



Complaints brought by Ukraine against Russia concerning a pattern of human-rights violations in Crimea declared partly admissible

In its decision in the case of **Ukraine v. Russia (re Crimea)** (application nos. 20958/14 and 38334/18) the European Court of Human Rights has, by a majority, declared the application partly admissible. The decision will be followed by a judgment at a later date.

The case concerns Ukraine's allegations of a pattern ("administrative practice") of violations of the European Convention on Human Rights by the Russian Federation in Crimea¹.

Firstly, the Court 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 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.

Aside from this case, there are now two other inter-State cases and over 7,000 individual applications pending before the Court concerning the events in Crimea, Eastern Ukraine and the Sea of Azov. For further information, see the [Q & A](#) on Inter-State Cases.

¹ "Crimea" refers to both the Autonomous Republic of Crimea (ARC) and the City of Sevastopol.

Principal facts

The Ukrainian Government maintains that Russia has from 27 February 2014 exercised effective control over the Autonomous Republic of Crimea (the ARC) and the City of Sevastopol, integral parts of Ukraine, owing to its military presence in Crimea and its support of both the local government and paramilitary forces. They allege that since that time Russia has exercised extraterritorial jurisdiction over a situation which has resulted in an administrative practice of human-rights violations.

In particular they allege that, on 27 February 2014, over 100 heavily armed men stormed the buildings of the Supreme Council and the Council of Ministers of the ARC. On the same day, Russia allegedly also dramatically increased its direct military presence in Crimea, without notifying the relevant Ukrainian authorities or receiving authorisation from them. By nightfall, the legitimate civilian authorities in Crimea had been removed by force and replaced with Russian agents. Russian troops and paramilitaries prevented the Ukrainian military forces from leaving their barracks and other Ukrainian units from being transferred from the mainland to the peninsula.

In the following days Russia deployed ever-increasing numbers of troops and prevented Ukraine from sending military reinforcement by establishing control over the entry and exit points into and from Crimea by land, sea and air and by sabotage operations. Up until 16 March Russia consolidated this control over Crimea by blocking all Ukrainian service personnel in their barracks, depriving them of communication with the outside world. This led to the transfer of power to the new local authorities, which then declared the independence of Crimea after a “referendum” held on 16 March 2014. On 18 March 2014 Russia, the “Republic of Crimea” and the City of Sevastopol signed the “Treaty of Unification”.

The Russian Government argue, on the other hand, that they only exercised jurisdiction in Crimea and Sevastopol after 18 March 2014, when those territories became part of Russia under the “Treaty of Unification”, and not before. The “referendum” and the “reunification” were the result of a series of protests in Ukraine, known as “Euromaidan” or “Maidan”, which had taken place between November 2013 and February 2014, leading to the ousting of the President of Ukraine and a series of political and constitutional changes. The Russian Government maintain that they were not responsible for those events or for any resultant disorder.

They argue, moreover, that Russian armed forces had always been present in Crimea, and their presence was provided for under bilateral agreements between Russia and Ukraine. They submit that, between 1 March and 17 March 2014, those armed forces stood ready to “assist the Crimean people in resisting attack by the Ukrainian armed forces”, to “ensure that the Crimean population could make a democratic choice safely without fear of reprisal from radicals”, to “ensure the normal expression of the will of those living in Crimea” and/or “to ensure the protection of Russian military forces and objects”. This did not mean, however, that Russia had effective control over Crimea in that period.

Complaints, procedure and composition of the Court

The Ukrainian Government complain that Russia was responsible for an administrative practice of human-rights violations. As illustrations of the alleged practice they 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.

The Ukrainian Government relies on several Articles of the Convention, in particular 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) and Article 11 (freedom of assembly). They also complain under Article 14 (prohibition of discrimination), Article 1 of Protocol No. 1 (protection of property), Article 2 of Protocol No. 1 (right to education) and Article 2 of Protocol No. 4 (freedom of movement).

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.

The Court applied Rule 39 of the Rules of Court (interim measures) 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 inhuman or degrading treatment).

On 7 May 2018 the Chamber dealing with these inter-State cases relinquished jurisdiction in favour of the Grand Chamber².

The McGill Centre for Human Rights and Legal Pluralism at McGill University, Canada, was granted leave to intervene in the written proceedings as a third party.

A Grand Chamber hearing was held in Strasbourg on 11 September 2019.

The decision was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Angelika **Nußberger** (Germany),
Síofra **O'Leary** (Ireland),
Vincent A. **De Gaetano** (Malta),
Ganna **Yudkivska** (Ukraine),
Aleš **Pejchal** (the Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Stéphanie **Mourou-Vikström** (Monaco),
Pere **Pastor Vilanova** (Andorra),
Tim **Eicke** (the United Kingdom),
Latif **Hüseynov** (Azerbaijan),
Jovan **Ilievski** (North Macedonia),
Gilberto **Felici** (San Marino),
Bakhtiyar **Tuzmukhamedov** (the Russian Federation), *ad hoc Judge*,

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

². Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects".

Decision of the Court

Scope of the case

Firstly, the Court pointed out that what was to be decided in the case was whether the alleged pattern of human-rights violations by Russia in Crimea between 27 February 2014 and 26 August 2015 was admissible. The events relating to the Maidan protests in Kyiv and the issue of the legality, as a matter of international law, of Crimea's purported integration into the Russian Federation following the "referendum" held in Crimea in March 2014 were not relevant for the Court's examination of the case. Nor indeed had those matters actually been referred to the Court and they were therefore outside the scope of the case.

Given that definition of the scope of the case, the Court decided to lift the interim measure applied in March 2014.

Jurisdiction

From 27 February to 18 March 2014

The Court found that there was sufficient evidence for it to conclude that Russia had exercised effective control over Crimea in the period in dispute between the parties, namely from 27 February to 18 March 2014.

In particular, although Russian troops on the peninsula had not exceeded the limit of 25,000 set out in the relevant bilateral agreements, the figures demonstrated that they had nearly doubled within a short space of time, increasing from some 10,000 in late January 2014 to around 20,000 in mid-March 2014. In the Court's view, the increased military presence of Russia in Crimea during that period was, at the very least, significant.

It also noted that the Russian Government had not contested the assertion that the Russian military forces stationed in Crimea had been superior to the Ukrainian troops in technical, tactical, military and qualitative terms.

The Russian Government had not justified such an increase in the Russian military presence by any concrete evidence showing that there had been a threat to the troops stationed in Crimea at the time.

Furthermore, the increase had taken place without the consent or cooperation of the Ukrainian authorities, as evidenced by diplomatic communiqués objecting to the deployments and movements in question.

Moreover, contrary to the Russian Government's arguments that their soldiers deployed in Crimea at the time had been passive bystanders, the Ukrainian Government had provided highly detailed, chronological and specific information, as well as sufficient evidence, showing active participation of Russian service personnel in the immobilisation of Ukrainian forces.

The Ukrainian Government's account had remained coherent throughout the proceedings before the Court, with consistent information regarding the manner, place and time of the alleged events leading to the transfer of power to the new local authorities, which had then organised the "referendum", declared the independence of Crimea and taken active steps towards its integration into Russia.

Lastly, the Court had particular regard to two uncontested statements by President Putin. The first had been made in a meeting with heads of security agencies during the night of 22 to 23 February 2014, saying that he had taken the decision to "start working on the return of Crimea to the Russian Federation", while in the second, during a television interview given on 17 April 2014, he had expressly acknowledged that Russia had "disarm[ed] military units of the Ukrainian army and law-enforcement agencies" and that "Russian servicemen [had] back[ed] the Crimean self-defence forces".

From 18 March 2014

The Court noted that it was common ground between the parties that Russia had exercised jurisdiction over Crimea after 18 March 2014. However, their positions differed as to the legal basis of that jurisdiction. Unlike the Ukrainian Government, who asserted that that jurisdiction was based on “effective control”, the Russian Government considered that it “would be inappropriate” to determine that issue because it “would take the Court into questions concerning sovereignty between States that [were] outside its jurisdiction”.

For the purposes of this admissibility decision, the Court decided to proceed on the basis of the assumption that the jurisdiction of Russia over Crimea was in the form or nature of “effective control over an area” – rather than of territorial jurisdiction. The Court reiterated in this connection that it was not called upon to decide whether Crimea’s admission, as a matter of Russian law, into Russia had been lawful from the standpoint of international law.

Conclusion

The Court considered that the alleged victims of the administrative practice complained of by the Ukrainian Government fell within the “jurisdiction” of Russia and that the Court therefore had competence to examine the application. That conclusion was without prejudice to the question of whether Russia was responsible under the Convention for the acts which formed the basis of the Ukrainian Government’s complaints, which belonged to the merits phase of the Court’s procedure.

Admissibility

Firstly, the Court found that the rule of non-exhaustion of domestic remedies was not applicable in the circumstances of the present case, which involved allegations of an administrative practice. It therefore dismissed the Russian Government’s objection on that point.

The Court then went on to assess the evidence available to it in order to determine whether or not the Ukrainian Government’s allegations could be said to meet the evidentiary threshold (*prima facie*) required at the admissibility stage of the proceedings for allegations of an administrative practice.

The Court considered that, on the whole, there was sufficient *prima facie* evidence regarding both the “repetition of acts” and “official tolerance”, component elements of an alleged administrative practice of:

- enforced disappearances and the lack of an effective investigation into such a practice under Article 2;
- ill-treatment and unlawful detention under Articles 3 and 5;
- extending application of Russian law to Crimea with the result that as from 27 February 2014 the courts in Crimea could not be considered to have been “established by law” within the meaning of Article 6;
- automatic imposition of Russian citizenship and raids of private dwellings under Article 8;
- harassment and intimidation of religious leaders not conforming to the Russian Orthodox faith, arbitrary raids of places of worship and confiscation of religious property under Article 9;
- suppression of non-Russian media under Article 10;
- prohibiting public gatherings and manifestations of support, as well as intimidation and arbitrary detention of organisers of demonstrations under Article 11;
- expropriation without compensation of property from civilians and private enterprises under Article 1 of Protocol No. 1;
- suppression of the Ukrainian language in schools and harassment of Ukrainian-speaking children at school under Article 2 of Protocol No. 1;

- restricting freedom of movement between Crimea and mainland Ukraine, resulting from the *de facto* transformation (by Russia) of the administrative delimitation into a border (between Russia and Ukraine) under Article 2 of Protocol No. 4;
- and, targeting Crimean Tatars under Article 14, taken in conjunction with Articles 8, 9, 10 and 11 of the Convention and with Article 2 of Protocol No. 4 to the Convention.

The Court found in particular that the above allegations were consistent with the conclusions set out in a number of reports by intergovernmental and non-governmental organisations, notably a report of 2017 by the Office of the United Nations High Commissioner for Human Rights³.

Moreover, as concerned certain allegations, the regulatory nature and the content of the measures complained of provided in themselves sufficient *prima facie* evidence.

However, as to the allegations of an administrative practice of killing and shooting, the Court found that the incidents referred to had not amounted to a pattern of violations. Concerning the short-term detention of foreign journalists and the seizure of their equipment in the first half of March 2014, it found that the limited number of allegations did not point to an administrative practice either. Furthermore, the Ukrainian Government had submitted no evidence as concerned the alleged practice of nationalising the property of Ukrainian soldiers. Accordingly, the required standard of proof had not been met and those complaints were rejected as inadmissible.

Lastly, the Court decided to give notice to the Russian Government of the complaint regarding “transfer of convicts” from Crimea to correctional institutions on the territory of Russia. That issue had been raised for the first time in the Ukrainian Government’s submissions before the Grand Chamber in December 2018 and the Court could thus not, on the basis of the case file, determine the admissibility of the complaint at the current stage.

Moreover, it considered it appropriate to examine both the admissibility and the merits of the “transfer of convicts” complaint and another inter-State application, *Ukraine v. Russia* (no. 38334/18) in which that complaint was also raised, at the same time as the merits stage of these proceedings. In consequence, it joined application no. 38334/18 to the present case.

The decision is available in English and French.

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Tracey Turner-Tretz

Denis Lambert

Inci Ertekin

Neil Connolly

³ Report on the situation of human rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), dated 25 September 2017, covering the period from 22 February 2014 to 12 September 2017 (“the OHCHR 2017 Report”) [Error! Bookmark not defined.](#)

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.