10/07/2020

Overview of Inter-Cases before the ECHR

NON-PAPER

Introduction

This document was compiled during the preparation of the draft CDDH report on the effective processing and resolution of cases relating to inter-State disputes (DH-SYSC-IV(2020)04) under the auspices of Ms Jenny Dorn in her capacity as one the co-rapporteurs. The document is for information only.

I. Category: Inter-state conflicts (political dimension)

1. Ukraine v. Russian Federation (VIII), Application no. 55855/18, 29.11.2018

Facts of the Case

The Ukrainian Government submitted an urgent request under Rule 39 of the Rules of Court to indicate to the Russian Government an interim measure in the interests of the 24 sailors of the Ukrainian Navy captured in the waters of the Sea of Azov and the Kerch Strait on 25 November 2018. The Ukrainian Government requested in particular that Russia provide urgent medical assistance to the wounded sailors and information about the current state of health of Ukrainian Navy crew members, the place of their detention and all medical assistance that is being provided to them. The applicant Government also requested that the sailors be treated as prisoners of war in accordance with the Third Geneva Convention of 1949 and that they be repatriated without delay. The Court addressed the following questions to the Russian Government:

- Are the officers and men of the Ukrainian naval vessels Berdyansk, Nikopol and Yany Kapu deprived of their liberty? If so, on what ground and where are they being held?
- Can it be confirmed that there are wounded among the officers and men of the three Ukrainian naval vessels? If so, who are they, what are their injuries and what medical treatment have they received?

Lastly, it invited the Russian Government “to submit all relevant documents”.

Current State

On 4 December 2018, the ECHR decided to indicate to the Russian Government by way of interim measure that they should ensure that appropriate medical treatment be administered to those captive Ukrainian naval personnel who required it, including in particular any who might have been wounded in the naval incident that took place in the Kerch Strait on 25 November 2018. The Court also maintained its request for factual information, as formulated in its letter to the Russian Government on 29 November 2018. The case is still pending.

2. Georgia v. Russian Federation (IV), Application no. 39611/18, 22.08.2018

Facts of the Case

The application relates to the alleged recent deterioration of the human rights situation along the administrative boundary lines between Georgian-controlled territory and Abkhazia and South Ossetia.

The Georgian Government alleges, in particular: (a) that Russia has engaged (and continues to engage) in an administrative practice of harassing, unlawfully arresting and detaining, assaulting, torturing, murdering and intimidating ethnic Georgians attempting to cross, or living next to, the administrative boundary lines that now separate Georgian-controlled territory from Abkhazia and South Ossetia; (b) that Russia has engaged (and continues to engage) in an administrative practice of failing to conduct Convention-compliant investigations in this connection; (c) that Archil Tatunashvili was unlawfully deprived of his liberty, tortured and murdered by persons for whom Russia bears responsibility; and (d) that Russia has failed to conduct a Convention-compliant investigation into the unlawful arrests and murders of Davit Basharuli, Giga Otkhozoria and Archil Tatunashvili.

The Georgian Government relies on Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination) and Article 18 (limitation on use of restrictions on rights) of the Convention, Article 1 (protection of property) and Article 2 (right to education) of Protocol No. 1 and Article 2 (freedom of movement) of Protocol No. 4.

Current State

The case is still pending.

3. Ukraine v. Russian Federation (VII), Application no. 38334/18, 11.08.2018

Facts of the Case

The application concerns Ukrainian nationals arrested and prosecuted, and in some cases convicted, by the Russian Federation on charges of membership of organisations banned by Russian law, incitement to hatred or violence, war crimes, espionage and terrorism. The Ukrainian Government alleges violations of Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 7 (no punishment without law), Article 8 (right to respect for private and family life), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy), Articl e14 (prohibition of discrimination) and Article 18 (limitation on use of restrictions on rights) of the Convention. According to the applicant Government, the Russian Federation has adopted an administrative practice of suppressing the expression by Ukrainian nationals of political views favouring a return to the pre-2014 borders and penalising Ukrainian nationals' membership of certain organisations that are legal in Ukraine.

Current State

The case is still pending.

4. Slovenia v. Croatia, Application no. 54155/16, 15.09.2016

Facts of the case

The application concerns the conduct of the judicial and executive authorities of Croatia in relation to the assets and receivables of Ljubljanska banka d.d., a joint stock company incorporated under Slovenian law, and its branch Ljubljanska banka Main Branch Zagreb, in Zagreb (Croatia), in the context of the disintegration of the former Socialist Federal Republic of Yugoslavia (SFRY; see Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia [GC], no. 60642/08, ECHR 2014).

According to the Slovenian Government, between 1991 and 1996 Ljubljanska banka and its Zagreb branch brought proceedings in the Croatian courts against a number of Croatian companies, seeking the repayment of debts contracted in the former SFRY, mainly in the 1980s. As of 1994, over 80 such legal cases were pending before Croatian courts ; the present application before the Court covers 26 cases. Some of them are still pending, some others have ended in judgments denying Ljubljanska banka standing before the Croatian courts; lastly, in some other cases, judgments favourable to the bank could never be enforced.

In 2007 Ljubljanska banka brought similar complaints before the Court in *Ljubljanska banka d.d. v. Croatia* (no. 29003/07). The bank essentially complained about the non-enforcement of two writs of execution in its favour in proceedings it had brought against a Croatian sugar factory for recovery of debt. However, in 2015 the Court declared the case inadmissible because the bank was government-controlled and had no standing to lodge an application.

The applicant Government in the pending application alleges multiple violations of Article 6 § 1 (right to a fair trial) of the Convention. It argued that Ljubljanska banka was and still is a victim of an arbitrary interpretation of Slovenian law by the Croatian courts, contrary to the requirements of Croatia's own conflict rules, thus leading to the constant and arbitrary denial of the bank's *locus standi* in the respective proceedings. The applicant also alleged a violation of Ljubljanska banka's right to legal certainty, equality before the law, and adversarial proceedings. The applicant further complained of the unreasonable length of proceedings, and of a violation of the right to an impartial and independent tribunal through the interference of the Croatian executive authorities with the court proceedings.

Lastly, the applicant Government complained of the impossibility to obtain the enforcement of final judgments in many cases. According to the Slovenian Government, there have also been several violations of Ljubljanska banka's rights under Article 1 of Protocol No. 1 (peaceful enjoyment of possessions) to the Convention, Article 14 (prohibition of discrimination) and Article 13 (right to an effective remedy) of the Convention.

Current state

On 28 October 2016 the Croatian Government was given notice of the application, with questions from the Court.

On 18 December 2018 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

On 12 June 2019, a Grand Chamber hearing on the admissibility of the case took place.

The case is still pending.

5. Ukraine v. Russian Federation (III), Application no. 49537/14, 09.07.2014

Facts of the Case

The complaint concerned the deprivation of liberty and the treatment of Mr Dzhemilov, a Ukrainian national belonging to the Crimean Tatars ethnic group, in the context of criminal proceedings which the Russian authorities have conducted against him. The Government of Ukraine complained of a violation of Articles 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment) and Article 5 (right to liberty and security) of the Convention.

On 10 July 2014, the Court decided to indicate, to both Russia and Ukraine, under Rule 39 of its Rules of Court (interim measures), that they should ensure respect for the Convention rights of Mr Dzhemilov, including, in particular, respect for security of his person and his right to legal assistance. In parallel, the Court issued an interim measure under Rule 39 to the same effect in the context of an application lodged by Mr H. Dzhemilov (no. 49522/14) against both Russia and Ukraine.

Current state

On 15 May 2015 the Government of Ukraine informed the Court that it did not wish to pursue the application given that the individual application lodged by Mr H. Dzhemilov (no. 49522/14) concerning the same subject matter was pending before the Court. The Government of Russia informed the Court that it did no object to the application being struck out of the Court's list.
The Court considered that it was no longer justified to continue the examination of the application and therefore the application was struck out of its list of cases in September 2015. The application of Rule 39 of the Rules of Court comes to an end, without prejudice to the interim measure issued in the context of the application lodged by Mr H. Dzhemilov (no. 49522/14).

6. Ukraine v. Russian Federation (II), Application no. 43800/14, 13.06.2014

Facts of the Case

The case concerns the abduction of three groups of Ukrainian orphan children and children without parental care and a number of adults accompanying them. The groups were allegedly abducted by armed representatives of the separatist forces in Eastern Ukraine, on three occasions, in June, July and August 2014 respectively, and subsequently transported to Russia. In each case, following diplomatic efforts by the Ukrainian authorities in coordination with the Russian authorities, the children and adults were returned to the territory of Ukraine one day and in the third case five days after their abduction. The Government of Ukraine complain that the abductions and illegal border-crossings were in violation of Article 2 (right to life), Article 3 (prohibition of torture and inhuman or degrading treatment), Article 5 (right to liberty and security), Article 8 (right to respect for private life) and Article 2 of Protocol No. 4 (freedom of movement) to the Convention.

Current State

An interim measure applied by the Court, under Rule 39 of the Rules of Court, following the introduction of the case after the first incident – indicating to the Russian Government that it should ensure respect for the Convention rights of the people abducted and ensure their immediate return to Ukraine - was lifted after the group had been returned to Ukraine.

The Russian Government has been asked to submit its observations on the admissibility of the application and to comment in particular on the questions of whether the alleged violations of the Convention fall within the jurisdiction of the Russian Federation within the meaning of

Article 1 of the Convention (States' obligation to respect the rights guaranteed in the Convention), what legal remedies were available to the people concerned by the alleged violations of the Convention and whether these remedies were accessible and effective.

This case is pending before a Chamber.

7. Ukraine v. Russian Federation (re Crimea), Application no. 20958/14, 13.03.2014

Facts of the Case

The case relates to events leading up to and following the assumption of control by the Russian Federation over the Crimean Peninsula and subsequent developments in Eastern Ukraine.

The Ukrainian Government maintains that the Russian Federation has from 27 February 2014 exercised effective control over the Autonomous Republic of Crimea, an integral part of Ukraine, and has exercised jurisdiction over a situation which has resulted in numerous Convention violations. The Government alleges that the violations are a result of a general administrative practice by the Russian Federation.

The applicant Government relies on several Articles of the European Convention on Human Rights, including Article 2 (right to life), Article 3 (prohibition of inhuman treatment and torture), Article 5 (right to liberty and security), Article 6 (right to a fair trial), Article 8 (right to respect for private life), Article 9 (freedom of religion), Article 10 (freedom of expression), Article 11 (freedom of assembly and association), Article 13 (right to an effective remedy) and 14 (prohibition of discrimination). It also complains under Article 1 of Protocol No.1 to the Convention (protection of property), Article 2 of Protocol No. 1 (right to education) and Article 2 of Protocol No.4 (freedom of movement).

In particular, the applicant Government alleges that between March and September 2014, Ukrainian military servicemen, officers of law-enforcement bodies and civilians were killed as a result of the allegedly illegal annexation of Crimea and Russian support for separatist armed groups in Eastern Ukraine. The applicant Government alleges that the killings amounted to a widespread and systematic practice. It also alleges cases of torture or other forms of ill-treatment of civilians and of arbitrary deprivation of liberty. It is further alleges that a number of Crimean Tatars were subjected to ill-treatment on account of their ethnic origin or their attempts to protect Ukrainian national symbols. The applicant Government states that Ukrainian nationals living in Crimea and Sevastopol were automatically recognised as Russian nationals and that pressure was exerted on those who expressed the wish to remain Ukrainian nationals. There were allegedly cases of attacks, abductions, ill-treatment and harassment of journalists doing their work. It is alleged that property belonging to Ukrainian legal entities was subjected to unlawful control, namely by being taken by the self-proclaimed authorities of the Crimean Republic, which acts were later approved by Russian legislation.

Finally, the Government of Ukraine maintains that the new State border between Crimea and Ukraine has led to Ukrainian nationals' entry into Crimea being unlawfully restricted.

Current State

The applications has been communicated to the Russian Government, which have made submissions on them.

On 13 March 2014 the Court applied Rule 39 of the Rules of Court to this case. It called upon the Russian Federation and Ukraine to refrain from measures, in particular military action, which might bring about violations of the civilian population's Convention rights, notably under

Article 2 (right to life) and Article 3 (prohibition of inhuman or degrading treatment). Both States were also asked to inform the Court as soon as possible of the measures taken to ensure that the Convention is fully complied with. The interim measure remains in force.

Division of the case

To make its processing of the case more efficient, the Court decided on 9 February 2016 to divide it geographically. All the complaints related to the events in Crimea up to September 2014 remained as case no. 20958/14, while complaints relating to events in Eastern Ukraine and Donbass up to September 2014 were put under Ukraine v. Russia (V), application no. 8019/16.

Both the applicant and the respondent Governments have submitted their observations on the merits of the cases.

On 7 May 2018 the Chamber dealing with these inter-State cases relinquished jurisdiction in favour of the Grand Chamber. The Court held a Grand Chamber hearing on Wednesday 11 September 2019.

The case is still pending.

8. Ukraine v. Russian Federation (V) (re Eastern Ukraine), Application no. 8019/16, 13.03.2014

Facts of the case

The application includes allegations of the detention of individuals by one or another of the States Parties concerned, by the self-proclaimed Donetsk and Luhansk People's republics, and about the destruction of housing during hostile action.

Current State/ruling

To make its processing of the case more efficient, the Court decided on 9 February 2016 to divide it geographically – all the complaints relating to events in Eastern Ukraine and Donbass up to September 2014 were put under Ukraine v. Russia (V), application no. 8019/16 (See also: Ukraine v. Russian Federation (re Crimea), Application no. 20958/14, 13.03.2014)

On 17 December 2018, the Court adopted a plan for its future processing of thousands of applications from individuals who have raised complaints against Ukraine or Russia or both countries in relation to the conflict in Eastern Ukraine. A key issue to be determined in these applications is whether Ukraine or Russia has jurisdiction in relation to the matters complained of, in accordance with Article 1 of the European Convention on Human Rights (Obligation to respect human rights).

As matters now stand, the Court expects to rule on this issue in the related inter-State case of Ukraine v. Russia (re Eastern Ukraine) (application no. 8019/16), in which the Government of Ukraine raises various complaints against the Government of the Russian Federation.

To save as much time as possible, the Court has decided that any related individual applications which are not declared inadmissible or struck out at the outset will be communicated to the appropriate respondent Government or Governments for observations in parallel with the inter-State case. After receiving the Governments' and applicants' observations in reply, the Court intends to record an adjournment for each case, pending a

judgment in the inter-State case, with a view to having the files complete and ready for decision or judgment as soon as possible thereafter.

9. Georgia v. Russian Federation (III), Application no. 61186/09, 03.12.2009

Facts of the Case

The application was lodged in connection with the detention of four Georgian minors by the *de facto* authorities of South Ossetia.

Current state/ruling

Following two visits to South Ossetia by the Human Rights Commissioner of the Council of Europe, the four minors and a further one who had been previously detained were released from detention. On 29 January 2010 the Georgian Government informed the Court that they no longer wished to maintain the case. Therefore, on 16 March 2010 a Chamber decided to strike the application out of its list of cases (Article 37 § 1 (a) of the Convention).

10. Georgia v. Russian Federation (II), Application no. 38263/08, 12.08.2008

Facts of the Case

The application relates to the 2008 conflict between Georgia and the Russian Federation. The applicant Government submitted that, in the course of indiscriminate and disproportionate attacks by Russian forces and/or by the separatist forces under their control, hundreds of civilians were injured, killed, detained or went missing, thousands of civilians had their property and homes destroyed and over 300,000 people were forced to leave Abkhazia and South Ossetia. In their submission, those consequences and the subsequent lack of any investigation engaged the Russian Federation's responsibility under Articles 2, 3, 5, 8 and 13 of the Convention, Articles 1 and 2 of Protocol No. 1 to the Convention and Article 2 of Protocol No. 4 to the Convention.[1]

Ruling

On 12 August 2008 the Court adopted an interim measure inviting both Governments to respect their obligations under the Convention. This decision is still in force.

A hearing was held on 22 September 2011. The application was declared admissible by a Chamber on 13 December 2011 and relinquished to the Grand Chamber on 3 April 2012. After several exchanges of observations between the parties, a witness hearing was held from 6 to 17 June 2016 and a hearing on the merits was held on 23 May 2018.

The respondent Government denied the applicant Government's allegations, which they considered to be baseless, unjustified and unconfirmed by any admissible evidence. They maintained that the applicant Government had deliberately distorted the facts when they referred to indiscriminate and disproportionate attacks by Russian forces and/or the separatist forces under their control. In actual fact, they argued, the armed forces of the Russian Federation had not launched an attack, but, on the contrary, had defended the civilian population of South Ossetia against Georgian attacks. [2]

[1] Georgia v. Russia (II) (dec), no. 38263/08, §21, 13 December 2011
[2] Ibid. §22

Taking of evidence

A witness hearing and a hearing on the merits was held.

The Court based its judgment on the admissibility amongst others on the Report by the Independent International Fact-Finding Mission on the Conflict in Georgia, established by a decision of 2 December 2008 of the Council of the European Union, on the Report by Human Rights Watch (HRW): “Up in flames: Humanitarian Law Violations and Civilian Victims in the Conflict Zone over South-Ossetia”, 22 January 2009, and on the Amnesty International Report: “Civilians in the line of fire: the Georgia-Russia conflict”, EUR 04/005/2008, November 2008.

11. Georgia v. Russian Federation (I), Application no. 13255/07, 26.03.2007

Facts of the Case

The case essentially concerns the alleged existence of an administrative practice involving the arrest, detention and collective expulsion of Georgian nationals from the Russian Federation in the autumn of 2006.

It raises issues under Articles 3 (prohibition of torture, inhuman or degrading treatment), 5 (right to liberty and security), 8 (right to respect for private and family life), 13 (right to an effective remedy) and 18 (limitation on use of restrictions on rights) of the Convention and under Articles 1 and 2 of Protocol No. 1 (protection of property and right to education), Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) as well as under Article 1 of Protocol No. 7 (procedural safeguards relating to expulsion of aliens).

Ruling

Following a hearing on 16 April 2009, the application was declared admissible by a Chamber on 30 June 2009, without prejudging the merits of the case, and relinquished to the Grand Chamber on 15 December 2009. From 31 January to 4 February 2011, a witness hearing was held in Strasbourg. A Grand Chamber hearing took place in public in the Human Rights Building, Strasbourg, on 13 June 2012.
In a judgment of 3 July 2014 the Court held that there had been a violation, in particular, of Article 4 of Protocol No. 4 (prohibition of collective expulsion of aliens) to the Convention and Articles 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security) and 13 (right to an effective remedy) of the Convention. The question of the application of Article 41 (just satisfaction) of the Convention was not yet ready to examine.

In a just satisfaction judgment on 31 January 2019, the Court decided that Russia had to pay Georgia 10,000,000 euros (EUR) in respect of non-pecuniary damage suffered by a group of at least 1,500 Georgian nationals; and that the amount was to be distributed to the individual victims.

Taking of evidence

In order to establish the facts the Court has based itself on the parties’ observations and the many documents submitted by them and on the statements of the witnesses heard in Strasbourg. It has also had regard to the reports by international governmental and non-governmental organisations such as the PACE Monitoring Committee, HRW, the FIDH and the annual report of 2006 of the Human Rights Commissioner of the Russian Federation (Russian Ombudsman).

During the week 31 January to 4 February 2011 the delegation of judges of the Grand Chamber heard a total of twenty-one witnesses, nine of whom had been proposed by the applicant Government, ten by the respondent Government and two chosen by the Court.

12. Cyprus v. Turkey (IV), Application no. 25781/94, 22.11.1994

Facts of the Case

The complaints raised in this application (and the others applications Cyprus v. Turkey) arise out of the Turkish military operations in northern Cyprus in July and August 1974 and the continuing division of the territory of Cyprus.

These allegations were invoked with reference to four broad categories of complaints: alleged violations of the rights of Greek-Cypriot missing persons and their relatives; alleged violations of the home and property rights of displaced persons; alleged violations of the rights of enclaved Greek Cypriots in northern Cyprus; alleged violations of the rights of Turkish Cypriots and the Gypsy community in northern Cyprus.

The applicant Government essentially claimed in their application that about 1,491 Greek Cypriots were still missing twenty years after the cessation of hostilities. These persons were last seen alive in Turkish custody and their fate has never been accounted for by the respondent State.

The applicant Government invoked in particular Articles 1 to 11 and 13 of the Convention as well as Articles 14, 17 and 18 read in conjunction with the aforementioned provisions. They further invoked Articles 1, 2 and 3 of Protocol No. 1.

Ruling

On 10 May 2001: The Court held that there had been 14 violations of the Convention, arising out of the military operations it had conducted in northern Cyprus in July and August 1974, the continuing division of the territory of Cyprus and the activities of the “Turkish Republic of Northern Cyprus” (the “TRNC”). Regarding the issue of just satisfaction, the Court held unanimously that it was not ready for decision and adjourned its consideration.

Just Satisfaction Judgment on 12 May 2014: The Court held that Turkey was to pay Cyprus 30,000,000 euros (EUR) in respect of the non-pecuniary damage suffered by the relatives of the missing persons, and EUR 60,000,000 in respect of the non-pecuniary damage suffered by the enclaved Greek-Cypriot residents of the Karpas peninsula. These amounts are to be distributed by the Cypriot Government to the individual victims under the supervision of the Committee of Ministers.

Taking of evidence

The Commission drew up and adopted a report on 4 June 1999 in which it established the facts and expressed an opinion as to whether the facts as found gave rise to the breaches alleged by the applicant Government.

The Court notes that the Commission had regard to written as well as, in respect of certain categories of complaints, oral evidence in order to clarify and establish the facts underlying the allegations advanced by the applicant Government. As appropriate, the Commission further relied on the findings contained in its 1976 and 1983 reports as well as documentary materials obtained of its own motion and, as a principal source, materials submitted by the parties.

The investigation also involved visits to certain localities (the Ledra Palace crossing-point over the demarcation line, the court building in northern Nicosia and Greek-Cypriot villages in the Karpas area). Oral statements were taken by the delegates from a number of officials and other persons encountered during the visit to northern Cyprus including the Karpas peninsula.

13. Cyprus v. Turkey (III), Application no. 8007/77, 06.09.1977

Facts of the Case

The violations complained of in the application are described as:

— detention or murder of about 2,000 missing Greek Cypriots;
— displacement of persons from their homes and land (refusal to allow the return of over 170, 000 refugees and eviction of Greek Cypriots from the occupied areas through inhuman methods);
— separation of families;
— looting and robbery of movables belonging to Greek Cypriots;
— seizure, appropriation, exploitation, occupation, distribution and destruction of movable and immovable properties of Greek Cypriots.

Ruling

Decision on admissibility on 10 July 1978, Interim Report on 12 July 1980, Report on Art. 31 on 4 October 1983.

In the report ("the 1983 report") the Commission expressed the opinion that the respondent State was in breach of its obligations under Articles 5 and 8 of the Convention and Article 1 of Protocol No. 1.

On 2 April 1992 the Committee of Ministers adopted Resolution DH (92) 12 in respect of the Commission's 1983 report. In its resolution the Committee of Ministers limited itself to a decision to make the 1983 report public and stated that its consideration of the case was thereby completed.

Taking of evidence

In addition to material handed in by the Governments (the applicant Government submitted a "List of Missing Persons as a Result of the Turkish Invasion in Cyprus" containing the names and other particulars of 1, 619 persons ; 50 statements of "Illustrative cases of missing persons containing new facts/ evidence'), the Commission undertook an investigation concerning missing persons, by obtaining oral evidence in some of the cases submitted by the applicant. This investigation was carried out by a Delegation who selected the cases to be examined in consultation with the applicant Government. The respondent Government, in its observations on the admissibility, objected that the application dealt with the same alleged acts and events as those already covered in the two previous applications and therefore refused to participate in the proceeding.

14. Cyprus v. Turkey (II), Application no. 6950/75, 21.03.1975

The case was joined with Cyprus v. Turkey (I), Application no. 6780/74.

15. Cyprus v. Turkey (I), Application no. 6780/74, 10.09.1974

Facts of the Case

The applicant Government stated that Turkey had on 20 July 1974 invaded Cyprus, until 30 July occupied a sizeable area in the north of the island and on 14 August 1974 extended its occupation to about 40% of the territory of the Republic. The applicant Government alleged violations of Arts 1, 2, 3, 4, 5, 6, 8, 13 and 17 of the Convention and Art 1 of Protocol N ^{O} 1 and of Art 14 of the Convention in conjunction with the aforementioned Articles.

In their second application (N ^{O} 6950/75) the applicant Government contended that, by acts unconnected with any military operation, Turkey had, since the introduction of the first application, committed, and continued to commit, further violations of the above Articles in the occupied territory.

Ruling

The proceeding led to the adoption of a report under former Article 31 of the Convention ("the 1976 report") on 10 July 1976 in which the Commission expressed the opinion that the respondent State had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No. 1. The Committee of Ministers of the Council of Europe, on 20 January 1979, adopted Resolution DH (79) 1 concerning the abovementioned two previous applications. It decided to strongly urge the parties to resume intercommunal talks under the auspices of the Secretary General of the United Nations in order to agree upon solutions on all aspects of the dispute. It considered that this decision completes its consideration of the case.

Taking of evidence

A delegation visited Cyprus from 2 to 6 September 1975 and heard 14 of the 29 witnesses proposed by the applicant Government. It also heard three further witnesses, who were refugees from the Kyrenia area, and eleven refugees in refugee camps. The locations visited in Nicosia were the demarcation separating the area controlled by the applicant government from the north of the city and some refugee camps. The delegation saw a set of short news films compiled and presented by the Cyprus Broadcasting Corporations.

16. Ireland v. United-Kingdom (II), Application no. 5451/72, 06.03.1972

Struck off the list on 1 October 1972.

17. Ireland v. United-Kingdom (I), Application no. 5310/71, 16.12.1971

Facts of the Case

The crisis in Northern Ireland lies at the root of this case. In order to combat what the respondent Government describe as "the longest and most violent terrorist campaign witnessed in either part of the island of Ireland", the authorities in Northern Ireland exercised from August 1971 until December 1975 a series of extrajudicial powers of arrest, detention and internment. The proceedings in this case concern the scope and the operation in practice of those measures as well as the alleged ill-treatment of persons thereby deprived of their liberty. Allegations of ill-treatment have been made by the applicant Government in relation both to the initial arrests and to the subsequent interrogations.

Notable: In the judgment, a long section is dedicated to the description of the social, constitutional and political background.

Up to March 1975, on the figures cited before the Commission by the respondent Government, over 1,100 people had been killed, over 11,500 injured and more than £140,000,000 worth of property destroyed during the recent troubles in Northern Ireland. This violence found its expression in part in civil disorders, in part in terrorism, that is organised violence for political ends.

Ruling

In a judgment delivered on 18 January 1978 ("the original judgment"), the Court held that the use of the five techniques of interrogation in August and October 1971 constituted a practice of inhuman and degrading treatment, in breach of Article 3 of the Convention, and that the said use of the five techniques did not constitute a practice of torture within the meaning of Article 3.[3] On 4 December 2014 the applicant Government informed the Court that no earlier than 4 June 2014, documents had come to their knowledge which by their nature might have had a decisive influence on the Court's judgment in respect of Article 3 of the Convention, had they been known to the Court at the time of delivering judgment. They accordingly requested revision of the judgment to the effect that the use of the five techniques of interrogation in depth amounted to a practice not merely of inhuman and degrading treatment but of torture within the meaning of Article 3 of the Convention. The revision is based on Rule 80 of the Rules of Court. The request for revision was dismissed on 20 March 2018 on the basis that it cannot be said that the documents submitted might have had a decisive influence on the Court's finding in the original judgment that the use of the five techniques constituted a practice of inhuman and degrading treatment in breach of Article 3 of the Convention but did not constitute a practice of torture within the meaning of that provision.[4]

Taking of evidence

The applicant Government submitted written evidence to the Commission in respect of 228 cases concerning incidents between 9 August 1971 and 1974.

The Commission examined in detail with medical reports and oral evidence 16 "illustrative" cases selected at its request by the applicant Government. The Commission considered a further 41 cases (the so-called "41 cases") on which it had received medical reports and invited written comments; it referred to the remaining cases.

18. Austria v. Italy, Application no. 788/60, 11.07.1960

Facts of the case

The case concerns the criminal proceedings following the murder of an Italian customs officer by several South Tyroleans.

After two Italian customs officers got into an argument with a group of young men from the village of Pfunders (South Tyrol) in a bar, one of them was found dead the following morning. While one had managed to escape, the other was caught up and beaten and kicked to death by the young men.

All fourteen men involved in the scuffle were arrested by the police on 16 August 1956. On July 8, 1957 a criminal trial followed before the jury court in Bolzano. In the course of this trial, seven of the eight men accused of murdering were found guilty and sentenced to long prison terms.

[3] *Ireland v. United Kingdom*, 18 January 1978, §167
[4] *Ireland v. United Kingdom* (revision), 20 March 2018, §136 and 137.

The defense argued that the sentences imposed were disproportionate. In addition, the body had been taken away from the scene of the crime without any traces having been secured beforehand or the location of the body having been depicted. Moreover, important witnesses had not been heard.

Austria lodged a state complaint against Italy claiming that Italy had violated Article 6 (1), (2) and (3) lit. D and Article 14 ECHR (prohibition of discrimination) in the proceedings.

The following questions were examined:

(i) Did the Trent Assize Court of Appeal violate Article 6 (3) (d) of the Convention by refusing to hear Mrs. Giovanna Johanna Ebner and Dr. Kofler as witnesses?

(ii) Did that Court violate the same provision when on 20th March 1958 it held an investigation on the spot in the absence of the accused who were then in prison?

(iii) Was the rule regarding presumption of innocence (Article 6 (2) of the Convention) observed in this case?

(iv) Did the alleged violation of paragraphs (3) (d) and (2) of Article 6 involve disregard of the right to a fair trial as guaranteed by paragraph 1 of that Article?

(v) Did the alleged violation of paragraphs (3) (d) and (2) of Article 6 involve disregard of the principle of non-discrimination set out in Article 14 of the Convention?

Ruling

No violation of the Convention was found.

Procedural particularity: The ECtHR ruled that it was irrelevant whether the State bringing the complaint was a party to the ECHR at the time of the violation (Austria only became a party to the ECHR after the events in South Tyrol)

The Commission published ist report on 30 March 1963. On 23 October 1963, the Committee of Ministers agreed with the reasoning of the Commission and decided that there has been no violation of the Convention (Resolution (63) DH 3).

19. Greece v. United-Kingdom (II), Application no. 299/57, 17.07.1957

Facts of the Case

The Government of Greece submitted to the Commission 49 complaints by persons in Cyprus by members of the police, security or military forces in the island and invoked a violation of Articles 3, 5, 6, 8, 9, 10, 11 and 15 ECHR.

Ruling

On 12 October 1957, the Commission declared the State complaint admissible.

On 8 July 1959 the Commission finalised its report indicating that the case did not appear to fall exactly within the terms of either Article 30 or Article 31 of the Convention. Before the examination of the application had been completed, Greece and the United Kingdom, acting in concert, requested the Commission to allow the proceedings to be terminated because of "a fundamental change in the situation of the island through the conclusion of the Zurich and London Agreement for the final settlement of the problem of Cyprus". Having regard to the request of the Parties and especially to the importance of the political settlement reached at Zurich and London as a means of restoring to the people of Cyprus the full and perfect enjoyment of their rights and freedoms, and having regard to the information received that the

provisions of the Convention are again being fully executed in Cyprus, the Commission decided to terminate the proceedings on 14 December 1959 (Res 32) "having regard in particular to the Zurich and London Agreements for the final settlement of the problem of Cyprus". The report of the Commission was made public by the Committee of Ministers in 2006 following a request by the Government of the United Kingdom.[5]

20. Greece v. United-Kingdom (I), Application no. 176/56, 07.05.1956

Facts of the Case

Cyprus was still under the colonial regime of the United Kingdom in 1956. The latter was accused by Greece of having arrested and imprisoned men from Cyprus for several days without bringing them before a court. Greece also claimed that the men had been tortured and beaten by police officers. In addition, Archbishop Makarios and three other Greek Cypriots were arrested and then deported to the Seychelles, i.e. they were not allowed to return to Cyprus. Greece also argued that the requirements for the British derogation of the Convention under Article 15 of the Convention concerning the situation in Cyprus were not met and that a series of legislative measures were incompatible with the Convention.

The Commission did not find a violation of the Convention as regards the facts concerning the deportation of Archbishop Makarios and the other three Greek Cypriots.

Ruling

On 2 June 1956, the Commission declared the state complaint admissible. On 19 December 1956, the Sub-commission invited the Parties to examine the possibilities of a friendly settlement, pursuant to Article 28 § b) of the Convention. After several unsuccessful attempts, it concluded it will not proceed further. In the conclusion of its report published in 1958, the Commission reiterated that the full enjoyment of human rights in Cyprus is closely connected with the solution of the wider political problems relating to the constitutional status of the island. It concluded by expressing the firm conviction that the Committee of Ministers of the Council of Europe could make no greater contribution to restoring the full and unfettered enjoyment of human rights in Cyprus than by lending its aid in promoting a settlement of the Cyprus problem in all its aspects in accordance with the spirit of true democracy. The report was then transmitted to the Committee of Ministers, which took note on 20th April 1959 of the "final settlement" of the Cyprus question which has since been achieved.

Taking of Evidence

Evidence handed in by the respective governments and oral hearings that were held from 12th to 19th November 1958.

[5] Res DH (2006) 24, 05 April 2006.

II. Category: Erga Omnes Cases

1. Denmark, France, Norway, Sweden & the Netherlands v. Turkey, Application no. 9940/82 to 9944/82, 01.07.1982

Facts of the Case

The applications related to the situation in Turkey between 12 September 1980 and 1 July 1982. In September 1980, the Turkish Parliament was dissolved, its powers were transferred to the National Security Council and the full executive power was transferred to the Chairman of the Council.

The applicant Governments submitted that the Law on the Constitutional Order of 27 October 1980 and a number of laws and decrees made under it abrogated the constitutional protection of fundamental rights.

The applicant Governments alleged violations of:

Art. 3 of the Convention, in that detainees were tortured or subjected to inhuman or degrading treatment, and that such cases constituted a widespread and systematic practice;

Arts. 5 and 6 of the Convention with regard to detention and criminal proceedings under martial law; and

Arts. 9, 10 and 11 of the Convention, with regard to restrictions on political parties, trade unions and the press.

The applications also referred to the notice of derogation given by the Turkish Government under Art. 15 of the Convention and submitted that, whatever situation existed in Turkey prior to 12 September 1980, a public emergency threatening the life of the nation did not obtain there on 1 July 1982. Further, the legislation, administrative measures and practices complained of went beyond what was strictly required by the exigencies of the situation.

Ruling

The case was declared admissible on 6 December 1983.
On 2 July 1985, on the basis of Article 28 § b) the Parties presented their joint proposal for a settlement of the case, considering the evolution of the situation in Turkey. On 5 and 5 December 1985 the Parties informed the Commission that they had reached a friendly settlement.
On 7 December 1985 the Commission adopted its Report noting that the six Governments concerned have come to an agreement to settle the case and concluding that the settlement reached was secured.

Taking of evidence

As a first step the Court heard 12 witnesses proposed by the applicant Governments in relation to their allegations under Art. 3 of the Convention. Then, a series of meetings took place between the Parties and the Delegation of the Commission to work out a friendly settlement.

2. Denmark, Norway, Sweden v. Greece (II), Application no. 4448/70, 10.04.1970

Facts of the Case

On 27 March 1970, a trial against 34 persons accused of subversive activities was opened before the Extraordinary Court in Athens. With regard to these proceedings the applicant Governments alleged violations of Articles 3 and 6 of the Convention. As regards Article 3, they claim that the defendants were kept in strict isolation in dark cells and that at least twelve of them were subjected to torture during the investigation. With regard to Article 6 of the Convention, the applicant Governments allege violations of the right to a fair trial by an independent and impartial tribunal established by law.

Ruling

After Greece's refusal to participate in the proceedings, the Commission declared that it could not adequately continue its functions. The Committee of Ministers took note of the Commission's report in 1971. However, in 1974, Greece rejoined the Council of Europe and became again a Contracting Party. Subsequently in 1976, all the Parties requested that the proceedings should be closed by the Commission. The applicant Government presumed that all the individuals were no longer detained or imprisoned. The Commission consequently decided to accede to the Parties' concordant requests to close the proceedings and to strike out the application off its list on 4 October 1976.

3. Denmark, Norway, Sweden & the Netherlands v. Greece (I), Application no. 3321/67 to 3323/67 & 3344/67, 27.09.1967 & 25.03.1968

Facts of the Case

After the military coup on 21 April 1967, Greece was ruled by a military regime from 1967 to July 1974. The applications referred to the Royal Decree of 21 April 1967 by which a state of siege had been declared in Greece and certain articles of the Constitution had been suspended. The applicant governments complained that by the legislative measures and administrative practices, Greece had violated Art. 5, 6, 8, 9, 10, 11, 13, 14 and 15 of the Convention.

Ruling

The Commission declared the original requests admissible on 24th January 1968 and merged the complaints. In its second decision on admissibility of 31st May 1968, the Commission declared the new allegations made by the first three applicant Governments, admissible.

On 5th November 1969, the Commission in its report found that Greece's legislative measures and administrative practices had infringed Articles 5, 6, 8, 9, 10, 11, 13, 14 of the Convention and Article 3 of the First Protocol to theConvention, that these measures and practices were not justified under Article 15 of the Convention. However, by adopting the constitutional Act "Eta", later "Lambda", Greece had not violated Article 7 of the Convention nor Article 1 of the First Protocol to the Convention.

The Committee of Ministers in its Resolution (32) of 15 April 1970, having regard to the denunciation of the Statute of the Council of Europe by the Government of Greece on 12 December 1969 and considering that Greece declared that it does not consider itself legally bound by the conclusions of the report of the Commission, concluded there is no basis for further action. It also urged the Government of Greece to restore without delay human rights and fundamental freedoms in Greece taking into account the proposals made by the Commission.

The Committee of Ministers on 26 November 1974 decided not to continue the examination of the case, having regard to the fundamental changes which have since occurred in Greece, as illustrated by the procedure already initiated for the readmission of Greece to the Council of Europe.

Taking of evidence

Documents handed in by the governments and hearing of witnesses. The Commission found that it had been prevented by the respondent Government from fully establishing the facts.

III. Third Category: Diplomatic conflict situations

1. Denmark v. Turkey, Application no. 34382/97, 07.01.1997

Facts of the Case

The complaint related to the alleged ill-treatment suffered by Mr. Kemal Koç, a Danish national, during his detention in Turkey from 8 July 1996 to 16 August 1996, and in particular the treatment Mr Koç was subjected to on 8 and 9 July 1996.

Furthermore, the Government of Denmark requested the Commission to examine whether the interrogation techniques applied to Mr Kemal Koç were applied in Turkey as a widespread practice designed to extract under severe pain and suffering confessions and other statements, whether incriminating or not, whether true or false.

Ruling

The case was declared admissible on 8 June 1999.

By letters of 30 and 31 March 2000, the parties informed the Court that they undertook not to request a rehearing of the case before the Grand Chamber. The Court took note of the friendly settlement reached between the parties. The agreement made provision for the payment of a sum of money to the applicant Government, including a statement of regret by the respondent Government concerning the occurrence of occasional and individual cases of torture and ill-treatment in Turkey. It also emphasized the importance of the training of Turkish police officers with reference to Turkey's continued participation in the Council of Europe's police-training project. The Court also observed the changes to the legal and administrative framework which have been introduced in Turkey in response to instances of torture and ill-treatment as well as the respondent Government's undertaking to make further improvements in the field of human rights – especially concerning the occurrence of incidents of torture and ill-treatment – and to continue their co-operation with international human rights bodies, in particular the Committee for the Prevention of Torture. Against the above background the Court was satisfied that the settlement (Article 39 of the Convention) is based on respect for human rights as defined in the Convention or its Protocols. Accordingly, the case was struck out of the list.