January 2023
This Factsheet does not bind the Court and is not exhaustive

Armed conflicts

Cases concerning the Katyń massacre during World War II

Janowiec and Others v. Russia[1]

21 October 2013 (Grand Chamber)

This case concerned complaints by relatives of victims of the 1940 Katyń massacre – the killing of several thousands of Polish prisoners of war by the Soviet secret police (NKVD) – that the Russian authorities' investigation into the massacre had been inadequate. The applicants complained that the Russian authorities had not carried out an effective investigation into the death of their relatives and had displayed a dismissive attitude to all their requests for information about their relatives' fate.

The European Court of Human Rights held that it had **no competence to examine the complaints under Article 2** (right to life) and that there had been **no violation of Article 3** (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights. If found that it was not competent to examine the adequacy of an investigation into the events that had occurred before the adoption of the Convention in 1950. Furthermore, by the time the Convention entered into force in Russia, the death of the Polish prisoners of war had become established as a historical fact and no lingering uncertainty as to their fate – which might have given rise to a breach of Article 3 in respect of the applicants – had remained. The Court further held that Russia had **failed to comply with its obligations under Article 38** (obligation to furnish necessary facilities for examination of the case) of the Convention. It underlined that Member States were obliged to comply with its requests for evidence and found that Russia, in refusing to submit a key procedural decision which remained classified, had failed to comply with that obligation. The Russian courts had not conducted a substantive analysis of the reasons for maintaining the classified status.

Cases concerning the Turkey-Cyprus issue

Cyprus v. Turkey

10 May 2001 (Grand Chamber – principal judgment)[2]

This case related to the situation that has existed in northern Cyprus since the conduct of military operations there by Turkey in July and August 1974 and the continuing division of the territory of Cyprus. Cyprus alleged violations of the Convention by Turkey as a matter of administrative practice. It contended that Turkey was accountable for those alleged violations notwithstanding the proclamation of the "Turkish Republic of

[1]. On 16 September 2022 the Russian Federation ceased to be a Party to the European Convention on Human Rights ("the Convention").

[2]. See also, with regard to the same case, the Grand Chamber judgment of 12 May 2014 on the question of just satisfaction. In this judgment, the Court held that the passage of time since the delivery of the principal judgment on 10 May 2001 did not preclude it from examining the Cypriot Government's just satisfaction claims. It concluded 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, said the Court, are to be distributed by the Cypriot Government to the individual victims under the supervision of the Committee of Ministers of the Council of Europe.

Northern Cyprus" (TRNC) in November 1983, pointing to the international community's condemnation of the establishment of the TRNC. Turkey, on the other hand, maintained that the TRNC was an independent State and that it could therefore not be held accountable under the Convention for the acts or omissions concerned.

The Court held that the facts complained of in the application fell within the jurisdiction of Turkey. It found fourteen violations of the Convention, concerning:

– *Greek-Cypriot missing persons and their relatives*: **continuing violation of Article 2** (right to life) of the Convention concerning the failure of the authorities of the Turkish State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances; **continuing violation of Article 5** (right to liberty and security) of the Convention concerning the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of the Greek-Cypriot missing persons in respect of whom there was an arguable claim that they were in Turkish custody at the time of their disappearance; and **continuing violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention in that the silence of the Turkish authorities in the face of the real concerns of the relatives attained a level of severity which could only be categorised as inhuman treatment;

– *Home and property of displaced persons*: **continuing violation of Article 8** (right to respect for private and family life, home and correspondence) of the Convention concerning the refusal to allow the return of any Greek-Cypriot displaced persons to their homes in northern Cyprus; **continuing violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention concerning the fact that Greek-Cypriot owners of property in northern Cyprus were being denied access to and control, use and enjoyment of their property as well as any compensation for the interference with their property rights; and **violation of Article 13** (right to an effective remedy) of the Convention concerning the failure to provide to Greek Cypriots not residing in northern Cyprus any remedies to contest interferences with their rights under Article 8 and Article 1 of Protocol No. 1;

– *Living conditions of Greek Cypriots in Karpas region of the northern part of Cyprus*: **violation of Article 9** (freedom of thought, conscience and religion) of the Convention, concerning the effects of restrictions on freedom of movement which limited access to places of worship and participation in other aspects of religious life; **violation of Article 10** (freedom of expression) of the Convention in so far as school-books destined for use in their primary school were subject to excessive measures of censorship; **violation of Article 1 of Protocol No. 1** in that their right to the peaceful enjoyment of their possessions was not secured in case of their permanent departure from that territory and in that, in case of death, inheritance rights of relatives living in southern Cyprus were not recognised; **violation of Article 2** (right to education) **of Protocol No. 1** in so far as no appropriate secondary-school facilities were available to them; **violation of Article 3** of the Convention in that the Greek Cypriots living in the Karpas area of northern Cyprus had been subjected to discrimination amounting to degrading treatment; **violation of Article 8** of the Convention concerning their right to respect for their private and family life and to respect for their home; and **violation of Article 13** of the Convention by reason of the absence, as a matter of practice, of remedies in respect of interferences by the authorities with their rights under Articles 3, 8, 9 and 10 of the Convention and Articles 1 and 2 of Protocol No. 1;

– *Rights of Turkish Cypriots living in northern part of Cyprus*: **violation of Article 6** (right to a fair trial) of the Convention, on account of the legislative practice of authorising the trial of civilians by military courts.

The Court further held that there had been **no violation** of the Convention concerning a number of complaints, including all those raised under: **Article 4** (prohibition of slavery and forced labour), **Article 11** (freedom of assembly and association), **Article 14** (prohibition of discrimination), **Article 17** (prohibition of abuse of rights) and **Article 18** (limitation on use of restrictions on rights) read in conjunction with all those provisions.

As regards a number of other allegations, the Court held that it was not necessary to consider the issues raised.

Varnava and Others v. Turkey

18 September 2009 (Grand Chamber)

The applicants were relatives of nine Cypriot nationals who disappeared during Turkish military operations in northern Cyprus in July and August 1974. They alleged in particular that their relatives had disappeared after being detained by Turkish military forces and that the Turkish authorities had not accounted for them since.

The Court held that there had been a **continuing violation of Article 2** (right to life) of the Convention on account of the failure of the authorities to conduct an effective investigation into the fate of the nine men who disappeared in life-threatening circumstances, a **continuing violation of 3** (prohibition of inhuman treatment) of the Convention in respect of the applicants, a **continuing violation of Article 5** (right to liberty and security) of the Convention by virtue of the failure of the authorities to conduct an effective investigation into the fate of two of the missing men, and **no continuing violation of Article 5** in respect of the other seven missing men.

Cases concerning acts linked to the First Gulf War

Hussein and Others v. Belgium

16 March 2021

During the first Gulf War (1990-1991) the applicants, ten Jordanian nationals, who were living in Kuwait, were prosecuted by the Kuwaiti authorities and deported to Jordan. They lodged a civil-party application with the Brussels investigating judge against high-ranking Kuwaiti officials with a view to launching criminal proceedings for genocide on the basis of the 16 June 1993 Act on the suppression of serious violations of international humanitarian law (the so-called "universal jurisdiction law"), as amended by Act of 10 February 1999 and ultimately superseded by the Act of 5 August 2003. They also claimed compensation for pecuniary and non-pecuniary damage sustained as a result of the offences of which they were the alleged victims. After the proceedings, which ended with the 18 January 2012 judgment of the Court of Cassation, the applicants' action failed on the grounds that no investigative act had yet been carried out at the time of the entry into force of the 5 August 2003 Law and the Belgian courts had in any case lacked jurisdiction to hear and determine the criminal proceedings. The applicants submitted that in declaring the proceedings inadmissible and declining jurisdiction, the Belgian courts had provided insufficient reasons for their decisions and deprived them of the right of access to a tribunal.

The Court held that there had been **no violation of Article 6 § 1** (right to a fair trial) of the Convention in the present case. It ruled, in particular, that the Belgian courts had provided a specific and explicit response to the pleas raised by the applicants and had not failed in their obligation to give reasons. It discerned nothing arbitrary or manifestly unreasonable in the domestic courts' interpretation of the concept of "investigative act". Indeed, that interpretation corresponded to the purpose of the 5 August 2003 Act of reducing universal jurisdiction litigation, while also establishing a transitional mechanism in order to prevent cases pending at the investigative stage from being affected. The Court further noted that in 2001, at the time of the applicants' civil-party application, Belgian law had recognised an absolute form of universal criminal jurisdiction. Subsequently, the legislature gradually introduced criteria requiring a connection with Belgium and a filtering system for assessing whether a prosecution should be brought. When the 5 August 2003 had come into force on 7 August 2003, the proceedings which the applicants had initially brought in 2001 had no longer satisfied the new criteria governing the jurisdiction of the Belgian courts as defined for the future. The case could therefore not be retained on that basis. The Court thus considered that the decision by the Belgian courts, following the entry into force of the 2003 Act, to decline jurisdiction to hear and determine the civil-party application in 2001, had not

been disproportionate to the legitimate aims pursued. Indeed, the reasons given by the Belgian authorities (proper administration of justice and the immunities issue raised by the proceedings under international law) could be considered as compelling grounds of public interest.

Cases concerning the conflict between Armenia and Azerbaijan / Nagorno-Karabakh[3]

Chiragov and Others v. Armenia

16 June 2015 (Grand Chamber – judgment on the merits)[4]

This case concerned the complaints by six Azerbaijani refugees that they were unable to return to their homes and property in the district of Lachin, in Azerbaijan, from where they had been forced to flee in 1992 during the conflict over Nagorno-Karabakh. The applicants complained in particular about the loss of all control over, and of all potential to use, sell, bequeath, mortgage, develop and enjoy their properties in Lachin. They also complained that their inability to return to the district of Lachin constituted a continuing violation of the right to respect for home and private and family life. Furthermore, they complained that no effective remedies had been available to them in respect of their complaints.

In the applicants' case, the Court confirmed that Armenia exercised effective control over Nagorno-Karabakh and the surrounding territories and thus had jurisdiction over the district of Lachin. Concerning their complaints, it held that there had been a **continuing violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, a **continuing violation of Article 8** (right to respect for private and family life) of the Convention, and a **continuing violation of Article 13** (right to an effective remedy) of the Convention. The Court considered in particular that there was no justification for denying the applicants access to their property without providing them with compensation. The fact that peace negotiations were ongoing did not free the Armenian Government from their duty to take other measures. The Court also noted that what was called for was a property claims mechanism which would be easily accessible to allow the applicants and others in their situation to have their property rights restored and to obtain compensation.

Sargsyan v. Azerbaijan

16 June 2015 (Grand Chamber – judgment on the merits)[5]

This case concerned an Armenian refugee's complaint that, after having been forced to flee from his home in the Shahumyan region of Azerbaijan in 1992 during the conflict over Nagorno-Karabakh, he had since been denied the right to return to his village and to have access to and use his property there. It was the first case in which the Court had to decide on a complaint against a State which had lost control over part of its territory as a result of war and occupation, but which at the same time was alleged to be responsible for refusing a displaced person access to property in an area remaining under its control. The applicant having died after having lodged his complaint with the

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[3]. Under the Soviet system of territorial administration, Nagorno-Karabakh was an autonomous province of the Azerbaijan Soviet Socialist Republic. Its population was approximately 75% ethnic Armenian and 25% ethnic Azeri. Armed hostilities started in 1988, coinciding with an Armenian demand for the incorporation of the province into Armenia. Azerbaijan became independent in 1991. In September 1991 the Nagorno-Karabakh Soviet announced the establishment of the "Nagorno-Karabakh Republic" (the "NKR") and in January 1992 the "NKR" parliament declared independence from Azerbaijan. The conflict gradually escalated into full-scale war before a ceasefire was agreed in 1994. Despite negotiations for a peaceful solution under the auspices of the Organization for Security and Co-operation in Europe (OSCE) and the Minsk Group, no political settlement of the conflict has been reached. The self-proclaimed independence of the "NKR" has not been recognised by any State or international organisation.

[4]. See also, with regard to the same case, the Grand Chamber judgment of 12 December 2017 on the question of just satisfaction.

[5]. See also, with regard to the same case, the judgment of 12 December 2017 on the question of just satisfaction.

European Court of Human Rights, two of his children have pursued the application on his behalf.

In the applicant's case, the Court confirmed that, although the village from which he had to flee was located in a disputed area, Azerbaijan had jurisdiction over it. Concerning the applicant's complaints, it held that there had been a **continuing violation of Article 1** (protection of property) **of Protocol No. 1** to the Convention, a **continuing violation of Article 8** (right to respect for private and family life) and a **continuing violation of Article 13** (right to an effective remedy) of the Convention. The Court considered in particular that while it was justified by safety considerations to refuse civilians access to the village, the State had a duty to take alternative measures in order to secure the applicant's rights as long as access to the property was not possible. The fact that peace negotiations were ongoing did not free the Azerbaijani Government from their duty to take other measures. The Court further noted that what was called for was a property claims mechanism which would be easily accessible to allow the applicant and others in his situation to have their property rights restored and to obtain compensation.

Pending applications

There are currently seven inter-State cases pending before the Court which concern mainly the conflict between Armenia and Azerbaijan/Nagorno Karabakh which took place between 27 September 2020 and 10 November 2020 (the date of entry into force of a ceasefire agreement). These cases contain allegations of widespread violations of the Convention.

There are also individual applications pending before the Court in regard to individuals captured during the conflict in late 2020. Rule 39 (interim measures) of the Rules of Court has been applied on numerous occasions in these cases.

Armenia v. Azerbaijan (no. 42521/20) and Azerbaijan v. Armenia (no. 47319/20)

Applications lodged on 27 September 2020 and 27 October 2020 respectively – Relinquishment in favour of the Grand Chamber in May 2021

The applications concern mainly the recent hostilities between Armenia and Azerbaijan and contain allegations of widespread violations of the Convention by the respondent States during the hostilities, including indiscriminate attacks on civilians as well as civilian and public property and infrastructure; executions, ill-treatment and mutilations of combatants and civilians; the capture and continued detention of prisoners of war; and the forced displacement of the civilian population in areas affected by the military actions. Azerbaijan additionally submits that Armenia has been responsible for a number of Convention violations since 1992, including the continued displacement of hundreds of thousands of Azerbaijanis from their homes and property; the ill-treatment and disappearance of Azerbaijani nationals without proper investigations; and the destruction of cultural and religious property.

In the context of the mentioned inter-State cases, the Court received requests for interim measures. Taking the view that the situation had given rise to a risk of serious violations of the Convention, the Court granted an interim measure under Rule 39 (interim measures) of the Rules of Court and called upon both Azerbaijan and Armenia to refrain from taking any measures, in particular military action, which might entail breaches of the Convention rights of the civilian population, including putting their lives and health at risk, and to comply with their obligations under the Convention, notably in respect of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment or punishment) of the Convention[6].

On 9 March 2021 the Chamber to which the two inter-State applications had been allocated decided unanimously to inform the parties about its intention to relinquish

[6]. Details of the interim measure as well as many other requests for interim measures received and examined by the Court in regard to the recent hostilities can be seen in the press releases of 30 September 2020 (link), 27 October 2020 (link), 4 November 2020 (link), 16 December 2020 (link), 4 February 2021 (link) and 16 March 2021 (link).

jurisdiction in favour of the Grand Chamber. Neither of the parties objected to a relinquishment.
The Chamber relinquished jurisdiction in favour of the Grand Chamber on 11 May 2021.

Armenia v. Turkey (no. 43517/20)

Application lodged on 4 October 2020

This case concerns Turkey's alleged role in the recent armed hostilities between Armenia and Azerbaijan which took place between 27 September and 10 November 2020 (the date of entry into force of a ceasefire agreement). Notably, Armenia alleges that Turkey provided assistance to the Azerbaijani armed forces during the conflict.
Previously, on 4 October 2020 the Court had received a request for an interim measure introduced by Armenia against Turkey in relation to the above inter-State case. On 6 October 2020 the Court, applying Rule 39 (interim measures) of the Rules of Court, called on all States directly or indirectly involved in the conflict, including Turkey, to refrain from actions that would contribute to breaches of the Convention rights of civilians and to respect their obligations under the Convention[7]. On 17 November 2020 the Government of Turkey requested that the Court lift the interim measure in question. They referred, in particular, to a statement signed on 9 November 2020 by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the Russian Federation, declaring an end to the hostilities with effect from midnight on 10 November 2020. On 1 December 2020 the Court decided, in the light of the information provided by the Government of Turkey, to lift the interim measure previously indicated on 6 October 2020[8].
The completed application form received by the Court in the inter-State case of Armenia v. Turkey on 9 May 2021 opened the proceedings on the complaints about alleged violations of the Convention. The first matter for the Court to examine is the admissibility of the application. As an initial step, and in accordance with Rule 51 § 1 (assignment of applications and subsequent procedure), the President of the Court has assigned the case to the Third Section and given notice of the application to the respondent State.

Armenia v. Azerbaijan (no. 2) (no. 33412/21)

Application lodged on 29 June 2021

Armenia v. Azerbaijan (no. 3) (no. 42445/21)

Application lodged on 24 August 2021

Armenia v. Azerbaijan (no. 4) (no. 15389/22)

Application lodged on 24 March 2022

The three above-mentioned applications contain allegations of various violations under Articles 2 (right to life), 3 (prohibition of torture, inhuman or degrading treatment), 6 (right to a fair trial) and 8 (right to respect for private and family life) of the Convention.

Azerbaijan v. Armenia (no. 2) (no. 39912/22)

Application lodged on 18 August 2022

This application concerns alleged looting and destruction of houses, setting fire to trees and destruction of infrastructure by Armenians leaving the town of Lachin and the surrounding area, allegedly on the orders or with the encouragement of Armenia.

7. Link to the press release of 6 October 2020.
8. Link to the press release of 2 December 2020.

Cases concerning the war in Croatia

Marguš v. Croatia

27 May 2014 (Grand Chamber)

This case concerned the conviction, in 2007, of a former commander of the Croatian army of war crimes against the civilian population committed in 1991. The applicant complained in particular that his right to be tried by an impartial tribunal and to defend himself in person had been violated. He further submitted that the criminal offences of which he had been convicted were the same as those which had been the subject of proceedings against him terminated in 1997 in application of the General Amnesty Act.

The Court held that there had been **no violation of Article 6 §§ 1 and 3 (c)** (right to a fair trial) of the Convention, considering that the applicant's removal from the courtroom had not prejudiced his defence rights to a degree incompatible with that provision. The Court further held that **Article 4** (right not to be tried or punished twice) **of Protocol No. 7** to the Convention was **not applicable** in respect of the charges relating to the offences which had been the subject of proceedings against the applicant terminated in 1997 in application of the General Amnesty Act. At the same time, it declared **inadmissible** the complaint under Article 4 of Protocol No. 7 as regards the applicant's right not to be tried or punished twice in respect of the charges dropped by the prosecutor in January 1996. The Court found in particular that there was a growing tendency in international law to see the granting of amnesties in respect of grave breaches of human rights as unacceptable. It concluded that by bringing a new indictment against the applicant and convicting him of war crimes against the civilian population, the Croatian authorities had acted in compliance with the requirements of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman or degrading treatment) of the Convention and consistent with the recommendations of various international bodies.

Milanković v. Croatia

20 January 2022

This case concerned the applicant's conviction for war crimes, perpetrated by the police units under his command, against the Serbian civilian population and a prisoner of war, on the territory of Croatia between mid-August 1991 and mid-June 1992. The applicant complained that, in convicting him of those crimes, the domestic courts had applied a protocol applicable only to international armed conflicts, whereas the events had taken place before Croatian independence and thus during a non-international armed conflict.

The Court held that there had been **no violation of Article 7** (no punishment without law) of the Convention in the applicant's case. It found, in particular, that the applicant's conviction for war crimes on the basis of his command responsibility had, at the time of the events, a sufficiently clear legal basis in international law also covering non-international armed conflict, and that he should have known that his failure to prevent them from being committed by the police units under his command would make him criminally liable. It was irrelevant whether those crimes had been committed before or after Croatian independence.

Cases concerning the war in Bosnia and Herzegovina

Palić v. Bosnia and Herzegovina

15 February 2011

This case concerned the disappearance during the war in Bosnia and Herzegovina of a military commander leading one of the local forces at the time. In July 1995, after the opposing local forces (the VRS, mostly made up of Serbs) had taken control of the area of Žepa in Bosnia and Herzegovina, he went to negotiate the terms of surrender of his forces, and disappeared. His wife attempted numerous times to find out about his fate from official sources, without success. She complained that Bosnia and Herzegovina

failed to investigate the disappearance and death of her husband and that she had suffered as a result for many years.
The Court held that there had been **no violation of Article 2** (right to life), **3** (prohibition of inhuman or degrading treatment) **or 5** (right to liberty and security) of the Convention. It found that the application was admissible, as the disappearance of the applicant's husband had not been accounted for by 12 July 2002, the date when Bosnia and Herzegovina ratified the Convention. It further observed that despite the initial delays, the investigation had finally identified the remains of the applicant's husband. That had been a significant achievement in itself, given that more than 30,000 people had gone missing during the war in Bosnia and Herzegovina. The prosecution authorities had been independent, and although there had been some concern in relation to one of the members of one of the ad hoc investigative commissions that had not influenced the conduct of the ongoing criminal investigation. In addition, after a long and brutal war, Bosnia and Herzegovina had had to make choices in terms of priorities and resources.

Stichting Mothers of Srebrenica and Others v. the Netherlands

11 June 2013 (decision on the admissibility)
This case concerned the complaint by relatives of victims of the 1995 Srebrenica massacre, and by an NGO representing victims' relatives, of the Netherlands courts' decision to declare their case against the United Nations (UN) inadmissible on the ground that the UN enjoyed immunity from national courts' jurisdiction. Relying in particular on Article 6 (right to a fair trial) of the Convention, the applicants alleged in particular that their right of access to court had been violated by that decision.
The Court declared the application **inadmissible** in respect of both the NGO and the individual applicants. It found that the NGO had not itself been affected by the matters complained of and could thus not claim to be a "victim" of a violation of the Convention. As regards the individual applicants, the Court rejected the complaint as manifestly ill-founded, as the granting of immunity to the UN served a legitimate purpose. It held in particular: that bringing military operations under Chapter VII of the Charter of the UN within the scope of national jurisdiction would mean allowing States to interfere with the key mission of the UN to secure international peace and security; that a civil claim did not override immunity for the sole reason that it was based on an allegation of a particularly grave violation of international law, even genocide; and, that in the circumstances the absence of alternative access to a jurisdiction did not oblige the national courts to step in.

Maktouf and Damjanović v. Bosnia and Herzegovina

18 July 2013 (Grand Chamber)
Both applicants in this case had been convicted by the Court of Bosnia and Herzegovina of war crimes committed against civilians during the 1992-1995 war. They complained in particular that a more stringent criminal law, namely the 2003 Criminal Code of Bosnia and Herzegovina, had been applied to them retroactively than that which had been applicable at the time they committed the offences – in 1992 and 1993 respectively – namely the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia.
The Court held that there had been a **violation of Article 7** (no punishment without law) of the Convention. Given the type of offences of which the applicants had been convicted (war crimes as opposed to crimes against humanity) and the degree of seriousness (neither of the applicants had been held criminally liable for any loss of life), the Court found that the applicants could have received lower sentences had the 1976 Code been applied. Since there was a real possibility that the retroactive application of the 2003 Code operated to the applicants' disadvantage in the special circumstances of this case, it held that they had not been afforded effective safeguards against the imposition of a heavier penalty.

Mustafić-Mujić and Others v. the Netherlands

30 August 2016 (decision on the admissibility)

The applicants, relatives of men killed in the Srebrenica massacre of July 1995, imputed criminal responsibility to three Netherlands servicemen who were members of the UN peacekeeping force. They complained that the Netherlands authorities had wrongly refused to investigate and prosecute the servicemen for allegedly sending their relatives to their probable death by ordering them to leave the safety of the UN peacekeepers' compound after the Bosnian Serb forces had overrun Srebrenica and its environs.

The Court declared the application **inadmissible**, finding that the Netherlands authorities had sufficiently investigated the incident and given proper consideration to the applicants' request for prosecutions. In relation to the investigation, the Court held that there had been extensive and repeated investigations by national and international authorities. There was no lingering uncertainty as regards the nature and degree of involvement of the three servicemen and it was therefore impossible to conclude that the investigations had been ineffective or inadequate. In relation to the decision not to prosecute – taken on the basis that it was unlikely that any prosecution would lead to a conviction – the Court rejected the applicants' complaints that that decision had been biased, inconsistent, excessive or unjustified by the facts.

Cases concerning the NATO operation in former Yugoslavia

Banković and Others v. Belgium and 16 Other Contracting States

19 December 2001 (Grand Chamber – decision on the admissibility)

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

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

Markovic and Others v. Italy

14 December 2006 (Grand Chamber)

The application concerned an action in damages brought by the ten applicants, nationals of the former Serbia and Montenegro, before the Italian courts in respect of the deaths of their relatives as a result of air strikes on 23 April 1999 by the NATO alliance on the headquarters of Radio Televizije Srbije (RTS) in Belgrade. They alleged, relying on Article 6 (right to a fair trial) read in conjunction with Article 1 (obligation to respect human rights) of the Convention, that they were denied access to a court.

The Court held that once the applicants had brought a civil action in the Italian courts, there indisputably existed a "jurisdictional link" for the purposes of Article 1 (obligation to respect human rights) of the Convention. However, the Court found **no violation of Article 6** (right to a fair trial) of the Convention, holding that the applicants' claims had been fairly examined in the light of the Italian legal principles applicable to the law of tort.

Behrami and Behrami v. France and Saramati v. France, Germany and Norway

31 May 2007 (Grand Chamber – decision on the admissibility)

The first case concerned the detonation of a cluster bomb in March 2000 – dropped during the 1999 NATO bombing of the then Federal Republic of Yugoslavia – found by playing children, which killed one boy and seriously wounded another. The applicants complained, relying on Article 2 (right to life) of the Convention, that the death of one boy and the injuries of the other were attributable to the failure of the French troops of the international security force in Kosovo (KFOR) to mark and/or defuse the undetonated bombs.

The second case concerned the detention by KFOR of a man from Kosovo of Albanian origin, who was suspected of involvement with armed groups operating in the border region between Kosovo and the Former Yugoslav Republic of Macedonia and assumed to represent a threat to the security of KFOR. He complained that his detention, between July 2001 and January 2002, violated, in particular, Article 5 (right to liberty and security) of the Convention.

The Court declared the applications **inadmissible**. It found that the supervision of de-mining in Kosovo fell within the mandate of the UN Interim Administration for Kosovo (UNMIK) and the issuing of detention orders fell within the security mandate of KFOR, hence the UN, given that the UN Security Council had passed Resolution 1244 establishing UNMIK and KFOR. The UN had a legal personality separate from that of its member states and was not a Contracting Party to the Convention. Since UNMIK and KFOR relied for their effectiveness on support from member states, the Convention could not be interpreted in a manner which would subject Contracting Parties' acts or omissions to the scrutiny of the Court. To do so would be to interfere with the fulfilment of the UN's key mission to preserve peace. The Court concluded that it was not necessary to examine the question of its competence to hear complaints against France about extra-territorial acts or omissions.

Cases concerning the conflict in Chechnya

To date the European Court of Human Rights has delivered more than 290 judgments finding violations of the Convention in connection with the armed conflict in the Chechen Republic (Russian Federation[9])[10]. About 60% of the applications concern enforced disappearances; other issues include killing and injuries to civilians, destruction of homes and property, indiscriminate use of force, use of landmines, illegal detention, torture and inhuman conditions of detention.

The applicants most commonly refer to Articles 2 (right to life), 3 (prohibition of torture and 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 14 (prohibition of discrimination) of the Convention and to Article 1 (protection of property) of Protocol No. 1 to the Convention.

The first judgments were delivered by the Court in 2005 and concerned the disproportionate use of force during the military campaign in 1999-2000 (**Isayeva, Yusupova and Bazayeva v. Russia** and **Isayeva v. Russia**, judgments of 24 February 2005).

In a number of cases, State servicemen were found responsible for extra-judicial killings of the applicants' relatives (**Khashiyev and Akayeva v. Russia**, judgment of 24 February 2005; **Musayev and Others v. Russia**, judgment of 26 July 2007; **Estamirov and Others v. Russia**, judgment of 12 October 2006; **Amuyeva and Others v. Russia**, judgment of 25 November 2010).

[9]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.
[10]. For further information regarding status of execution of the judgments, see here.

On 2 December 2010, in the judgment **Abuyeva and Others v. Russia**, the Court concluded that in carrying out the investigation in the case, Russia had manifestly disregarded the specific findings of the Court's previous binding judgment **Isayeva v. Russia** of 24 February 2005, concerning the ineffectiveness of the same set of criminal proceedings. The Court emphasised that any measures adopted within the process of executing judgments must be compatible with the conclusions set out in the Court's judgment. The Court invited the Committee of Ministers of the Council of Europe to address the issue, with reference to Article 46 (binding force of judgments) of the Convention[11].

Other more recent judgments include: **Esmukhambetov and Others v. Russia** (29 March 2011), which concerned a Russian military air strike on a village in Chechnya in September 1999 killing five people and destroyed houses and property; **Tashukhadzhiyev v. Russia** (25 October 2011), which concerned the disappearance of a young man in Chechnya after having been detained by a group of military servicemen in 1996; **Inderbiyeva v. Russia** and **Kadirova and Others v. Russia** (27 March 2012), which concerned the alleged killings and lack of effective investigation into the death of four civilian women during security operations by Russian servicemen in the Chechen Republic in 2000; **Umarova and Others v. Russia** (31 July 2012), which concerned the disappearance of a man, husband and father of five, and the inadequate investigation into the events surrounding it; **Gakayeva and Others v. Russia** (10 October 2013), concerning alleged abductions by Russian servicemen between 2000 and 2005 in broad daylight in various public places in Chechnya; **Petimat Ismailova and Others v. Russia** (18 September 2014), concerning the disappearance of seventeen persons between 2001 and 2006 after allegedly being arrested at their homes in Chechnya by State servicemen; **Sultygov and Others v. Russia** (9 October 2014), which concerned the disappearance of seventeen men and one woman between 2000 and 2006 after allegedly being arrested in Chechnya by Russian servicemen during security operations or at military checkpoints.

In its judgment in the case of **Aslakhanova and Others v. Russia** of 18 December 2012, concerning the complaints brought by 16 applicants, the Court found that *the non-investigation of disappearances that have occurred between 1999 and 2006 in Russia's North Caucasus was a systemic problem*, for which there was no effective remedy at national level.

The Court outlined two types of **general measures to be taken by Russia** to address those problems: to alleviate the continuing suffering of the victims' families; and, to remedy the structural deficiencies of the criminal proceedings. A corresponding strategy was to be prepared by Russia without delay and to be submitted to the Committee of Ministers for the supervision of its implementation. At the same time, the Court decided not to adjourn the examination of similar cases pending before it.

The judgment in the case of **Turluyeva v. Russia** of 20 June 2013 concerned the disappearance of a young man in October 2009 after last having been seen at the premises of a police regiment in Grozny. The Court found three **violations of Article 2** (right to life) of the Convention, on account of the young man's presumed death, on account of the State's failure to protect his life, and on account of the failure to conduct an effective investigation into his disappearance.

The Court underlined that the Russian authorities were sufficiently aware of the gravity of the problem of enforced disappearances in the North Caucasus and its life-threatening implications, and that they had lately taken a number of steps to make investigations of this type of crime more efficient. It therefore found, in particular, that the authorities

[11]. Under Article 46 of the Convention, the Committee of Ministers (CM), the executive arm of the Council of Europe, supervises the execution of the Court's judgments. Further information on the execution process and on the state of execution in cases pending for supervision before the CM can be found on the Internet site of the Department for the execution of judgments of the European Court of Human Rights.

should have taken, but had failed to take, appropriate measures to protect the life of the applicant's son once they had learned of his disappearance.

The judgment in the case of **Abdulkhanov and Others v. Russia** of 3 October 2013 concerned a Russian military strike on a village in Chechnya in February 2000, which killed 18 of the applicants' relatives.

For the first time in a case concerning the armed conflict in Chechnya, the Russian Government acknowledged that there had been a violation of Article 2 (right to life), both as regards the use of lethal force and as regards the authorities' obligation to investigate its circumstances.

The Court observed that the parties did not dispute that the applicants and their close relatives had become victims of the use of lethal force and that no investigation capable of establishing the circumstances had taken place. Those considerations were sufficient to conclude that there had been a **violation of Article 2** (right to life) of the Convention, both in its substantive and in its procedural aspect.

The Court further found that where, as in the applicants' case, a criminal investigation into the use of lethal force had been ineffective, the effectiveness of any other remedy was undermined. There had accordingly been a **violation of** the applicants' right to an effective remedy under **Article 13** (right to an effective remedy) of the Convention.

The judgment in the case of **Pitsayeva and Others v. Russia** of 9 January 2014 concerned the disappearances of 36 men after they were abducted in Chechnya by groups of armed men, in a manner resembling a security operation, between 2000 and 2006.

In this case the Court confirmed its conclusion in previous cases that the situation resulted from a systemic problem of non-investigation of such crimes, for which there was no effective remedy at national level.

The Court held in the present case that there had been a **violation of Article 2** (right to life) of the Convention, both on account of the disappearance of the applicants' relatives who were to be presumed dead and on account of the inadequacy of the investigation into the abductions; a **violation of Article 3** (prohibition of inhuman or degrading treatment) in respect of the applicants on account of their relatives' disappearance and the authorities' response to their suffering; a **violation of Article 5** (right to liberty and security) on account of the unlawful detention of the applicants' relatives; and a **violation of Article 13** (right to an effective remedy) of the Convention.

The judgment in the case of **Abakarova v. Russia** of 15 October 2015 concerned an aerial attack by the Russian military on a village in Chechnya in February 2000 which had killed the family of the applicant, eight year old at the time, and left her injured.

The Court held in the present case that there had been a **violation** of the substantive limb **of Article 2** (right to life) of the Convention in respect of the applicant and her five deceased relatives, a **violation** of the procedural limb **of Article 2** in respect of the failure to conduct an effective investigation into the use of lethal force by State agents, and a **violation of Article 13** (right to an effective remedy) of the Convention **in conjunction with Article 2**, on account of the flaws of the criminal investigation, which had in turn undermined the effectiveness of any other remedy that might have existed.

Under **Article 46** (binding force and execution of judgments) of the Convention, the Court further noted that, in carrying out the investigation in the applicants' case, the respondent State had manifestly disregarded the specific findings of the Court in the *Isayeva* and *Abuyeva and Others* cases (mentioned above) and no previously identified defect of the investigation had been resolved to date. In fact, the criminal investigation had still not succeeded in establishing the relevant factual circumstances concerning the events, including a complete list of the victims and of the causes of the deaths and injuries, in carrying out an independent expert report of the compatibility of the lethal force used with the principle of "absolute necessity", or in attributing individual responsibility between the commanders and the civilian authorities for the aspects of the

operation which led to the breach of Article 2. It was therefore incumbent on the Council of Europe Committee of Ministers, acting under Article 46 of the Convention[12], to continue to address the issue of what could be required from the respondent Government by way of compliance, through both individual and general measures. In the light of the Court's findings, these measures should focus not only on the continued criminal investigation, but also on non-judicial mechanisms aimed at ensuring that similar occurrences do not recur in the future, and that the applicant's rights are adequately protected in any new proceedings, including through access to measures for obtaining reparation for the harm suffered.

Cases concerning NATO operations in Afghanistan

Hanan v. Germany

16 February 2021 (Grand Chamber)

This case concerned the investigations carried out following the death of the two sons of the applicant – an Afghan national who lived in Afghanistan – in an airstrike near Kunduz, Afghanistan, in September 2009, ordered by a colonel of the German contingent of the International Security Assistance Force (ISAF) commanded by NATO, in which several people had been killed. The applicant alleged that the German State had not conducted an effective investigation into the airstrike in question. He also complained that he had not had an effective domestic remedy by which to challenge the decision of the German Federal Prosecutor General to discontinue the criminal investigation.

The Court held that there had been **no violation** of the procedural limb **of Article 2** (right to life) of the Convention, finding that the investigation by the German authorities into the deaths of the applicant's two sons had complied with the requirements of an effective investigation under Article 2. It noted, in particular, that the fact that Germany had retained exclusive jurisdiction over its troops deployed within the International Security Assistance Force with respect to serious crimes, which, moreover, it was obliged to investigate under international and domestic law, constituted "special features" which, taken in combination, triggered the existence of a jurisdictional link for the purposes of Article 1 (obligation to respect human rights) of the Convention in relation to the procedural obligation to investigate under Article 2. The Court further noted that the German civilian prosecution authorities had not had legal powers to undertake investigative measures in Afghanistan under the ISAF Status of Forces Agreement, but would have been required to resort to international legal assistance to that end. However, the Federal Prosecutor General had been able to rely on a considerable amount of material concerning the circumstances and the impact of the airstrike. The Federal Constitutional Court had reviewed the effectiveness of the investigation on the applicant's constitutional complaint. Noting that the Federal Constitutional Court was able to set aside a decision to discontinue a criminal investigation, the Court concluded that the applicant had had at his disposal a remedy enabling him to challenge the effectiveness of the investigation. Lastly, the Court observed that the investigation into the airstrike by the parliamentary commission of inquiry had ensured a high level of public scrutiny of the case.

Cases concerning the international military operations in Iraq during the Second Gulf War

Al-Saadoon & Mufdhi v. the United Kingdom

2 March 2010

The applicants are two Sunni Muslims from southern Iraq and former senior officials of the Ba'ath party, who were accused of involvement in the murder of two British soldiers shortly after the invasion of Iraq in 2003. They complained that the British authorities

[12]. See footnote 11 above.

transferred them to Iraqi custody on 31 December 2008 and that they were at real risk of being subjected to an unfair trial followed by execution by hanging.
In its admissibility decision of 30 June 2009, the Court considered that the United Kingdom authorities had had total and exclusive control, first through the exercise of military force and then by law, over the detention facilities in which the applicants were held. The Court found that the applicants had been within the UK's jurisdiction and had remained so until their physical transfer to the custody of the Iraqi authorities on 31 December 2008.
In its judgment of 2 March 2010, the Court found a **violation of Article 3** (prohibition of inhuman or degrading treatment) of the Convention, concluding that the applicants' transfer to Iraqi custody had subjected them to inhuman treatment. In particular, it observed that the Iraqi authorities had not given any binding assurance that they would not execute the applicants. The Court further found a **violation of Article 13** (right to an effective remedy) **and Article 34** (right to individual petition) of the Convention, holding that the British Government had not taken steps to comply with the Court's indication not to transfer the applicants to Iraqi custody. Lastly, under **Article 46** (binding force and execution of judgments) of the Convention[13], the Court requested the UK Government to take all possible steps to obtain assurance from Iraqi authorities that the applicants would not be subjected to death penalty.

Al-Skeini and Others v. the United Kingdom

7 July 2011 (Grand Chamber)
This case concerned the deaths of the applicants' six close relatives in Basrah in 2003 while the UK was an occupying power: three of the victims were shot dead or shot and fatally wounded by British soldiers; one was shot and fatally wounded during an exchange of fire between a British patrol and unknown gunmen; one was beaten by British soldiers and then forced into a river, where he drowned; and one died at a British military base, with 93 injuries identified on his body.
The Court held that, in the exceptional circumstances deriving from the United Kingdom's assumption of authority for the maintenance of security in South East Iraq from 1 May 2003 to 28 June 2004, the United Kingdom had jurisdiction under Article 1 (obligation to respect human rights) of the Convention in respect of civilians killed during security operations carried out by UK soldiers in Basrah. It found that there had been a failure to conduct an independent and effective investigation into the deaths of the relatives of five of the six applicants, in **violation of Article 2** (right to life) of the Convention.

Al-Jedda v. the United Kingdom

7 July 2011 (Grand Chamber)
This case concerned the internment of an Iraqi civilian for more than three years (2004-2007) in a detention centre in Basrah, run by British forces.
The Court found that the applicant's internment was attributable to the United Kingdom and that, while interned, he fell within the jurisdiction of the United Kingdom for the purposes of Article 1 (obligation to respect human rights) of the Convention. It further found a **violation of Article 5 § 1** (right to liberty and security) of the Convention, holding in particular that neither of the relevant UN resolutions explicitly or implicitly required the United Kingdom to place an individual whom its authorities considered to constitute a risk to the security of Iraq into indefinite detention without charge.

Pritchard v. the United Kingdom

18 March 2014 (strike-out decision)
This case concerned the fatal shooting of a soldier of the Territorial Army (the volunteer part of the UK reserve force) serving in Iraq. The complaint was lodged by his father, who alleged that the United Kingdom authorities had failed to carry out a full and independent investigation into his son's death.

[13]. See footnote 11 above.

The Court took note of the **friendly settlement** reached between the parties. Being satisfied that the settlement was based on respect for human rights as defined in the Convention and its Protocols and finding no reasons to justify a continued examination of the application, it decided to **strike** it **out of** its **list of cases** in accordance with Article 37 (striking out applications) of the Convention

Hassan v. the United Kingdom

16 September 2014 (Grand Chamber)

This case concerned the capture of the applicant's brother by British armed forces and his detention at Camp Bucca in Iraq (close to Um Qasr). The applicant alleged in particular that his brother had been arrested and detained by British forces in Iraq and that his dead body, bearing marks of torture and execution, had subsequently been found in unexplained circumstances. He also complained that the arrest and detention had been arbitrary and unlawful and lacking in procedural safeguards. He lastly complained that the British authorities had failed to carry out an investigation into the circumstances of his brother's detention, ill-treatment and death.

The case concerned the acts of British armed forces in Iraq, extra-territorial jurisdiction and the application of the European Convention of Human Rights in the context of an international armed conflict. In particular, this was the first case in which a contracting State had requested the Court to disapply its obligations under Article 5 (right to liberty and security) of the Convention or in some other way to interpret them in the light of powers of detention available to it under international humanitarian law.

In the present case, the Court held that the applicant's brother had been **within the jurisdiction of the United Kingdom** between the time of his arrest by British troops, in April 2003, until his release from the bus that had taken him from Camp Bucca under military escort to a drop-off point, in May 2003.

The Court further held that there had been **no violation of Article 5 §§ 1, 2, 3 or 4 (right to liberty and security)** of the Convention as concerned the actual capture and detention of the applicant's brother. It decided in particular that international humanitarian law and the European Convention both provided safeguards from arbitrary detention in time of armed conflict and that the grounds of permitted deprivation of liberty set out in Article 5 should be accommodated, as far as possible, with the taking of prisoners of war and the detention of civilians who pose a risk to security under the Third and Fourth Geneva Conventions. It further found that, in the present case, there had been legitimate grounds under international law for capturing and detaining the applicant's brother, who had been found by British troops, armed and on the roof of his brother's house, where other weapons and documents of a military intelligence value had been retrieved. Moreover, following his admission to Camp Bucca, he had been subjected to a screening process, which established that he was a civilian who did not pose a threat to security and led to his being cleared for release. The applicant's brother's capture and detention had not therefore been arbitrary.

The Court lastly declared **inadmissible**, for lack of evidence, the applicant's complaints under Article 2 (right to life) and 3 (prohibition of inhuman or degrading treatment) of the Convention concerning the alleged ill-treatment and death of his brother.

Jaloud v. the Netherlands

20 November 2014

This case concerned the investigation by the Netherlands authorities into the circumstances surrounding the death of an Iraqi civilian (the applicant's son) who died of gunshot wounds in Iraq in April 2004 in an incident involving Netherlands Royal Army personnel. The applicant complained that the investigation into the shooting of his son had neither been sufficiently independent nor effective.

The Court established that the complaint about the investigation into the incident – which had occurred in an area under the command of an officer of the armed forces of the United Kingdom – fell **within the jurisdiction of the Netherlands** within the meaning of Article 1 (obligation to respect human rights) of the Convention.

It noted in particular that the Netherlands had retained full command over its military personnel in Iraq.
The Court further held that there had been a **violation of Article 2** (right to life) of the Convention under its procedural limb, as regards the failure of the Netherlands authorities to carry out an effective investigation into the death of the applicant's son. The Court came to the conclusion that the investigation had been characterised by serious shortcomings, which had made it ineffective. In particular, records of key witness statements had not been submitted to the judicial authorities; no precautions against collusion had been taken before questioning the Netherlands Army officer who had fired at the car carrying the victim; and the autopsy of the victim's body had been inadequate. The Court recognised that the Netherlands military and investigators, being engaged in a foreign country in the aftermath of hostilities, had worked in difficult conditions. Nevertheless, the shortcomings in the investigation, which had seriously impaired its effectiveness, could not be considered inevitable, even in those conditions.

Inter-State case concerning the Georgia-Russia issue[14]

Georgia v. Russia (II)

21 January 2021 (Grand Chamber)

This case concerned allegations by the Georgian Government of administrative practices on the part of the Russian Federation entailing various breaches of the Convention, in connection with the armed conflict between Georgia and the Russian Federation in August 2008.
The Court found that a distinction needed to be made between the military operations carried out during the active phase of hostilities (from 8 to 12 August 2008) and the other events occurring after the cessation of the active phase of hostilities – that is, following the ceasefire agreement of 12 August 2008.
The Court had regard to the observations and numerous other documents submitted by the parties, and also to reports by international governmental and non-governmental organisations. In addition, it heard evidence from a total of 33 witnesses.
The Court concluded, following its examination of the case, that the events occurring during the active phase of hostilities (8 to 12 August 2008) had not fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 (obligation to respect human rights) of the Convention and declared this part of the application inadmissible. However, it held that the Russian Federation had exercised "effective control" over South Ossetia, Abkhazia and the "buffer zone" during the period from 12 August to 10 October 2008, the date of the official withdrawal of the Russian troops. After that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation indicated that there had been continued "effective control" over South Ossetia and Abkhazia. The Court therefore concluded that the **events occurring after** the cessation of hostilities – that is, following **the ceasefire agreement of 12 August 2008** – **had fallen within the jurisdiction of the Russian Federation** for the purposes of Article 1 of the Convention. In this regard, the Court held:
- that there had been an **administrative practice contrary to Articles 2** (right to life), **3** (prohibition of torture and inhuman or degrading treatment) **and 8** (right to respect for private and family life) of the Convention **and Article 1** (protection of property) **of Protocol No. 1** to the Convention;
- that the Georgian civilians detained by the South Ossetian forces in Tskhinvali between approximately 10 and 27 August 2008 had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention;
- that there had been an **administrative practice contrary to Article 3** of the Convention as regards the conditions of detention of some 160 Georgian civilians and

[14]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

the humiliating acts which had caused them suffering and had to be regarded as inhuman and degrading treatment;
- that there had been an **administrative practice contrary to Article 5** (right to liberty and security) of the Convention as regards the arbitrary detention of Georgian civilians in August 2008;
- that the Georgian prisoners of war detained in Tskhinvali between 8 and 17 August 2008 by the South Ossetian forces had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention;
- that there had been an **administrative practice contrary to Article 3** of the Convention as regards the acts of torture of which the Georgian prisoners of war had been victims;
- that the Georgian nationals who had been prevented from returning to South Ossetia or Abkhazia had fallen within the jurisdiction of the Russian Federation;
- that there had been an **administrative practice contrary to Article 2** (freedom of movement) **of Protocol No. 4** to the Convention as regards the inability of Georgian nationals to return to their homes;
- that there had been **no violation of Article 2** (right to education) **of Protocol No. 1** to the Convention;
- that the Russian Federation had had a procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation not only into the events which had occurred after the cessation of hostilities (following the ceasefire agreement of 12 August 2008) but also into the events which had occurred during the active phase of hostilities (8 to 12 August 2008);
- that there had been a **violation of Article 2** of the Convention in its procedural aspect;
- that there was **no need to examine separately** Georgia's complaint under **Article 13** (right to an effective remedy) of the Convention in conjunction with other Articles;
- that the respondent State had **failed to comply with its obligations** under **Article 38** (obligation to furnish necessary facilities for examination of the case) of the Convention.
The Court further found that the question of the application of Article 41 (just satisfaction) of the Convention was not ready for decision and should therefore be reserved in full for decision at a later date.

Cases concerning the Ukraine-Russia issue[15]

Ukraine v. Russia (III)

1 September 2015 (decision – strike-out)
This case concerned the deprivation of liberty and the alleged ill-treatment of a Ukrainian national belonging to the Crimean Tatars ethnic group, in the context of criminal proceedings conducted against him by the Russian authorities.
The Court **decided to strike** the application **out of** its **list of cases** after the Government of Ukraine had informed it that they did not wish to pursue the application, given that an individual application (no. 49522/14) concerning the same subject matter was pending before the Court.

Lisnyy and Others v. Ukraine and Russia

5 July 2016 (decision on the admissibility)
This case essentially concerned three Ukrainian nationals' complaints about the shelling of their homes during the hostilities in Eastern Ukraine from the beginning of April 2014 onwards.
The Court declared the applications **inadmissible** as being manifestly ill-founded. Despite the fact that the Court in certain exceptional circumstances beyond the

[15]. On 16 September 2022 the Russian Federation ceased to be a Party to the Convention.

applicants' control – such as in this case where there is a situation of ongoing conflict – did take a more lenient approach as to the evidence to be submitted to it in support of individual applications, it found that the applicants in the present case, having essentially only submitted their passports as evidence, had not sufficiently substantiated their complaints. In this case the Court also reiterated that, generally, if an applicant did not produce any evidence in support of their cases, such as titles to property or of residence, his or her complaints were bound to fail.

Pending applications

Inter-State applications

Ukraine v. Russia (X) (no. 11055/22)

Receipt of the completed application form on 23 June 2022

This inter-State case concerns the Ukrainian Government's allegations of mass and gross human-rights violations committed by the Russian Federation in its military operations on the territory of Ukraine since 24 February 2022.

In March and April 2022 the Court has indicated a number of interim measures to the Government of the Russian Federation in relation to the military action which commenced on 24 February 2022 in various parts of Ukraine. It also reiterated that the interim measure indicated on 13 March 2014 to both the Russian Federation and Ukraine in relation to the events in eastern Ukraine remain in force[16].

Ukraine v. Russia (re-Crimea) (no. 20958/14 and no. 38334/18)[17]

Relinquishment to the Grand Chamber in May 2018 – Grand Chamber decision on the admissibility delivered on 14 January 2021

This case concerns Ukraine's allegations of a pattern ("administrative practice") of violations of the European Convention on Human Rights by the Russian Federation in Crimea[18]. As illustrations of the alleged practice the Ukrainian Government essentially rely on individual incidents, and on the effects of general measures adopted in respect of Crimea, during the period from 27 February 2014, the date from when they allege that Russia exercised extraterritorial jurisdiction over Crimea, until 26 August 2015, the date of introduction of their second application. They further state that the purpose of their application is not to seek individual findings of violations and just satisfaction but rather to establish that there was a pattern of violations, to put an end to them and to prevent their recurrence. They rely, in particular, on Article 2 (right to life), 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 8 (right to respect for private and family life and the home), Article 9 (freedom of religion), Article 10 (freedom of expression), Article 11 (freedom of assembly), and Article 14 (prohibition of discrimination) of the Convention. They also complain under Article 1 (protection of property) and Article 2 (right to education) of Protocol No. 1 to the Convention, and under Article 2 (freedom of movement) of Protocol No. 4 to the Convention.

The Court applied Rule 39 (interim measures) of the Rules of Court to the case. It called upon Russia and Ukraine to refrain from measures, in particular military action, which might bring about violations of the civilian population's Convention rights, notably under Articles 2 (right to life) and 3 (prohibition of torture and inhuman or degrading treatment).

On 7 May 2018 the Chamber dealing with these inter-State applications relinquished jurisdiction in favour of the Grand Chamber.

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16. See press releases of 1 March 2022 (link), 4 March 2022 (link) and 1 April 2022 (link).

17. The case originates in two applications (nos. 20958/14 and 42410/15) against Russia lodged with the Court by Ukraine on 13 March 2014 and 26 August 2015, respectively. Both applications concern events in Crimea and Eastern Ukraine. On 11 June 2018 the two applications were joined and given the new name *Ukraine v. Russia (re Crimea)* under application no. 20958/14. Complaints relating to events in Eastern Ukraine were placed under application no. 8019/16.

18. "Crimea" refers to both the Autonomous Republic of Crimea (ARC) and the City of Sevastopol.

On 11 September 2019 the Grand Chamber held a hearing in the case (see press release and recording of the hearing).
In its decision on the admissibility of 14 January 2021, the Grand Chamber declared the application **partly admissible**.
Firstly, the Grand Chamber identified the scope of the issue before it and held that what was to be decided was whether the alleged pattern of human-rights violations by Russia in Crimea during the relevant period, namely between 27 February 2014 and 26 August 2015, was admissible. The Court held that it was not called upon in the case to decide whether Crimea's admission, under Russian law, into Russia had been lawful from the standpoint of international law.
Before considering the allegations of an administrative practice, it had to consider whether Russia had "jurisdiction", within the meaning of Article 1 (obligation to respect human rights) of the Convention, over Crimea as from 27 February 2014 and therefore whether it had competence to examine the application. It found that **the facts complained of** by the Ukrainian Government **did fall within the "jurisdiction" of Russia** on the basis of effective control that it exercised over Crimea as of that date. When coming to that decision it took into account in particular the size and strength of the increased Russian military presence in Crimea from January to March 2014, without the Ukrainian authorities' consent or any evidence to prove that there was a threat to Russian troops stationed there under the relevant Bilateral Agreements between them, valid at the time. It also found the Ukrainian Government's account coherent and consistent throughout the proceedings before it; they had provided detailed and specific information, backed up by sufficient evidence, to prove that the Russian troops had not been passive bystanders, but had been actively involved in the alleged events.
That conclusion is without prejudice to the question of Russia's responsibility under the Convention for the acts complained of, which belongs to the merits phase of the Court's procedure.
The Court went on to identify and apply the applicable evidential threshold and its approach to the standard and burden of proof and declared **admissible**, without prejudging the merits, **all but a few of the** Ukrainian Government's **complaints of an administrative practice of human-rights violations by Russia**.
Lastly, it **decided to give notice to the Russian Government of the complaint**, not raised until 2018, **concerning the alleged transfer of Ukrainian "convicts" to the territory of Russia**, and, given the overlap, in this respect, with another inter-State application, *Ukraine v. Russia* (no. 38334/18), decided to join the latter application to the present case and examine the admissibility and merits of that complaint and the latter application at the same time as the merits stage of the proceedings.

Ukraine and the Netherlands v. Russia (nos. 8019/16, 43800/14 and 28525/20)

Applications pending before the Grand Chamber – Grand Chamber decision on the admissibility adopter on 30 November 2022

This case concerns complaints related to the conflict in eastern Ukraine involving pro-Russian separatists which began in spring 2014. The Government of Ukraine principally complained about alleged ongoing patterns ("administrative practices") of violations of a number of articles of the European Convention on Human Rights by separatists of the "Donetsk People's Republic" ("DPR") and the "Lugansk People's Republic" ("LPR") and by members of the Russian military. The Government of the Kingdom of the Netherlands complained about the shooting down of Malaysia Airlines flight MH17 in eastern Ukraine on 17 July 2014, which resulted in the deaths of 298 people, including 196 Dutch nationals. The applicant Governments claimed that their complaints fell within the jurisdiction of the Russian Federation.
Since it was alleged that many of the administrative practices were ongoing, the Court considered the evidence up to 26 January 2022, the date of the hearing on admissibility in the case.

In its decision made public on 25 January 2023, among other things, the Court concluded that areas in eastern Ukraine in separatist hands were, from 11 May 2014 and up to at least 26 January 2022, under the jurisdiction of the Russian Federation. It referred to the presence in eastern Ukraine of Russian military personnel from April 2014 and the large-scale deployment of Russian troops from August 2014 at the latest. It further found that the respondent State had a significant influence on the separatists' military strategy; that it had provided weapons and other military equipment to separatists on a significant scale from the earliest days of the "DPR" and the "LPR" and over the following months and years; that it had carried out artillery attacks upon requests from the separatists; and that it had provided political and economic support to the separatists.
The Court found that there was sufficient evidence to satisfy the burden of proof at the admissibility stage of administrative practices in violation of a number of Articles of the Convention and it declared the majority of the complaints by the Government of Ukraine admissible. Likewise, the evidential threshold for the purposes of admissibility had been met in respect of the complaints of the Government of the Netherlands concerning the downing of MH17 which were therefore also declared admissible.
In the next stage of the procedure, the question whether there has been a violation of the Convention in respect of the admissible complaints will be examined by the Court. A judgment will be adopted in due course.

Ukraine v. Russia (VIII) (no. 55855/18)

Application lodged on 29 November 2018
This case concerns the naval incident that took place in the Kerch Strait in November 2018, which led to the capture of three Ukrainian naval vessels and their crews.
The case is currently pending before a Chamber of the Court.

Ukraine v. Russia (IX) (no. 10691/21)

Application lodged on 19 February 2021
This case concerns the Ukrainian Government's allegations of an ongoing administrative practice by the Russian Federation consisting of targeted assassination operations against perceived opponents of the Russian Federation, in Russia and on the territory of other States. The Ukrainian Government also alleges an administrative practice by the Russian Federation of failing to investigate these assassination operations and of deliberately mounting cover-up operations aimed at frustrating efforts to find the persons responsible.
The case is currently pending before the Court.

Russia v. Ukraine (no. 36958/21)

Application lodged on 22 July 2021
This case concerns the Russian Government's allegation of an administrative practice in Ukraine of, among other things, killings, abductions, forced displacement, interference with the right to vote, restrictions on the use of the Russian language and attacks on Russian embassies and consulates. They also complain about the water supply to Crimea at the Northern Crimean Canal being switched off and allege that Ukraine was responsible for the deaths of those on board Malaysia Airlines Flight MH17 because it failed to close its airspace. In the context of the application, the Russian Government submitted an urgent request under Rule 39 (interim measures) of the Rules of Court to indicate to the Ukrainian Government: to stop restrictions on the rights of Russian-speaking persons notably as concerns access to use of their mother tongue in schools, the media and the Internet; and, to order the Ukrainian authorities to suspend the blockade of the North Crimean Canal.
The Court decided to reject the request under Rule 39 (interim measures) of the Rules of Court since it did not involve a serious risk of irreparable harm of a core right under the European Convention on Human Rights.

Individual applications

Over 8,500 individual applications are currently pending before the Court concerning the events in Crimea, eastern Ukraine, the Sea of Azov and the armed attack which began in February 2022. Among the individual applications are the cases *Ayley and Others v. Russia* (no. 25714/16) and *Angline and Others v. Russia* (no. 56328/18), lodged by relatives of people who were killed in the MH17 disaster.

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