroborate or refute the allegations made before it and do not duly account for their failure or refusal, the Court can draw inferences and combine such inferences with contextual factors (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 438).

160. The level of persuasion necessary for reaching a particular conclusion and the distribution of the burden of proof, are intrinsically linked to the specificity of the facts, the nature of the allegations made and the Convention right at stake (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 257; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 439).

B. Standard of proof and assessment of evidence

1. Standard of proof in relation to jurisdiction

161. The question of jurisdiction does not necessarily go to the merits of the case. The Court may determine the issue of the respondent State's jurisdiction under Article 1 of the Convention at the admissibility stage of the proceedings. Where it does so, the "beyond reasonable doubt" standard of proof applies (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 265, *Ukraine v. Russia (Crimea)* [GC], 2024, § 849, and *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 452). The applicable standard of proof for the purposes of admissibility in respect of allegations of individual violations and of administrative practices is that of "sufficiently substantiated prima facie evidence" (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 261-263, *Ukraine v. Russia (Crimea)* [GC], 2024, § 850, and *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 450-451).

162. As regards the content of the "beyond reasonable doubt" standard, it has never been the Court's purpose to borrow the approach of the national legal systems that use that standard. The Court's role is not to rule on criminal guilt or civil liability but on Contracting States' responsibility under the Convention (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 453).

163. For a negative example of the application of the "beyond reasonable doubt" standard of proof, see *Ukraine v. Russia (Crimea)* [GC], 2024, §§ 880-887. In that inter-State case, the Ukrainian Government had complained of violations of the fundamental rights of a Ukrainian national who had been supposedly abducted in Belarus by Russian agents then transferred to Russia. Having regard to all the evidence, the Court took the view that neither "effective control" by Russia over part of Belarus nor "State agent authority and control" over the person in question – the two main criteria characterising the exercise of extraterritorial jurisdiction– was proven to the requisite standard.

2. Assessment of evidence

164. There are no procedural barriers to the admissibility of evidence or pre-determined formulae for its assessment: the Court has complete freedom in assessing not only the admissibility and relevance but also the probative value of each item of evidence before it. The Court adopts those conclusions of fact which are, in its view, supported by the free evaluation of all material before it irrespective of its origin, including such inferences as may flow from the facts and the parties' submissions and conduct (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 379-380; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, §§ 440).

165. Proof may follow from the "coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact" (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 257; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 441).

166. The Court takes into account reports and statements by international observers, NGOs and the media as well as decisions of other international and national courts to shed light on the facts or to corroborate findings made by the Court (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 257). Its assessment of the evidence, and in particular the weight to be given to it, varies in view of the different nature of the material, the source of the material and the degree of rigour applied to its collection and verification (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 442).

167. The Court has thus often attached importance to material from reliable and objective sources, such as the UN, reputable NGOs and governmental sources. However, in assessing its probative

value a degree of caution is needed since widespread reports of a fact may prove, on closer examination, to derive from a single source. In relation to such material, consideration should be given to the source of the material and in particular its independence, reliability and objectivity. The Court also considers the presence and reporting capacities of the author in the country in question: it will not always be possible for investigations to be carried out in the immediate vicinity of a conflict and in such cases information provided by sources with first-hand knowledge of the situation may have to be relied upon. Consideration is given to the authority and reputation of the author, the seriousness of the investigations forming the basis for the report, and the consistency of the conclusions and their corroboration by other sources (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 386-388; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 443).

168. Media reports, on the other hand, are to be treated with caution. They are not themselves evidence for judicial purposes, but public knowledge of a fact may be established by means of these sources of information and the Court may attach a certain amount of weight to such public knowledge (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 383; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 444).

169. The direct evidence of witnesses is also taken into account by the Court (*Georgia v. Russia (II)* [GC], and *Ilaşcu and Others v. Moldova and Russia* [GC], 2004, § 26). Even where the domestic authorities have not been given the opportunity to test the evidence and the Court itself has not had the opportunity to probe the details of the statement in the course of the proceedings before it, this does not necessarily diminish its probative value. It is for the Court to determine whether it considers a statement to be credible and reliable, and what weight to attach to it (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 445).

170. The Court may also rely on witness statements from Government officials. Statements by Government ministers or other high officials should, however, be treated with caution since they would tend to be in favour of the Government that they represent. That said, statements from high-ranking officials, even former ministers and officials, who have played a central role in the dispute in question are of particular evidentiary value when they acknowledge facts or conduct that place the authorities in an unfavourable light. They may then be construed as a form of admission (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, §§ 334 and 381). Similar considerations apply to official documents and intelligence material provided by State ministries and agencies (*Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 446).

171. There is no need for direct evidence from alleged victims in order for a complaint about an administrative practice to be regarded as admissible (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 384; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 447).

172. A delay in collecting evidence, or its collection specifically for the purposes of proceedings before the Court, does not render such evidence per se inadmissible (*Ukraine v. Russia (re Crimea)* [GC] (dec.), 2020, § 381; *Ukraine and the Netherlands v. Russia* [GC] (dec.), 2022, § 448).

List of cited cases

The case-law cited in this Guide refers to judgments or decisions delivered by the Court and to decisions or reports of the European Commission of Human Rights ("the Commission").

Unless otherwise indicated, all references are to a judgment on the merits delivered by a Chamber of the Court. The abbreviation "(dec.)" indicates that the citation is of a decision of the Court and "[GC]" that the case was heard by the Grand Chamber.

Chamber judgments that were not final within the meaning of Article 44 of the Convention when this update was published are marked with an asterisk (*) in the list below. Article 44 § 2 of the Convention provides: "The judgment of a Chamber shall become final (a) when the parties declare that they will not request that the case be referred to the Grand Chamber; or (b) three months after the date of the judgment, if reference of the case to the Grand Chamber has not been requested; or (c) when the panel of the Grand Chamber rejects the request to refer under Article 43". In cases where a request for referral is accepted by the Grand Chamber panel, it is the subsequent Grand Chamber judgment, not the Chamber judgment, that becomes final.

The hyperlinks to the cases cited in the electronic version of the Guide are directed to the HUDOC database (*http://hudoc.echr.coe.int*) which provides access to the case-law of the Court (Grand Chamber, Chamber and Committee judgments and decisions, communicated cases, advisory opinions and legal summaries from the Case-Law Information Note) and of the Commission (decisions and reports), and to the resolutions of the Committee of Ministers.

The Court delivers its judgments and decisions in English and/or French, its two official languages. HUDOC also contains translations of many important cases into more than thirty non-official languages, and links to around one hundred online case-law collections produced by third parties.

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