

# **The Applicability of The European Convention of Human Rights on Extraterritorial Acts**

## **Anvendeligheden af den Europæiske Menneskerettighedskonvention på Ekstraterritoriale Handlinger**

by STINE SKJALM PEDERSEN

*This thesis seeks to examine the limits of the applicability of the European Convention of Human Rights on extraterritorial acts under Article 1, with a focus on the extent to which Member States can exercise extraterritorial jurisdiction by virtue of the personal jurisdiction doctrine.*

*The Court has not provided general criteria on how Member States exercise extraterritorial personal jurisdiction but has instead ruled on specific cases. In order to examine the limits of the extraterritorial application of the Convention this thesis will review and analyze how the European Commission of Human Rights and the European Court of Human Rights have interpreted and defined the exercise of 'control and authority' by State agents over individuals abroad throughout the decades. This interpretation has been inconsistent, which has led to legal uncertainty for the States.*

*This thesis will focus on four newer judgements from the Court, which have the potential to lay the basis for how future case law concerning personal jurisdiction should be applied. The Court has not reached the same conclusion in the four newer cases that all concerned situations where an individual was killed by a State agent without prior detention. The Court appears to be torn as to whether the instantaneous act of, for instance, a shooting, in itself is enough to establish an extraterritorial personal link. In the case of Georgia v Russia No. 2 concerning an armed conflict with a systematic use of lethal force, the Court concludes that the personal doctrine is not applicable in the 'context of chaos'. The Court takes another approach in the Carter v Russia judgement where the determining factor in the personal doctrine was the State agent's exercise of control over the individual's right and his life. If this new approach in Carter v Russia is to be followed in future judgements, this could mean that the instantaneous act of the use of lethal force by a State agent over an individual abroad will be enough to trigger the personal doctrine. However, the thesis concludes that only new case law, specifically new case law concerning armed conflicts, will determine whether the approach in Carter v Russia will be followed and the instantaneous act of shooting an individual abroad will be enough to trigger personal jurisdiction or whether the approach of 'context of chaos' excluding the applicability of personal jurisdiction in Georgia No 2 will be followed.*

*Denne afhandling undersøger grænserne for anvendeligheden af Den Europæiske Menneskerettighedskonvention på eksteritoriale handlinger i henhold til artikel 1, med fokus på, i hvilket omfang medlemsstaterne kan udøve ekstraterritorial jurisdiktion i kraft af doktrinen om personlig jurisdiktion.*

*Domstolen har ikke udarbejdet generelle kriterier for, hvordan og hvornår medlemsstaterne udøver ekstraterritorial personlig jurisdiktion, men har i stedet truffet afgørelse om specifikke sager. For at*

*undersøge grænserne for den ekstraterritoriale anvendelse af konventionen vil denne afhandling redegøre for og analysere, hvordan Den Europæiske Menneskerettighedskommission og Den Europæiske Menneskerettighedsdomstol har fortolket og defineret statsagenters udøvelse af 'kontrol og myndighed' over enkeltpersoner uden for statsagentens medlemsstat gennem årtierne. Denne fortolkning har været inkonsekvent, hvilket har ført til juridisk usikkerhed for medlemsstaterne.*

*Dette speciale vil særligt fokusere på fire nyere domme fra Domstolen, som har potentiale til at lægge grundlaget for, hvordan den personlige jurisdiktion doktrin vil blive anvendt i fremtidig retspraksis. Domstolen er ikke nået til den samme konklusion i de fire nyere sager, som alle vedrørte situationer, hvor en person blev dræbt af en statsagent uden forudgående tilbageholdelse/anholdelse. Domstolen fremstår splittet over, hvorvidt den øjeblikkelige handling, som f.eks. et skyderi, i sig selv er nok til at etablere en eksterritorial personlig forbindelse. I sagen Georgien mod Rusland nr. 2, som omhandlede en væbnet konflikt med systematisk brug af dødelig magt, konkluderer Domstolen, at den personlige doktrin ikke er anvendelig i sådan en "kaoskontekst". Domstolen har en anden tilgang i Carter mod Rusland-dommen, hvor den afgørende faktor i den personlige doktrin blev fortolket som statsagentens udøvelse af kontrol over individets rettigheder og hans liv.*

*Afhandlingen konkluderer, at kun ny retspraksis, særligt ny retspraksis vedrørende væbnede konflikter, vil afgøre, om tilgangen i Carter mod Rusland vil blive fulgt, og en øjeblikkelige handling som at skyde en person i "udlandet" vil være nok til at udløse personlig jurisdiktion, eller om tilgangen til "kaoskontekst", der udelukker anvendelsen af personlig jurisdiktion i Georgien mod Rusland nr. 2, i stedet vil blive fulgt.*

## Table of Contents

<b>1</b>	<b>Introduction .....</b>	<b>4</b>
1.1	Problem statement.....	5
1.2	Delimitation of the thesis .....	5
1.1	Method .....	6
<b>2</b>	<b>Interpretation and application of the Convention.....</b>	<b>6</b>
2.1	The significance of case law .....	6
2.2	Other Conventions and sources of law .....	8
2.3	Other interpretation principles .....	8
2.4	Positive and negative obligations.....	9
<b>3</b>	<b>The Scope of the Convention .....</b>	<b>9</b>
3.1	The Member States as the subject of duty imposed.....	10
3.1.1	Member States' responsibility in connection to international organisation.....	10
3.2	The binding nature of the Convention .....	11
3.3	The interested party under the Convention .....	11
<b>4</b>	<b>The territorial scope of Member State's responsibility – "ratione loci" .....</b>	<b>11</b>
4.1	The drafting of Article 1 .....	11
4.2	The Strasbourg Approach 1953-2001 .....	12
4.2.1	Personal jurisdiction.....	12
4.2.2	Spatial Jurisdiction.....	15
4.2.3	Partial conclusion.....	16

4.3	The Court’s approach from 2001 and onward – deconstruction and reconstruction .....	17
4.3.1	Bankovic .....	17
4.3.2	Al-Skeini v UK: The Court’s systemisation of Article 1 .....	22
<b>5</b>	<b>Member States’ extraterritorial control and authority over individuals.....</b>	<b>25</b>
5.1	Arrest and detention on the territory of another state and in international waters.....	25
5.2	Killing of a person on another state’s territory without prior arrest or detention .....	26
5.2.1	Georgia v Russia No 2 - In the context of chaos .....	27
5.2.2	Hanan v Germany .....	31
5.2.3	Makuchyan and Minasyan v. Azerbaijan and Hungary – does the Convention apply to assassinations abroad?.....	32
5.2.4	Carter v Russia – applying the Convention to extraterritorial assassinations.....	34
<b>6</b>	<b>A proposal .....</b>	<b>37</b>
<b>7</b>	<b>Conclusion .....</b>	<b>37</b>
	<b>Bibliography .....</b>	<b>40</b>
	Preparatory work.....	40
	Books .....	40
	Case law from the Commission .....	40
	Case law from the Court .....	40
	International cases.....	41
	Articles, Dissertations, Conventions and Academic Sources .....	41

## Abstract

*Extraterritorial jurisdiction is the legal ability for a Member State to exercise authority and power beyond its domestic territory, thus bringing with it the application and protection of the European Convention of Human Rights to those within its jurisdiction as stipulated in Article 1. This is an important element in the protection from the Convention as it holds that a Member State should be held to the same responsibility abroad as they are at home. Otherwise, this would give States the opportunity to circumvent the protection of the Convention by killing individuals abroad.*

*Extraterritorial jurisdiction can generally be presented in two categories, personal jurisdiction, which is a when State agent exercises authority and control over an individual outside its territory, and spatial jurisdiction, which is when a State exercises effective control over an area outside its territory. The Court’s interpretation of the personal jurisdiction doctrine has not been consistent, which has led to legal uncertainty for the States who are unable to regulate their conduct with certainty in order to not violate the Convention.*

*By using the legal dogmatic method, this thesis seeks to examine the limits of the applicability of the European Convention of Human Rights on extraterritorial acts under Article 1, with a focus on the extent to which Member States can exercise extraterritorial jurisdiction by virtue of the personal jurisdiction doctrine.*

*The Court and Commission has applied the Convention consistently to situations where an individual has been detained prior to being killed, noting that this has amounted to the exercise of control and authority, triggering the personal jurisdiction. However, the opposite is true where an individual is*

*killed by a State agent without prior detention. In the recent case of Georgia v Russia No 2, the Court concluded that the personal doctrine could not be applied in the 'context of chaos' during an armed conflict with systematic use of lethal force through bombing and shelling resulting in massive killings. The case of Carter v Russia concluded that the Convention is applicable to extraterritorial assassinations and the Court interpreted the determining factor in the personal doctrine to be the control over the individual's rights and his life. This could mean that personal jurisdiction is triggered to every situation where a State agent uses lethal force over an individual abroad. However, only new case law will determine whether the approach in Carter will be followed and the instantaneous act of shooting an individual is enough to trigger jurisdiction, or whether the 'context of chaos' in Georgia No 2 will be upheld.*

*The Court has also interpreted a conceptualised version of jurisdiction where an investigation described by domestic law instigated by the State into the death can be enough to trigger jurisdiction after the procedural limb of Article 2, and certain 'special features' also has this ability. However, the Court has not provided general criteria for what can constitute as a 'special feature' but has instead noted that they are specific to each case and circumstances.*

## **Abbreviations**

### Used abbreviation

Court

Convention

Commission

State

IHL

### Full name

The European Court of Human Rights

The European Convention of Human Rights

The European Commission of Human Rights

Member State of The European

Convention of Human Rights

International Humanitarian Law

## **Introduction**

The European Convention on Human Rights entered into force in 1953 and has 47 Member States<sup>1</sup>. With the extraterritorial protection of the Convention, it is of great importance not only to individuals located in the territory of Member States but also to individuals abroad who come into contact with State agents. Article 1 of the Convention stipulates a threshold criterion in order for the Convention to apply. It states that the Convention shall be secured by the Member States to everyone 'within their jurisdiction'. This makes the Convention's applicability broad but not unrestricted.<sup>2</sup>

Jurisdiction is generally limited to the domestic territory of the State, as this is where it exercises its power and authority. However, States may in exceptional cases be responsible for actions or omission committed outside its territory, if they amount to an extraterritorial link of jurisdiction.<sup>3</sup>

According to case law from the Court and the Commission, extraterritorial jurisdiction can generally be presented in two categories: i) cases where State agents exercise control and authority over individuals outside its territory, this type of jurisdiction will be referred to as personal jurisdiction in

---

<sup>1</sup> Russia ceases to be a Member State on 16<sup>th</sup> of September 2022

<sup>2</sup> Introduction to the European Convention of Human Rights, page 6

<sup>3</sup> Kjølbros, page 50

the thesis, and ii) in cases where the State exercises effective control over an area outside its territory, this will be referred to as spatial jurisdiction in the thesis.

If the Court rules that a State has exercised an ‘extraterritorial act’, triggering jurisdiction under Article 1, the Convention applies, and the State is thus responsible for ensuring compliance with the Convention.

The Court has not provided general criteria on how States exercise extraterritorial personal or spatial jurisdiction but has instead ruled on specific cases. For the first decades of the Convention’s existence mainly the Commission but also the Court held a consistent line when interpreting the Conventions extraterritorial application through the personal and spatial jurisdiction doctrine. The case of *Bankovic* in 2001 distanced itself from the rather constituent line of jurisprudence and restricted the scope of the Convention on extraterritorial application. This case is two decades old, and its approach has been challenged in several cases, but the Court has not been able to hold a consistent line of jurisprudence concerning the personal jurisdiction doctrine. This has led to legal uncertainty for the Member States concerning how to regulate their conduct abroad. A coherent approach from the Court on the issue of extraterritorial jurisdiction has been long awaited. Four newer judgements<sup>4</sup> from the Court are of particular interest of this thesis, as they have the possibility to lay the basis for the application of future case law concerning the personal jurisdiction.

Before an analysis of these four cases, I will start with an in-depth review and analysis of older case law from the Commission and Court to provide context as it is a prerequisite for a satisfactory answer to the problem statement of the dissertation. A review and analysis of the Commission and Court’s approach to the spatial and personal jurisdiction doctrine will be made, but the focus of this thesis will be an analysis on the extent to which Member States exercise personal jurisdiction.

### **3.1 Problem statement**

*This dissertation will examine the limits of the applicability of the European Convention of Human Rights on extraterritorial acts under Article 1, with a focus on the extent to which Member States can exercise extraterritorial jurisdiction by virtue of the personal jurisdiction doctrine.*

In order to examine the limits of the extraterritorial application of the Convention a review and analysis will be made of how the Commission and the Court interpret and apply the Convention's extraterritorial application, including how its scope has been respectively expanded and narrowed, as well as the Court's recent application of conceptual jurisdiction after the procedural limb of Article 2.

In order to answer the extent to which States can exercise personal jurisdiction an analysis will be carried out on how the Commission, and Court interprets and defines the exercise of ‘control and authority’ by State agents over individuals abroad. This will include a review and analysis of whether the instantaneous act of, for instance, a shooting from a gun or an airstrike of a missile, is enough to trigger a jurisdictional link, whether jurisdiction after the personal doctrine will entail the responsibility of the State for all rights in the Convention and what importance the Court attaches to the element of ‘proximity’.

### **3.2 Delimitation of the thesis**

This thesis will primarily be delimited to jurisprudence and case-law from the Court and the Commission concerning Article 1 of the Convention. As case-law from other international bodies can

---

<sup>4</sup> See section 5.2.1-5.2.4.

be a factor in the Court's interpretation of provisions of the Convention, smaller statements and references to international law and bodies will be mentioned when relevant in order to answer the question of the thesis.

The issue of jurisdiction under Article 1 is a question of admissibility of the case at hand. However, as will be seen in thesis, the Court sometimes examines the question of jurisdiction after Article 1 in conjunction with other provisions in the Convention, mainly Article 2. This thesis will not independently analyse these other provisions. Statements concerning the substantive and procedural limb of Article 2 will only be analysed in the light of jurisdiction under Article 1.

The scope is delimited to the extraterritoriality of Article 1 concerning the two exceptions of personal and spatial jurisdiction. The question of Article 1 in instances where acts committed in a Member State has an extraterritorial effect in another State, such as deportation, will not be analysed or discussed in this thesis.

## **1.1 Method**

The purpose of this thesis is to provide a presentation of existing law, *de lege lata*, in accordance with the abovementioned problem statement. For the purpose of answering this question, the legal dogmatic method is used. This method consists of a description, interpretation, and analysis of relevant legal sources in order to systematise existing law in this specific area.<sup>5</sup> In line with this method, the thesis will analyse the legal approach to Article 1 of the Convention by describing, assessing and analysing existing legislation from authoritative sources. These sources consist of; the Convention, the legislative history behind Article 1, which provides an insight into how the drafters ended up with the wording in Article 1, and case law from the Court and Commission dating back to 1950 and up to present day. In combination with a perspective on international law where this is relevant, this will allow the thesis to answer the question as to what extent Member States can exercise personal jurisdiction over individuals.

Given the dynamic interpretive style of the Court<sup>6</sup>, it is noted that the dissertation will not provide a definitive conclusion to the problem statement.

## **Interpretation and application of the Convention**

When the Court is assessing whether the Convention's provisions apply on the facts of a case before them, they can include certain interpretation factors as support. In the following will be described some of the most important factors referenced by the Court.

### **4.1 The significance of case law**

Previous case law from the Court plays a major role, since, in practice, it is not possible for the Court to interpret and apply the Convention without including previous jurisprudence on the relevant provisions.<sup>7</sup>

The Court mainly refers to previous judgements from the Court, but it also happens that the Court refers to previous decisions from the Commission before the merger in 1998. The Court mainly refers

---

<sup>5</sup> Ewald, page 15 & 208-210

<sup>6</sup> See section 2.1.

<sup>7</sup> Kjølbro, page 15

to its own judgements but will refer to decisions of the Commission on issues which it has not dealt with before.<sup>8</sup>

In practice, the Court finds itself bound by previous decisions, regardless of whether the decision is unanimous or decided by dissent.<sup>9</sup>

Formally, the Court is not bound by past jurisprudence. However, the Court has stated that it generally follows previous case law, as it is most appropriate in the interest of legal certainty<sup>10</sup>, which is the principle that the Court must provide those subjected to the Convention, here the States, with foreseeability, equality, and transparency in order for them regulate their conduct so they do not violate the Convention.<sup>11</sup> At the same time, the Court has emphasised that it may deviate from previous case law in situations where overriding reasons justify it. Such a derogation may be necessary to ensure that the rights of the Convention reflect the world we live in, meaning if Member States undergo social change, then the case law must also be in line with current societal conditions.<sup>12</sup> This is the 'living instrument' doctrine, which was developed by the Court in the late 1970s in *Tyrer v The United Kingdom*<sup>13</sup> and is a sign of the Court's dynamic style of interpretation. The *Tyrer* judgement revolved around a boy who was given three strokes of birch by policemen as a legal punishment for committing unlawful assault, which he pleaded guilty to in the juvenile Court.<sup>14</sup> The respondent State, Isle of Man, argued that this was not a violation of degrading punishment under Article 3 of the Convention because the public opinion of the Island was approving of the use of corporal punishment to deter criminals.<sup>15</sup> Both the Commission and the Court stressed the importance of looking at the act in the light of present-day conditions, which constitutes the 'living instrument'.<sup>16</sup> At the time of the incident corporal punishment was being outlawed in other Member States.<sup>17</sup> The Court denied the respondent State's claim and in the light of the 'living instrument' concluded that the punishment was degrading and violated Article 3 of the Convention.<sup>18</sup>

As the Court finds itself bound by previous jurisprudence, it will compare the applicant's case with previous cases. If the applicant wishes for the Court to derogate from previous jurisprudence, the Court will contemplate whether this present case differs from the previous one due to factual or legal circumstances of the case. If it differs the Court will examine whether the factual or legal circumstances had been of decisive importance for the outcome of the previous case. By doing this the Court can explain why it reaches either the same or a different result than the first case, and it also secures that the Court always make a concrete assessment.<sup>19</sup>

As case law is constantly evolving, the question of the temporal extent or the 'res judicata' of judgments arise. The Court finds it unproblematic to apply new case law to a case whose factual circumstances took place after this new case law was established. The problem arises in cases whose factual circumstances took place before this new case law was established. This is a frequent occurrence as many cases can take up to a decade before they come before the Court. Should the

---

<sup>8</sup> Ibid, page 17

<sup>9</sup> Ibid, page 15

<sup>10</sup> Ibid

<sup>11</sup> Introduction to the European Convention of Human Rights, page 122,

<sup>12</sup> Kjølbros, page 16

<sup>13</sup> *Tyrer v The United Kingdom*, 25<sup>th</sup> of April 1978, (Court), page 12, para 31

<sup>14</sup> Ibid, page 3, para 9

<sup>15</sup> Ibid, page 12, para 31

<sup>16</sup> Ibid, page 12, para 31

<sup>17</sup> Ibid, page 6, para 14

<sup>18</sup> Ibid, page 14, para 35

<sup>19</sup> Kjølbros, page 16-17

Court then adjudicate the old case according to old case law present at the time of the incident or should it adjudicate the old case after the new jurisprudence?

Judge Jon Fridrik Kjølbro, who is currently a sitting judge at the Court, advocates for the solution that all cases must be adjudicated according to the new current case law, even though they probably would have reached a different outcome if they had been adjudicated 10 earlier.<sup>20</sup> This approach appears to be in line with the 'living instrument'.

## 4.2 Other Conventions and sources of law

The Court also interprets the Convention in the light of international law.

In several judgments<sup>21</sup>, the Court notes that the Convention must be interpreted in the light of the 1969 Vienna Convention, in particular Article 31.<sup>22</sup> The Court's interpretation in light of Article 31 (1) of the Vienna Convention means the starting point is a natural understanding of the specific provision in relation to the context and purpose of that specific provision.<sup>23</sup> In the light of Article 31 (3) of the Vienna Convention, the Court must also consider any relevant rules of international law and seek to interpret State responsibility in conformity and harmony with international law with respect to the special character the Convention has of protecting human rights and fundamental freedoms.<sup>24</sup> This is because the Court's interpretation is also purpose oriented, which means that the provisions must never be interpreted in such a way that they entail less protection than national law<sup>25</sup>, even if an interpretation in the light of international law might suggest this restrictive conclusion.

Even though the Court interprets a provision in the light of international law it will not determine whether the Member States are bound by or comply with these other conventions<sup>26</sup>, as the Court only has to ensure compliance with the Convention.<sup>27</sup>

The Court's inclusion of other conventions can be beneficial when they contain a more specific description of a particular point, in contrast to the often very generally worded provisions of the Convention. They can thus be used as support when the Court is interpreting the Convention.

The Court can also be referencing international conventions and judgments, in cases where there is an international tendency for a particular interpretation. This must be seen in the light of the fact that the Court wants to achieve a result that does not conflict with judgements from other international bodies. However, the Court is not bound by other conventions and can thereby reach the opposite result.<sup>28</sup>

## 4.3 Other interpretation principles

Through extensive case law the Court has established general principles, which it relies on when interpreting and applying the Convention. This is for instance the 'living instrument' doctrine<sup>29</sup>, which was mentioned above under 2.1., the principle of effectiveness, which is the principle that the rights

---

<sup>20</sup> Kjølbro, page 19

<sup>21</sup> See *inter alia*, *Bankovic and Others v Belgium and 16 Other Contracting States*, 12<sup>th</sup> of December 2001, *Al-Saadoon & Mufdhi v UK*, 4<sup>th</sup> of October 2010, *Hassan v UK*, 16<sup>th</sup> of September 2014, *Loizidou v Turkey*, (merits), 18<sup>th</sup> of December 1996 (Court)

<sup>22</sup> Kjølbro, page 19

<sup>23</sup> See *Bankovic* para 55

<sup>24</sup> See *Bankovic*, page 15, para 57, *Al-Saadoon*, page 58, para 126-127, *Hassan v UK*, page 52-53, para 102

<sup>25</sup> Kjølbro, page 23

<sup>26</sup> *Demir & Baykara v Turkey*, 12<sup>th</sup> of November 2008, App No 34503/97, page 24, para 86

<sup>27</sup> The European Convention of Human Rights, Article 19

<sup>28</sup> Kjølbro, page 28-29

<sup>29</sup> Kjølbro, page 15

after the Convention are to be practical and effective and not made illusory, and the autonomy<sup>30</sup> of concepts in the Convention, which means that the Court is not bound by national definitions of, for instance, the term ‘jurisdiction’ but instead makes its own definition of the word.<sup>31</sup>

Only the English and French texts are authoritative, so when interpreting the provisions, the Court will make a comparison and assessment of any difference between the French and the English version.<sup>32</sup> If there is a difference between the two versions, such a difference cannot lead to a restriction of rights in the Convention resulting in an inferior protection. The Court must proceed with the interpretation that is consistent with the purpose of the Convention.<sup>33</sup>

Preparatory work to the Convention plays a limited role as an interpretation factor for the Court. The Court will be reluctant to give weight to the preparatory work in cases where such a subjective interpretation will lead to an untimely or restrictive result, for instance, a result that is not in line with the living instrument doctrine, which is likely since the Convention was drafted several decades ago. It will require very clear points of reference in the preparatory work in order to constitute an argument against a desired interpretation of the provisions by the Court.<sup>34</sup>

#### **4.4 Positive and negative obligations**

Several of the provisions of the Convention entails negative obligations on the States, i.e., that the State’s authorities must refrain from depriving an individual of his life. The Court has also derived positive obligations from the provisions of the Convention, i.e., that in certain cases the State can be expected to act in order to protect the freedoms and rights of the individual. The Court has interpreted these positive obligations to achieve effective protection of the rights in question.<sup>35</sup> In this thesis a lot of the referenced case law concern Article 2, and in some cases the Court chooses to intertwine the question of jurisdiction under Article 1 with its examination of whether Article 2 is violated. In Article 2 the Court has interpreted both a negative obligation, which means that a State must both refrain from arbitrarily depriving an individual of his life and a positive obligation, which means that in some circumstances the State is obligated to act in order to protect an individual from being killed by a third party who is not a State agent.

### **The Scope of the Convention**

According to Article 1:

“The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.”<sup>36</sup>

---

<sup>30</sup> See inter alia *Öztürk v Germany*, 21<sup>st</sup> of February 1984, page 13-14, para 47-50, concerning the autonomy definition of ‘criminal’ under Article 6 of the Convention

<sup>31</sup> Introduction to the European Convention on Human Rights, page 6

<sup>32</sup> See inter alia *Öztürk v Germany*, page 12-13, para 47, regarding the Court’s interpretation of ‘charged with a criminal offence’

<sup>33</sup> *Kjølbro*, page 20

<sup>34</sup> *Ibid*, page 21-23

<sup>35</sup> *Ibid*, page 26

<sup>36</sup> The European Convention of Human Rights, Article 1

In conjunction with Article 2 to 14 and Article 56, Article 1 defines the *personal scope* of the Convention, which is also known as *ratione personae*, the *material scope* also known as *ratione materiae* and the *territorial scope* also known as *ratione loci*.

Article 1 is therefore a key provision when discussing the applicability of the Convention.

Firstly, it states that the subjects of duty under the Convention are the Member States. Secondly, it defines the binding effect of the Convention with the wording "shall secure". Thirdly, it states that the interested party under the Convention are 'everyone'. Fourthly, the provision states that the obligation of the Member States applies to everyone 'within their jurisdiction'. It is this fourth point that this thesis will analyse further in the following. Fifthly, the provision also establishes the substantive application of the Convention, which is that the Member States are obligated to secure the rights and freedoms set out in the other provisions of the Convention.<sup>37</sup>

## 5.1 The Member States as the subject of duty imposed

As the Member States are subjects of duty, it is crucial that the act or omission complained of can be attributed directly or indirectly to the respondent State. The Court will therefore by their own initiative examine whether this point is met once a complaint is brought forward. Even though Article 1 mentions the Member States as being the subject of duty, it is known from case law that the concept is to be interpreted wide. This means that a State can incur liability for any actions or omissions committed by all the State's bodies, agents, and servants, because their actions or omissions are attributed to the State.<sup>38</sup>

The phrase 'The High Contracting Parties' must be seen in the conjunction with Article 34, which states that anyone who is a non-governmental organisation can bring a complaint to the Court. So conversely, this means that a body subject to duty under Article 1 cannot bring an interference before the Court.<sup>39</sup>

If the complaint concerns the actions or omissions of private parties, the Court would initially be incompetent *ratione personae*. The State can, however, be held indirectly liable if the State has not lived up to its positive obligation to protect its citizens from the acts of private parties through legislation or its enforcement.<sup>40</sup>

### 5.1.1 Member States' responsibility in connection to international organisation

If an individual wishes to complain over a Member State's responsibility for acts or omissions in connection to an international organisation, this is a question of jurisdiction *ratione personae* rather than *ratione loci*.<sup>41</sup> The Court will initially have to examine whether the act can be attributed to the international organisation or to the State. If the act can be attributed to the organisation, the Court must reject the claim out of lack of competence as the claim is incompatible with the *ratione personae* of the Convention. If, on the other hand, the act can be attributed to the State, the Court has competence to review the claim and the next issue will be whether the State has exercised jurisdiction after Article 1.

---

<sup>37</sup> Kjølbros, page 37

<sup>38</sup> Ibid, page 37

<sup>39</sup> Ibid, page 38

<sup>40</sup> Kjølbros, page 42

<sup>41</sup> Murdoch, chapter 3, para 3.18

## 5.2 The binding nature of the Convention

The wording 'shall secure' attests the Conventions binding nature.<sup>42</sup> The obligation applies in full and from the time the State is bound by the Convention.

## 5.3 The interested party under the Convention

The wording "everyone" in Article 1 means that the Convention can apply to everyone regardless of whether they are a physical or legal person, and regardless of age, gender, employment position, citizenship, foreigner, public employee, private employee, etc., as long as they are within the State's jurisdiction under Article 1.<sup>43</sup>

What encompasses the jurisdiction of a State is the focal point of this thesis and will be further elaborated and analysed in the following thesis.

## The territorial scope of Member State's responsibility – "ratione loci"

### 6.1 The drafting of Article 1

Jurisdiction is a precondition for a State's actions and omissions to entail liability after the Convention. This means that the question of 'jurisdiction' is a threshold criterion to apply the Convention to acts committed abroad.

Even though this is the case in present day, the initial stages of drafting the Convention, which was conducted by a juridical committee of the European Movement, indicate that the Member State's obligation after the Convention should be limited to their own national territory. When the movement in July 1949 submitted the draft of the Convention to the newly established Council of Europe, it proposed that the provision of applicability should read<sup>44</sup>:

"Article 1 – Every State a party to this Convention shall guarantee to all persons within its territory [...] the following rights".<sup>45</sup>

This initial presumption of the Convention's application being restricted to a States' national territory continued through a series of amendments,<sup>46</sup> without a mention of the word 'jurisdiction'.<sup>47</sup> The move towards the use of 'jurisdiction' instead of 'territory' came because of the contemporaneous drafting of the International Covenant on Human Rights by the United Nations Commission on Human Rights. The Committee of Ministers of the Council of Europe had expressly requested a Committee of Legal Experts on human rights, who was to assist in the drafting of the Convention, to pay;<sup>48</sup> "due attention to the progress which has been achieved in this field by the competent organs of the United Nations."<sup>49</sup>

The preliminary draft of the International Covenant on Human Rights' Article 2 was to be worded:

---

<sup>42</sup> Kjølbros, page 46

<sup>43</sup> Ibid, page 47

<sup>44</sup> Mallory, page 17

<sup>45</sup> Council of Europe, European Court of Human Rights, Preparatory work on Article 1 of the European Convention on Human Rights, Cour (77) 9, page 1, para II(a)

<sup>46</sup> Ibid, page 15-16, para 5-8

<sup>47</sup> Mallory, page 18

<sup>48</sup> Mallory, page 19

<sup>49</sup> Council of Europe, European Court of Human Rights, Preparatory work on Article 1 of the European Convention on Human Rights, Cour (77) 9, page 30, para V 2(2)

“Each State Party hereto hereby undertakes to ensure to all individuals within its jurisdiction the rights defined in this Covenant.”<sup>50</sup>

The first occasion in the Convention’s drafting where the word ‘jurisdiction’ was used was in a proposal brought forward by the UK representative Dowson in 1950.<sup>51</sup> The proposal was with nearly identical wording to the drafting of the UN Treaty mentioned above.

Shortly before the treaty opened for signature in November 1950, the drafters of the Convention decided to settle on the final wording of Article 1 as we know today<sup>52</sup>, including the phrase ‘within their jurisdiction’ over the more restrictive phrase ‘all persons residing within their territories’.<sup>53</sup>

The first amendments in the drafting stage of Article 1 suggest that the drafters initially had the national territory of the Member States in mind when considering the scope of the Convention, but the final wording of Article 1 suggests that the drafters wished for a less restrictive approach, although they at this point in time had not mentioned the Conventions extraterritorial applicability as seen in present day judgements from the Court.<sup>54</sup>

## 6.2 The Strasbourg Approach 1953-2001

When the Convention entered into force on the 3<sup>rd</sup> of September 1953 the phrase “within their jurisdiction” in Article 1 was amorphous and called for a clarification.<sup>55</sup> Under the old system in Strasbourg, an allegation of a Member State’s violation of the Convention would initially have to be examined by the Commission who determined the admissibility of the complaint before it could proceed to the Court.<sup>56</sup> Only if the Commission declared the complaint admissible and the respondent State had accepted its jurisdiction would the case proceed to the Court<sup>57</sup>. This institutional framework meant that very few cases were brought before the Court, and it was not until the 1990s that the Court had the opportunity to interpret Article 1. Until then it was up to the Commission to interpret and apply Article 1.<sup>58</sup>

### 6.2.1 Personal jurisdiction

The first instance in which the Commission had to deal with the Convention’s extraterritorial application was through the personal jurisdiction, which arises when a State agent exercises authority and control over an individual abroad.<sup>59</sup> The Commission’s decision in *X v Federal Republic of Germany*<sup>60</sup> gives an example of this type of jurisdiction.

The applicant was an Austrian citizen who acquired Czech and German nationality. He was living in Morocco at the time of the complained incidents.

The applicant’s complaint was directed at the German embassy and consular officials in Morocco who he claimed was responsible for asking the Moroccan authorities to expel him from the country. The case was ultimately dismissed as being manifestly ill-founded, but the Commission noted:

---

<sup>50</sup> Ibid, page 30, para V 2

<sup>51</sup> Ibid, page 33, para 5

<sup>52</sup> Mallory, page 21

<sup>53</sup> Council of Europe, European Court of Human Rights, Preparatory work on Article 1 of the European Convention on Human Rights, Cour (77) 9, page 71, para XI

<sup>54</sup> Mallory, page 21-22

<sup>55</sup> Ibid, page 61

<sup>56</sup> Ibid, page 62

<sup>57</sup> See inter alia *Drozd & Janousek v Francee & Spain*, 26<sup>th</sup> of June 1992, page 2, para 1

<sup>58</sup> Mallory, page 62-63

<sup>59</sup> Wallace, page 44

<sup>60</sup> *X v Federal Republic of Germany*, (Commission), 25<sup>th</sup> of September 1965

“[...] [I]n certain respects, the nationals of a Contracting State are within its ‘jurisdiction’ even when domiciled or resident abroad; whereas, in particular, the diplomatic and consular representatives of their country of origin perform certain duties with regard to them which may, in certain circumstances, make that country liable in respect of the Convention.”<sup>61</sup>

This statement suggests that ‘in certain respects’ a State’s nationals could be within its jurisdiction even when they are located abroad. Considering the focus, the drafters initially put on ‘territory’ instead of ‘jurisdiction’, the Commission did not choose the more restrictive interpretation of jurisdiction as being limited to the State’s domestic territory. Instead, they implicitly rejected this and allowed for the Convention’s extraterritorial application. The case set the direction for the interpretation of Article 1 in subsequent cases.<sup>62</sup> *Hess* was the next case before the Commission where it had to take a stand on the Conventions applicability. It simply affirmed the approach in *X v Federal Republic of Germany*, noting:

“As the Commission has already decided, a State is under certain circumstances responsible under the Convention for the Actions of its authorities outside its territory.”<sup>63</sup> (emphasis added)

The cases following *Hess* about Article 1 kept up with this trajectory<sup>64</sup>. In this period the Commission and Court did not provide judgements with clear and general articulations of how Article 1 was to be interpreted, but instead chose a case-by-case basis where they focused on the facts of each individual case and kept to a minimalistic style.<sup>65</sup>

This approach was also followed in a strong line of cases about judicial transfer of suspected criminals, where State agents travel to another non-member State in order to capture and bring the individual back with them to the Member State for the purpose of standing trial. One of the earliest of these types of cases is *Freda v Italy*<sup>66</sup>, where the Italian national Franco Freda fled to Costa Rica during the appeal of his murder conviction in Italy. He was taken into custody by local police and handed over to the Italian authorities on Costa Rican soil and escorted on board an Italian airplane back to Italy to stand trial. The Commission noted that the applicant:

“[F]rom the time of being handed over in fact [was] under the authority of the Italian State and thus within the ‘jurisdiction’ of that country, even if this authority was in the circumstances exercised abroad.”<sup>67</sup>

The Commission used a nearly identical phrase in both *Reinette v France*<sup>68</sup>, concerning a French national Luc Reinette, who was wanted due to several bomb attacks in Guadeloupe, as he was

---

<sup>61</sup> Ibid, page 168

<sup>62</sup> Mallory, page 64

<sup>63</sup> *Hess v The United Kingdom*, 28<sup>th</sup> of May 1975, (Commission), page 73

<sup>64</sup> See inter alia *X v The United Kingdom*, 15<sup>th</sup> of December 1977, (Commission), page 73, *M. v Denmark*, 14<sup>th</sup> of October 1992, (Commission), page 4-5, para “the law”, and the first case before the Court: *Drozd & Janousek v France & Spain*, 26<sup>th</sup> of June 1992, page 23, para 91

<sup>65</sup> Mallory, page 66

<sup>66</sup> *Freda v Italy*, 7<sup>th</sup> of October 1980, (Commission)

<sup>67</sup> Ibid, page 256, para 3

<sup>68</sup> *Reinette v France*, 2<sup>nd</sup> of October 1989, (Commission) page 193, para 2

transferred from Saint Vincent, Caribbean, to France to stand trial, and in *Sánchez Ramirez v France*<sup>69</sup> concerning the self-professed ‘revolutionary’ Ilich Sánchez Ramirez who was transferred from Sudan to France.<sup>70</sup>

The Commission’s approach to personal jurisdiction, was confirmed by the Grand Chamber in 2005 in the case of *Öcalan v Turkey*<sup>71</sup>. The applicant was a Turkish national who was expelled from Syria. He stayed in various countries seeking asylum, which were all denied. He ended up in Kenya with the help of the Greek Ambassador in Nairobi. The Kenyan authorities escorted the applicant to the airport where Turkish authorities arrested him aboard a Turkish plane and brought him back to Turkey to stand trial. The Court noted that the applicant was forced aboard the plane back to Turkey, which constituted that the applicant was under the Turkish State agent’s control and authority from the arrest aboard the Turkish plane.

In these cases, both the Commission and the Court focused solely on the *de facto* control exercised by the State agents over the applicant and the question of whether the actions by the State agents were lawful or not did not impact whether jurisdiction was established or not.<sup>72</sup>

#### 6.2.1.1 Personal jurisdiction and Military Personnel

The personal jurisdiction model had been applied consistently by the Court and Commission to diplomats and consular authorities exercising control and authority over individuals abroad. This interpretation was also applied directly to military personnel exercising authority and control over an individual abroad in *Cyprus v Turkey*.<sup>73</sup> In this case Cyprus brought forward two cases against Turkey involving multiple alleged violations during the 1974 invasion and occupation of the northern part of Cyprus. At the admissibility hearing before the Commission, it reaffirmed the stance it took in *X v Federal Republic of Germany*<sup>74</sup> and in *Hess*<sup>75</sup>, and noted that jurisdiction was not limited to the national territory of the respondent State, noting:

“[A]uthorised agents of a State, including diplomatic or consular agents *and armed forces*, not only remain under its jurisdiction when abroad but bring any other persons or property ‘within the jurisdiction’ of that State, to the extent that they *exercise authority* over such persons [...]. In so far as, by their acts or omissions, they affect such persons [...], the responsibility of the State is engaged.”<sup>76</sup> (emphasis added)

The Commission interpreted the personal jurisdiction to refer to the authority of the State, which would be engaged when a State agent exercised control over an individual. This would be the case when the agent’s actions would affect the individual.<sup>77</sup>

This however still leaves many questions, for instance, as to how control over a person is defined? Will jurisdiction after the personal model entail that the respondent State is responsible for all rights

---

<sup>69</sup> *Ramirez Sánchez v France*, 24<sup>th</sup> of June 1996, (Commission), page 161-162, para 2

<sup>70</sup> Mallory, page 72

<sup>71</sup> *Öcalan v Turkey*, 12<sup>th</sup> of May 2005, page 26, para 91

<sup>72</sup> Wallace, page 45-46

<sup>73</sup> *Cyprus v Turkey*, 26<sup>th</sup> of May 1975, (Commission)

<sup>74</sup> See section 4.2.1.

<sup>75</sup> *Ibid*

<sup>76</sup> *Cyprus v Turkey*, (Commission), page 136, para 8

<sup>77</sup> *Cyprus v Turkey*, (Commission), page 137, para 10

in the Convention? Is the instantaneous act of, for instance, a shot fired from a gun or an airstrike of a missile, enough to trigger a jurisdictional link?<sup>78</sup>

These questions and issues will be further analysed in the following pages of the thesis. Before I move on to a more in-depth analysis of these issues concerning the personal jurisdiction model, I will analyse the Court's approach and interpretation of spatial jurisdiction, which is the second option for extraterritorial jurisdiction.

## 6.2.2 Spatial Jurisdiction

Spatial jurisdiction was developed as a direct response to the occurrences in Northern Cyprus and was first mentioned by the Court<sup>79</sup> in the case of *Loizidou v Turkey*.<sup>80</sup>

The applicant owned a property in Northern Cyprus and complained that she was denied her peaceful enjoyment of the property due to the Turkish invasion of Cyprus. Turkey argued that they did not exercise personal jurisdiction over the applicant since the actions complained of was not committed by Turkish State agents but were instead attributable to the Turkish Republic of Northern Cyprus (TRNC). The TRNC was an autonomous local administration appointed in 1983. The Court could potentially have viewed the TRNC soldiers as acting on behalf of Turkey which would create a personal jurisdictional link, but instead the Court chose to create a new approach to extraterritorial jurisdiction, stating:

“[...] [T]he responsibility of a Contracting Party may also arise when as a consequence of military action - whether lawful or unlawful - it exercises *effective control of an area outside its national territory*. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration”.<sup>81</sup> (emphasis added)

This statement from the Court forms the basis for all future understandings of spatial jurisdiction.<sup>82</sup> Two key contributions can be derived from the statement. Firstly, being that the determining factor is the effective control exercised over territory rather than over an individual.

As with the personal jurisdiction, the determinative factor is *de facto* control, rendering the legality of the exercised control and occupation irrelevant to the Court.<sup>83</sup>

The Court found that Turkey did in fact exercise effective control over the Northern Cyprus territory, triggering spatial jurisdiction, which meant that Turkey's obligation to secure the Conventions obligations extended to the northern part of Cyprus. As reasons for establishing that Turkey had effective control over the Northern Cyprus territory, the Court emphasised the large number of troops engaged in active duties in the occupied area of Northern Cyprus which was approximately 30.000 and that the occupied area was constantly patrolled and had checkpoints on all the main lines of communication.<sup>84</sup>

---

<sup>78</sup> Wallace, page 46

<sup>79</sup> Ibid, page 47

<sup>80</sup> *Loizidou v Turkey* (Preliminary Objections), 23<sup>rd</sup> of March 1995, page 14, para 47

<sup>81</sup> Ibid, page 18, para 62

<sup>82</sup> Mallory, page 78

<sup>83</sup> *Loizidou v Turkey* (Preliminary Objections), page 18, para 62

<sup>84</sup> *Loizidou v Turkey* (Preliminary Objections), page 18, para 63 and *Loizidou v Turkey* (merits), 18<sup>th</sup> of December 1996, page 18, para 56

Later case law has noted that some indicating factors for *de facto* control are:<sup>85</sup> the strength of the occupying State's military presence in the area<sup>86</sup>, whether it had a large number of troops in the area on active duty<sup>87</sup>, whether the State's armed forces patrolled the territory and had checkpoints on main lines of communication<sup>88</sup>, whether the armed forces had been deployed for a long time<sup>89</sup> and the extent to which the State's military, economic and political support to the local subordinate administration provides it with influence and control over the region<sup>90</sup>.

Later case law has suggested that if a Member State, on the basis of consent, invitation or tacit acceptance of the government of the territory, exercises all or some of the public powers normally exercised by a government<sup>91</sup>, this will suggest that the Member State exercises effective control over the territory.<sup>92</sup>

The Court has not provided a definition of 'public powers', but Wallace has stated that "the definition of public powers as including legislative, executive and judicial powers is sensible".<sup>93</sup>

The second important contribution from the statement is that Turkey would be responsible for securing the Convention's obligations to everyone affected by their actions, as they would be brought within the jurisdiction of Turkey. This is whether the actions were committed by Turkey and its agents or from the conduct of the local administration.<sup>94</sup> By stating this the Court bypassed any issues regarding attribution and avoided having to determine if Turkish State agents exercised control over an individual in every single circumstance.<sup>95</sup> This conclusion was later reaffirmed by the Court in the case of *Al-Skeini* where the Court noted that this approach was necessary in order to not deprive the population of that territory their rights and freedoms, as this would result in a vacuum of the Convention's protection.<sup>96</sup> This line of thought was also brought forward in other key-cases such as the case of *Cyprus v Turkey*<sup>97</sup> and the case of *Bankovic and Others*<sup>98</sup>.

With the Courts approach in *Loizidou* it introduced a more expansive application of the Convention's scope. The scope was no longer limited to individuals or small groups who were directly affected in isolated incidents, but instead expanded to also concern large areas of territory which could encompass large numbers of potential applicants affected by the State's actions and omission.<sup>99</sup>

### 6.2.3 Partial conclusion

Already through the first cases before the Commission, it paved the way for the future interpretation of the extraterritorial jurisdiction of the Convention. The first type of case before the Commission was diplomats and consular authorities exercising control over individuals, which triggered the

---

<sup>85</sup> Wallace, page 67

<sup>86</sup> See *Loizidou* (merits), page 5 & 18 para 16 & 56, *Ilascu & Others v Moldova & Russia*, 8<sup>th</sup> of July 2004, page 90, para 387 and *Al-Skeini & Others v United Kingdom*, 7<sup>th</sup> of July 2011, page 60, para 139

<sup>87</sup> *Loizidou v Turkey* (merits), page 18 para 56

<sup>88</sup> *Ibid*, page 5, para 16

<sup>89</sup> *Issa v Turkey*, 30<sup>th</sup> of March 2005, page 24, para 75

<sup>90</sup> *Ilascu & Others*, page 91-92, para 390-393 and *Al-Skeini & Others*, page 59-60, para 138

<sup>91</sup> See *inter alia Bankovic*, page 20, para 71 & *Behrami & Behrami v France & Saramati v France, Germany & Norway*, 2<sup>nd</sup> of May 2007, page 23, para 70

<sup>92</sup> *Kjølbro*, page 51

<sup>93</sup> Wallace, page 65

<sup>94</sup> *Loizidou v Turkey* (merits), page 18, para 56

<sup>95</sup> Mallory, page 80

<sup>96</sup> *Al-Skeini*, page 61, para 142

<sup>97</sup> *Cyprus v Turkey*, (merits), page 21, para 78

<sup>98</sup> *Bankovic*, page 23, para 80

<sup>99</sup> Mallory, page 81

personal jurisdiction. This approach also applied to judicial transfers and armed forces exercising control and authority over individuals. This trajectory was followed in a long line of cases and did not run into inconsistencies.

In *Loizidou* the Court expanded the Conventions extraterritorial scope and incorporated spatial jurisdiction, which was a second option for the Conventions extraterritorial applicability. For both models of jurisdiction, the determining factor was whether the State agent exercised *de facto* control over the individual. The question of legality of the State's action was not relevant to the Court's finding of jurisdiction.

### 6.3 The Court's approach from 2001 and onward – deconstruction and reconstruction

Both models of jurisdiction were established as relatively straightforward rules, which resulted in cases concerning extraterritorial jurisdiction evolving in a progressive manner. However, as time progressed, the Court's approach to extraterritorial jurisdiction became inconsistent which led to uncertainty. Much of this uncertainty stems from the *Bankovic* judgement.

The case was a significant departure from the early jurisprudence on extraterritorial jurisdiction as the Court deconstructed the previous meaning of jurisdiction and replaced it with a more restrictive approach.<sup>100</sup> In post-*Bankovic* case law, the Court attempted to stray away from the more restrictive approach and attempted to reinstate a semblance of universality in the interpretation of the Convention's extraterritorial application. This period in the Court's caselaw from 2001 and onward represents both the deconstruction of the understanding of jurisdiction of Article 1 and then the attempt to reconstruct this understanding.<sup>101</sup>

In the following I will initially analyse the restrictive approach in *Bankovic* and then proceed to analyse post-*Bankovic* cases where the Court is attempting to clear up the inconsistencies and reconstruct a universal understanding of extraterritorial jurisdiction.

#### 6.3.1 *Bankovic*

In connection with the conflict in Kosovo in the years 1998-1999 between Serbia and Kosovo-Albania, no political agreement could be reached, and as a result of this NATO decided to launch airstrikes against the Federal Republic of Yugoslavia. On the 23<sup>rd</sup> of April 1999 a television and radio station in Belgrade<sup>102</sup> was hit by an airstrike launched by NATO resulting in killing 16 individuals. The families of the deceased claimed that Belgium and several other European countries was responsible under the Convention for their participation in the NATO attack.<sup>103</sup>

The Court had to determine whether the applicants' deceased relative fell within the jurisdiction of the respondent States as a result of their extraterritorial act.

Four key points were made by the Court in this case. The first was the move to the application of the Convention being exceptional, the second concerning the legal space of the Convention, the third whether an instantaneous act will trigger jurisdiction and the fourth whether the Convention can be divided and tailored to the specific situation.

---

<sup>100</sup> Wallace, page 48

<sup>101</sup> Mallory, page 88

<sup>102</sup> The capital in Yugoslavia at the time of incident

<sup>103</sup> *Bankovic*, page 3-4, para 6-12

### 6.3.1.1 The move to extraterritorial jurisdiction being exceptional

The case law established pre-Bankovic illustrates that extraterritorial jurisdiction arose as a natural consequence from acts or omissions committed by State agents abroad. This is clearly shown in *Cyprus v Turkey*<sup>104</sup>, where the Commission noted that the phrase ‘within their jurisdiction’ was not:

“[...] limited to the national territory of the High Contracting Party concerned. It is clear from the language, in particular of the French text, and the object of this Article, and from the purpose of the Convention as a whole, that the High Contracting parties are bound to secure the said rights and freedoms to all persons under their actual authority and responsibility, whether that authority is exercised within their own territory or abroad.”<sup>105</sup>

*Bankovic* distanced itself from this approach and ruled that extraterritorial jurisdiction is exceptional and requires special justification.<sup>106</sup>

The Court interprets Article 1 in the light of public international law and notes that the ordinary meaning of ‘jurisdiction’ is primarily territorial, rendering extraterritorial jurisdiction to be an exemption to the rule and should be determined on the facts and circumstances of each case.<sup>107</sup>

The Court also relies on the preparatory work as an argument for the territorial notion of jurisdiction. As mentioned above under 4.1., the phrase “within their jurisdiction” replaced the phrase “all persons residing within their territories”. The Court emphasised that the drafters replaced the phrase because they believed the word ‘residing’ was too restrictive and wished to expand the Convention to also apply to people who did not, in the legal sense, reside within a State but was nevertheless present on the State’s territory.<sup>108</sup> However, the Convention was drafted many decades ago and as mentioned above under 2.3. preparatory work only plays a limited role in the Court’s interpretation of the provisions, especially in the light of ‘the living instrument’. The Court noted that they were aware of this but proceeded to state that Article 1 concerns the scope of the Convention and is such an essential provision that it will not deter from what it believed was the drafters intention.<sup>109</sup>

By reaching the conclusion that the scope of the Convention is mainly territorial, the Court restricts the scope of the Convention.<sup>110</sup>

### 6.3.1.2 Legal space

Another key point reached by the Court in this judgement was that the Convention did not apply to any activities that had extraterritorial effects in non-Member States:

“[T]he Convention is a multi-lateral treaty operating, [...] in an essentially regional context and notably in the legal space (*espace juridique*) of the Contracting States. The FRY clearly does not fall within this legal space. The Convention was not designed to be applied throughout the world, even in respect of the conduct of Contracting States.”<sup>111</sup>

---

<sup>104</sup> *Cyprus v Turkey*, (Commission), see section 4.2.1.1.

<sup>105</sup> *Cyprus v Turkey*, (Commission), page 137, para 10

<sup>106</sup> *Bankovic*, page 16, para 61

<sup>107</sup> *Ibid*, page 16, para 59 and 61

<sup>108</sup> *Ibid*, page 17, para 63

<sup>109</sup> *Ibid*, page 17-18, para 64-65

<sup>110</sup> Wallace, page 51

<sup>111</sup> *Bankovic*, page 23, para 80

In contrast with previous jurisprudence the Court stated that both the State in which an extraterritorial act occurs and the State responsible for the act must be parties to the Convention in order for the Convention to apply.<sup>112</sup> This finding leads to Member States being held to a lower standard for their acts and omissions abroad.<sup>113</sup>

This approach was almost immediately challenged in the following case law, and the Court quickly resigned from the restrictive legal space approach.<sup>114</sup> As to the personal jurisdiction, the Court did not even consider this approach in *Ocalan v Turkey*<sup>115</sup>, where they concluded that the Convention did in fact apply to the extraterritorial acts by the Turkish agents in Kenya and was then expressly disavowed in the case of *Pad v Turkey*<sup>116</sup> where the seven deceased men were all of Iranian nationality. On the 7<sup>th</sup> of May they went up into the mountains near their village in Iran, which was about 500 meters from the border of Turkey. There is conflicting information from the applicants and the respondent State whether the alleged violations occurred on the Iranian or Turkish side of the border. They did however agree that the Turkish soldiers detained the seven Iranian men and shot them to death. The facts of the case made it unclear to the Court whether the men were within Turkish or Iranian territory at the time of the killing, but Turkey did not dispute the claim of Turkish jurisdiction over the deceased individuals.

The Court came with a clear instruction regarding its view on the legal space of the Convention, noting:

“Accordingly, a State may be held accountable for violations of the Convention rights and freedoms of persons who are in the territory of another State which does not necessarily fall within the *legal space* of the Contracting States, but who are found to be under the former State’s authority and control through its agents operating – whether lawfully or unlawfully – in the latter State.”<sup>117</sup> (emphasis added)

The Court also implicitly distanced itself from the restrictive approach regarding the spatial jurisdiction in the case of *Issa v Turkey*<sup>118</sup>. In this case the applicants and their deceased relatives were all of Iraqi descent and resided in northern Iraq close to the Turkish border. The applicants claim that while they were shepherding close to their village their husbands and son were taken away by Turkish soldiers. The applicants claim that they requested the Turkish military to release their husbands and son, but the Turkish officers denied they were in their custody. Some days later the bodies of the applicant’s relatives were found with bullet wounds and had been subject to mutilation. The applicants claimed that Turkey had exercised spatial jurisdiction over a territory of northern Iraq where they killed their relatives.

When considering whether the deceased men fell within the jurisdiction of Turkey, the Court noted:

“The Court does not exclude the possibility that, as a consequence of this military action, the respondent State could be considered to have exercised, temporarily, effective overall control of a particular portion of the territory of northern Iraq. Accordingly, if there is a sufficient factual basis for holding that, at the relevant time, the victims were within that specific area, it would follow logically that they were within

---

<sup>112</sup> Wallace, page 51

<sup>113</sup> Ibid, page 52

<sup>114</sup> Wallace, page 52

<sup>115</sup> *Öcalan v Turkey*, 12<sup>th</sup> of May 2005

<sup>116</sup> *Pad v Turkey*, 28<sup>th</sup> of June 2007

<sup>117</sup> Ibid, page 10, para 53

<sup>118</sup> *Issa & Others v Turkey*, 30<sup>th</sup> of March 2005

the jurisdiction of Turkey (and not that of Iraq, which is not a Contracting State and clearly does not fall within the legal space (*espace juridique*) of the Contracting States (see the *Banković* decision)”<sup>119</sup>

Even though the Court concluded that Turkey did not exercise effective control over the territory in the northern territory of Iraq, it did note that it was prepared to accept the possibility of spatial jurisdiction on territory of Iraq, which is not a Member State to the Convention. In noting this, the Court even referenced *Bankovic*, thus implicitly distancing itself from the restrictive legal space approach concluded in the *Bankovic*-judgment.<sup>120</sup>

The Court decisively discarded the restrictive legal space approach from the *Bankovic*-judgement in *Al-Skeini v United Kingdom* where the Court noted:

“[...] [T]he importance of establishing the occupying State’s jurisdiction in such cases does not imply, *a contrario*, that jurisdiction under Article 1 of the Convention can never exist outside the territory covered by the Council of Europe member States.”<sup>121</sup>

The Court reached this decision noting that, the occupying power should in principle be held responsible after the Convention, because otherwise it would create a ‘vacuum’ of no protection for the individuals in that territory.<sup>122</sup>

### 6.3.1.3 Instantaneous Acts

The third key point in *Bankovic* was the issue of whether an instantaneous act from a Member State’s armed forces outside its territory, such as bombing a television and radio station, could in itself establish an extraterritorial jurisdictional link to that State.

A case called *Alejandre v Cuba*<sup>123</sup> had been decided from the Inter-American Commission, before *Bankovic*. The Inter-American Commission relied on the personal jurisdiction to establish an extraterritorial jurisdictional link to Cuba in a scenario where Cuban military shot down a civilian aircraft in international airspace. The Inter-American Commission noted that the direct act of firing at the aircraft resulted in the exercise of authority fulfilling the purpose and conditions of personal jurisdiction.<sup>124</sup>

Despite this case the Court in *Bankovic* clearly denied this approach<sup>125</sup>, noting:

“The Governments contend that this amounts to a “cause-and-effect” notion of jurisdiction not contemplated by or appropriate to Article 1 of the Convention. The Court considers that the applicants’ submission is tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, is thereby brought within the jurisdiction of that State for the purpose of Article 1 of the Convention. The Court

---

<sup>119</sup> *Issa & Others v Turkey*, page 24, para 74

<sup>120</sup> *Wallace*, page 53

<sup>121</sup> *Al-Skeini*, page 61, para 142

<sup>122</sup> *Ibid*

<sup>123</sup> *Alejandre v Cuba*, Report No 86/99, IAComHR, 29<sup>th</sup> of September 1999

<sup>124</sup> *Ibid*, page 12-13, para 25

<sup>125</sup> *Wallace*, page 54

is inclined to agree with the Governments' submission that the text of Article 1 does not accommodate such an approach to "jurisdiction."<sup>126</sup>

It appears that the Court concludes that the simple act of bombing someone abroad is not enough to establish the exercise of power of the individuals but calls for 'something more' to trigger personal jurisdiction.

The case-law concerning instantaneous acts post-*Bankovic* has been inconsistent. Judgements from the Courts, such as *Pad v Turkey*<sup>127</sup>, mentioned above in section 4.3.1.2., where the Court indicated that the mere shooting of the deceased was enough to establishing a jurisdictional link. This was also the case in *Andreou v Turkey*<sup>128</sup>, which revolved around the Cyprus Motorcycle Federation who organised a demonstration against the Turkish occupation of the Northern Cyprus. On the 2<sup>nd</sup> of August 1996 a group of Cypriot motorcyclists began a tour from Berlin throughout Europe to Cyprus. On the 11<sup>th</sup> of August 1996 the group of motorcyclists made their way to the UN buffer zone between Cyprus and the Northern Cyprus occupied by the TRNC, which resulted in violent clashes between the cyclist and TRNC resulting in the death of a Greek Cypriot national called Isaak.<sup>129</sup> After Isaak's funeral on the 14<sup>th</sup> of August, some of the Greek Cypriot motorcyclist went to the place of his death to pay respect. Here tension broke out between the TRNC and the Greek Cypriot demonstrators resulting in a TRNC soldier shooting the applicant. The shot was fired from the Turkish-Cypriot territory and hit the applicant on the Greek Cypriot territory.<sup>130</sup> The Court established that the shooting of the applicant was enough to establish a personal jurisdictional link, much in contrast to *Bankovic* where the bombing in itself was not enough.

The Court noted:

"[...] that even though the applicant had sustained her injuries in territory over which Turkey exercised no control, the opening of fire on the crowd from close range, which was the direct and immediate cause of those injuries, had been such that the applicant should be regarded as "within [the] jurisdiction" of Turkey within the meaning of Article 1 of the Convention."<sup>131</sup>

It is, however, noteworthy that *Bankovic* was a decision from the Grand Chamber, which carries more authority in the Strasbourg system.<sup>132</sup> The Grand Chamber also continued to uphold the outcome of *Bankovic* in the later case of *Medvedyev v France*<sup>133</sup>, which will be analysed below in section 4.3.2., where the Court, referencing *Bankovic* directly, concluded that Article 1 did not permit such a cause-and-effect notion of jurisdiction. Thus, shortly after the Court gave the clearest recognition of this instantaneous act establishing jurisdiction in *Andreou v Turkey*, the Grand Chamber refuted this possibility in *Medvedyev v France*.<sup>134</sup>

---

<sup>126</sup> *Bankovic*, page 21, para 75

<sup>127</sup> *Pad v Turkey*, page 10, para 54

<sup>128</sup> *Andreou v Turkey*, 27th of January 2010

<sup>129</sup> *Ibid*, page 2, para 9-10

<sup>130</sup> *Ibid*, page 2-3, para 11-15

<sup>131</sup> *Ibid*, page 7, para 25

<sup>132</sup> *Wallace*, page 55-56

<sup>133</sup> *Medvedyev & Others v France*, 29<sup>th</sup> of March 2010, page 23, para 64

<sup>134</sup> *Mallory*, page 109

#### 6.3.1.4 No tailored application of the Convention's obligations allowed

A fourth important point in the judgement was the Court's rejection of the implication that the obligations in the Convention could be divided and tailored to the specific circumstances at hand.<sup>135</sup>

Due to all the reasons listed above under section 4.3.1.1.- 4.3.1.4., the Court concluded that there was no jurisdictional link between the victims and the respondent States.

#### 6.3.1.5 Partial conclusion

Bankovic deconstructed the previous understanding of jurisdiction that both the Commission and the Court had established and steadily followed. The Court restricted the approach of extraterritorial jurisdiction to being exceptional contrary to what previous jurisprudence had suggested. The Court denied that the Convention could be applied to acts committed by Member States in non-member States, denied that the Convention's obligations could be tailored and concluded that an instantaneous act in itself could trigger the personal jurisdiction of Article 1.

#### 6.3.2 Al-Skeini v UK: The Court's systemisation of Article 1

*Al-Skeini* is a statement judgement just like *Bankovic*. In this judgement the Court seeks to recapitulate the bases for extraterritorial jurisdiction in order provide more clarity for the Member States. It is noteworthy that this judgement, like *Bankovic*, is a unanimous decision from the Grand Chamber, which provides it with more authority.<sup>136</sup>

The Court in this judgement took the same starting point as *Bankovic* did, saying that jurisdiction under Article 1 was primarily territorial.<sup>137</sup> It then notes that extraterritorial jurisdiction can arise through the personal jurisdiction, which is when a State agent exercises control and authority over an individual, and through the spatial jurisdiction which constitutes effective control over an area.

Within the personal jurisdiction, the Court continues to list three different types of bases for extraterritorial jurisdiction.<sup>138</sup>

These types will be further analysed in the following.

#### Diplomats

The first instance is when a State's diplomats or consular agents are present on a foreign territory, and these exercise control and authority over individuals.<sup>139</sup>

In reaching this conclusion the Court among other judgements referred to *Bankovic*, which followed the already established jurisprudence<sup>140</sup> and reaffirmed that "cases involving the activities of its diplomatic or consular agents abroad and on-board craft and vessels registered in, or flying the flag of, that State"<sup>141</sup> are recognised instances of extraterritorial jurisdiction exercised by that State.<sup>142</sup>

This statement has consistently been reaffirmed in case-law post-*Bankovic*, for instance, in *Medvedyev*<sup>143</sup> and *Hirsi Jamaa*<sup>144</sup>.

---

<sup>135</sup> Bankovic, page 21, para 75

<sup>136</sup> Mallory, page 166

<sup>137</sup> Al-Skeini, page 57, para 131

<sup>138</sup> Mallory, page 168

<sup>139</sup> Al-Skeini, page 58, para 134

<sup>140</sup> See; case of M v Denmark, (Commission), page 4-5, case of X v The Federal Republic of Germany, (Commission), page 168 & case of X v The United Kingdom, (Commission), page 74, & see section 4.2.1.

<sup>141</sup> Bankovic, page 20, para 73

<sup>142</sup> Ibid

<sup>143</sup> Medvedyev & Others v France, 29<sup>th</sup> of March 2010, page 23, para 65

<sup>144</sup> Hirsi Jamaa & Others v Italy, 23<sup>rd</sup> of February 2012, App No 27765/09, page 26, para 75

### Physical force

The second instance<sup>145</sup> is when State agents on foreign territory uses physical force on individuals, thus bringing them within the agent's control and establishing personal jurisdiction.<sup>146</sup>

The Court noted:

”[T]he Court’s case-law demonstrates that, in certain circumstances, the use of force by a State’s agents operating outside its territory may bring the individual thereby brought under the control of the State’s authorities into the State’s Article 1 jurisdiction.”<sup>147</sup>

The Court notes that this principle has been applied in earlier case-law, where State agents have detained or arrested individuals on another state’s territory.<sup>148</sup>

As examples of case law the Court referenced the case of *Öcalan v Turkey*, *Medvedyev and Others v France*<sup>149</sup> and *Al-Saadoon & Mufdhi v The UK*.<sup>150</sup>

The case of *Öcalan* is mentioned above in section 4.2.1., where the Court reached the conclusion that the applicant was within Turkish jurisdiction from the moment he was handed over to Turkish authorities.<sup>151</sup>

In the case of *Al-Saadoon* a large coalition of armed forces, led by America with a large force from the UK and smaller forces from Australia and Poland invaded Iraq in March 2003.<sup>152</sup>

On the 30<sup>th</sup> of April 2003 the first applicant was arrested by British forces and the second on 21<sup>st</sup> of November 2003. They were initially detained in an American facility but was transferred to a British camp on the 15<sup>th</sup> of December. The two Iraqi nationals were detained for 5 years suspected of killing two British servicemen,<sup>153</sup> before they were transferred to the Iraqi authorities.

The Court concluded that the British authorities exercised total and exclusive *de facto* control and later also *de jure* control over the British camp in Iraq, which meant that the UK State agents exercised control over the facilities in question and those detained within, thus bringing the applicants, who were detained in the British camp, within the UK’s jurisdiction.<sup>154</sup>

Finally, *Medvedyev* concerned the applicants aboard a Cambodian registered ship named ‘The Winner’. French authorities suspected that the ship might be smuggling large amounts of narcotics and in agreement with the Cambodian authorities, a French warship intercepted ‘The Winner’ on the high seas of Cape Verde.<sup>155</sup> The French warship detained the ship with its crew and sailed them to France where they were prosecuted.<sup>156</sup>

The Court stated:

“This was a case of France having exercised full and exclusive control over the Winner and its crew, at least *de facto*, from the time of its interception, in a continuous and

---

<sup>145</sup> This is the third instance in the judgement. The second and third instances have been moved around in this thesis for the purpose of better dissemination.

<sup>146</sup> *Al-Skeini*, page 59, para 136

<sup>147</sup> *Ibid*

<sup>148</sup> *Ibid*

<sup>149</sup> *Medvedyev with others v France*, 29<sup>th</sup> of March 2010

<sup>150</sup> *Al-Saadoon & Mufdhi v The United Kingdom*, (admissibility), 30<sup>th</sup> of June 2009

<sup>151</sup> *Öcalan v Turkey*, page 26, para 91

<sup>152</sup> *Al-Saadoon*, page 2, para 2

<sup>153</sup> *Ibid*, page 12-13, para 25-26

<sup>154</sup> *Ibid*, page 39, para. 87-88

<sup>155</sup> *Medvedyev*, page 3-4, para 9-13

<sup>156</sup> *Ibid*, page 4-5, para 18-20 & page 8, para 24

uninterrupted manner until they were tried in France, the applicants were effectively within France’s jurisdiction for the purposes of Article 1 of the Convention”<sup>157</sup>

In cases concerning the detention of an individual abroad by a State agent, it is not the control exercised by States over the aircraft or ship in which the individual is held which triggers the personal jurisdiction. The decisive factor is the State agent’s exercise of physical power and control over the individual that triggers the personal jurisdiction and thus the application of the Convention.<sup>158</sup>

In reaching this finding the Court only referenced cases where people were detained extraterritorially. Is this to mean that shooting or bombing an individual is implicitly excluded from this category?

The Court also stated that the use of force by State agents ‘may’ bring the individual within the jurisdiction and refrained from using the term ‘will’ bring. This implies that the sheer use of force extraterritorially by a State-agent is not enough to create a jurisdictional link between the Member State and the individual whom the agent used force over. This way the Court retains some latent discretion in future case-law as to when the individual falls within the State’s control and thus jurisdiction, but this also brings forward the question of when control arises.

The Court’s statement also makes it unclear whether the jurisdictional link is established from the moment of arrest, or whether it requires a continuous act of deprivation of liberty of that person. If the link already occurs by the instantaneous act of arrest, jurisdiction could also arise the moment an agent fires a missile or a shot. Conversely, if it requires a longer detention, the opposite conclusion arises.<sup>159</sup>

### Public powers

The third instance<sup>160</sup> is situations where a Member State, “*through consent or an invitation from the government of that territory, exercises all or some of the public powers normally to be exercised by that Government.*”<sup>161</sup> If the Member State’s agents carry out any executive or judicial power in these instances, the State may be responsible for any breaches of the Convention committed on that territory, *if any of these acts are attributable to the Member State and not to the territorial state.*<sup>162</sup>

The *Bankovic* judgement also included the mentioning of ‘public powers’<sup>163</sup> but it was unclear whether this contributed to the personal or spatial jurisdiction. The Court in this present judgement appears to reposition this notion from the spatial basis to the personal model instead.<sup>164</sup>

The Court used this conception of jurisdiction in the case at hand, and stated that the instantaneous acts of the UK soldiers, such as shootings, automatically created a jurisdictional link to the State<sup>165</sup>:

“[T]he United Kingdom [...] assumed in Iraq the exercise of some of the public powers normally to be exercised by a sovereign government. In particular, the United Kingdom assumed authority and responsibility for the maintenance of security in south-east Iraq. In these exceptional circumstances, the Court considers that the United Kingdom, through its soldiers engaged in security operations in Basra during the period in

---

<sup>157</sup> Ibid, page 24, para 67.

<sup>158</sup> Al-Skeini, page 59, para 136

<sup>159</sup> Wallace, page 57-58 & Mallory, page 176

<sup>160</sup> The second instance in the judgement

<sup>161</sup> Al-Skeini, page 58, para 135

<sup>162</sup> Ibid

<sup>163</sup> Bankovic, page 20, para 71

<sup>164</sup> Mallory, page 169

<sup>165</sup> Wallace, page 58

question, *exercised authority and control over individuals killed* in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention.”<sup>166</sup> (emphasis added)

However, there is a key difference between this model and the standard personal jurisdiction-model. The Court notes, that if a State is exercising some public powers overseas, the instantaneous act of killing an individual constitutes the exercise of ‘authority and control’ over that individual. The model used by the Court in this judgement to create a jurisdictional link, is a mixture of the ‘normal’ personal jurisdiction, which relies on authority and control over individuals, and the spatial jurisdiction, which relies on the exercise of public powers and effective control over areas.<sup>167</sup> Stuart Wallace gave this type of jurisdiction a ‘third name’, referring to it as “personal plus jurisdiction”<sup>168</sup>, as it focuses on the State agent’s exercise of authority and control, but the limit for establishing extraterritorial jurisdiction appears to be lower, since the instantaneous act – if attributable to the State - is enough to automatically create a jurisdictional link.

### **6.3.2.1 Dividing and tailoring the Convention’s obligations**

The Court made a significant distinction between spatial and personal jurisdiction by stating that when a State exercises spatial jurisdiction, it is required to fulfil all the obligations of the Convention in that specific area<sup>169</sup>, whereas, when a State agent exercises control and authority over an individual, and thus jurisdiction, that State is required to secure all the rights and freedoms that are relevant to that specific situation. Contrary to what was stated in *Bankovic*, this meant that the Convention could be ‘divided and tailored’.<sup>170</sup>

The Court referenced *Bankovic* directly as they made this conclusion, thus taking a clear stance and distancing itself from the finding in *Bankovic*.

### **6.3.2.2 Partial conclusion**

The Court noted that extraterritorial jurisdiction could be exercised through the spatial and personal jurisdiction doctrine. It also interpreted the element of ‘public powers’ as a contribution to the personal jurisdiction, which constituted a third ‘personal plus’ jurisdiction model. This model meant that if a State exercised some or all of the public powers in a territory of another state that the instantaneous act, such as shooting an individual, in itself would be enough to constitute the exercise of authority and control, thus trigger jurisdiction and the application of the Convention.

## **Member States’ extraterritorial control and authority over individuals**

### **7.1 Arrest and detention on the territory of another state and in international waters**

The fact that an individual has been detained by State agents has in several judgments been the decisive factor for the Court to rule that the State agent who detained the individual exercised control and authority and thus personal jurisdiction over the detained person. Examples of this is seen above under section 4.3.2. This approach was also followed in the later case of *Hassan v. United Kingdom*<sup>171</sup>, where the Court stated that Tarek Hassan, during the active hostilities phase of the

---

<sup>166</sup> Al-Skeini, page 62-63, para 149

<sup>167</sup> Wallace, page 58

<sup>168</sup> Ibid

<sup>169</sup> Al-Skeini, page 59-60, para 138

<sup>170</sup> Ibid, page 59, para 137

<sup>171</sup> Hassan v the United Kingdom, 16<sup>th</sup> of September 2014

international armed conflict in Iraq, was under the physical power and control of the British armed forces, and thus UK jurisdiction, from the moment of detention until release.<sup>172</sup>

## 7.2 Killing of a person on another state's territory without prior arrest or detention

As seen above in section 4.3.2. and 5.1., the Court has made a consistent line of establishing personal jurisdiction in cases where State agents arrest or detain an individual abroad, stating that this is the exercise of physical power and control. Contrary to this, case law concerning situations where State agents kill individuals abroad without detaining them has led to a lot of inconsistencies throughout the decades.

The analysis below concerns situations where the Member State does not exercise spatial jurisdiction on the territory where the person is killed and will instead focus on the question of personal jurisdiction.

The cases below will touch on the element of proximity, which the Court uses to distinguish isolated and specific acts to bombing and artillery shelling in order to seek control of an area, and whether an instantaneous act of killing an individual abroad is enough to establish personal jurisdiction.

In certain circumstances the Court have found it necessary to make a distinction between the substantive and the procedural limb of the provisions when determining whether to establish extraterritorial jurisdiction. In some cases the Court have found a strong enough jurisdictional link to render the procedural limb of Article 2 applicable. The Court has found this in situations where a State's domestic law obliges it to initiate an effective investigation into the death of the individual and in circumstances where the Court deems there to be 'special features'.<sup>173</sup> Whereas the Court would demand more in order to establish personal or spatial jurisdiction and trigger the substantive part of Article 2 applicable.

This distinction is depicted in *Güzelyurtlu with Others v Cyprus & Turkey*<sup>174</sup>, where three Cypriot nationals of Turkish-Cypriot origin in 2005 were found dead with gunshot wounds in the territory controlled by the Cypriot government. The applicants claimed that both Cyprus and Turkey had violated the procedural limb of Article 2.

Both the Cyprus and Turkish, including the TRNC<sup>175</sup>, authorities immediately opened criminal investigations into the deaths. The Cypriot investigation found 8 suspects who were arrested and questioned by the TRNC authorities, but both investigations reached a standstill and though the cases remained open, nothing was done after 2008.

The Court noted that the TRNC instigated an investigation into the deaths and had taken statements from the applicants, which created a jurisdictional link to Turkey, because Turkey was responsible for the TRNC's acts and omissions.<sup>176</sup>

The Court also noted that there were 'special features' which constituted a jurisdictional link.<sup>177</sup> One of the special features was that Turkey was recognised by the international community as occupying the Northern Cyprus, and TRNC was not recognised as a State. The Court noted that Turkey was exercising effective control over Northern Cyprus. The second special feature was that the suspects had fled to the TRNC, which prevented Cyprus from instigating an effective investigation and thus from fulfilling its obligations after the Convention.<sup>178</sup>

---

<sup>172</sup> Ibid, page 42, para 80

<sup>173</sup> Kjølbros, page 56

<sup>174</sup> *Güzelyurtlu & Others v Cyprus & Turkey*, 29<sup>th</sup> of January 2019

<sup>175</sup> The Turkish Republic of Northern Cyprus

<sup>176</sup> *Güzelyurtlu & Others v Cyprus & Turkey*, page 45, para 191

<sup>177</sup> Ibid, page 45, para 192

<sup>178</sup> Ibid, page 45-46, para 192-194

The Court concluded that each element – the investigation by the TRNC and the suspects fleeing to a part of Cyprus where Turkey exercises effective control - in itself would be enough to establish a jurisdictional link after the procedural limb of Article 2.<sup>179</sup>

This distinction of establishing a jurisdictional link between the procedural and substantive limb of Article 2 will also be demonstrated in the cases below.

### 7.2.1 Georgia v Russia No 2 - In the context of chaos

The recent judgement *Georgia v Russia No 2*<sup>180</sup>, dissociates from the approach in *Al-Skeini* mentioned above under 4.3.2. and instead resurrects the approach in *Bankovic* under 4.3.1.3., regarding the Court's view on instantaneous acts.

The case concerned the war in the South Ossetia and Abkhazia in 2008. Legally both South Ossetia and Abkhazia are parts of Georgia, but they have not been effectively governed by Georgian authorities since the collapse of the Soviet Union in 1991.<sup>181</sup> During the night of the 7<sup>th</sup> and 8<sup>th</sup> of August 2008, Georgia artillery attacked South Ossetia<sup>182</sup>, which resulted in Russian troops marching through South Ossetia and Abkhazia into Georgian territory the next day.<sup>183</sup> Russian and Georgian troops fought for five days until a ceasefire was set into place on the 12<sup>th</sup> of August 2008.<sup>184</sup> The Russian troops remained present until October 2008.<sup>185</sup>

Georgia complained of multiple systematic violations of the Convention, including Article 2.

An important distinction made by the Court, which shaped this whole case is between the 'active hostilities' phase of the conflict, lasting from the 8<sup>th</sup>-12<sup>th</sup> of August 2008, and the ceasefire on the 12<sup>th</sup> of August.<sup>186</sup>

The first part of the analysis concern the question of jurisdiction during the active hostiles and then proceeds to raise the question of jurisdiction during the time after the ceasefire on the 12<sup>th</sup> of August.

#### Spatial jurisdiction – active phase

The Court found that Russia had no effective control over the South Ossetia and Abkhazia territory during the 'active phase', noting:

“[...] [I]n the event of military operations – including, for example, armed attacks, bombing or shelling – carried out during an international armed conflict one cannot generally speak of “effective control” over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos means that there is no control over an area. This is also true in the present case, [...]”<sup>187</sup>

An important conclusion from this case is the element of 'context of chaos'. The Court firmly states that during the 'active phase' of the armed conflict there is such chaos that no State can exercise effective control over the territory, thus not creating spatial jurisdiction over the area.

---

<sup>179</sup> Ibid, page 46, para 196

<sup>180</sup> *Georgia v Russia No 2*, 21<sup>st</sup> of January 2021,

<sup>181</sup> Arato, "Georgia v Russia (II)", April 2021, page 288

<sup>182</sup> *Georgia v Russia No 2*, page 11, para 35

<sup>183</sup> Ibid, page 11, para 36

<sup>184</sup> Ibid, page 11, para 40

<sup>185</sup> Ibid, page 12, para 44

<sup>186</sup> *Georgia v Russia No 2*, page 15, para 51-53

<sup>187</sup> Ibid, page 46, para 126

### Personal jurisdiction – active phase

The Court then proceeds to examine if the personal model applies during this active phase.<sup>188</sup> The Court concluded that Russia did not exercise personal jurisdiction during the active phase either, however, the solution the Court arrives at is less clear and transparent than the conclusion on the spatial model.

The Court initially confirmed that they have established jurisdiction in similar cases where State agents shot and killed individuals without prior detention or arrest, such as *Pad* and *Andreou* described above under 4.3.1.3.<sup>189</sup> However, the Court proceeded to distinguish these cases as concerning isolated and proximate acts<sup>190</sup>, where this present case concerns bombing and artillery shelling by Russian forces in order to establish control over the areas forming part of Georgia.<sup>191</sup>

As another argument for the conclusion, the Court referenced *Bankovic* noting that an instantaneous act of a bombing in itself is not enough to trigger a jurisdictional link, which was reaffirmed in *Medvedyev and Others*.<sup>192</sup> The Court agrees with this previous approach to ‘instantaneous acts’<sup>193</sup>, and then reaches the same solution as with spatial jurisdiction during the active phase, stating:

“[...] [T]he Court attaches decisive weight to the fact that the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a *context of chaos* not only means that there is *no “effective control”* over an area [...], but also excludes any form of “State agent authority and control” over individuals.”<sup>194</sup> (emphasis added)

By reaching this conclusion, the Court resurrects the approach in *Bankovic* concerning ‘instantaneous acts’ not being enough in itself to trigger personal jurisdiction.

The Court, however, is being vague about how exactly their statement is supposed to be interpreted. The differences being that the referenced cases such as *Pad* and *Andreou* concerned some kind of one-off use of lethal force where this present case and *Bankovic* are instances of a systematic use of lethal force through bombing and shelling resulting in massive killings.<sup>195</sup>

The Court also uses the phrase ‘proximity’ in their statement as another element of contrast between the two conclusions. In contrast to *Bankovic* where an airstrike was launched, this is in closer proximity as there was ‘boots on the ground’ in this case, however it still was not in such a proximity to trigger jurisdiction. Without a justification by the Court for this approach, this could be read to mean that the Court deems a one-off killing more deserving of protection than mass killing during armed conflicts, which appear to be an arbitrary application of the Convention.<sup>196</sup>

The partly dissenting judge Albuquerque distanced itself from the majorities’ approach to proximity and instantaneous act, noting:

---

<sup>188</sup> Ibid, page 46, para 127

<sup>189</sup> Ibid, page 47, para 131

<sup>190</sup> Ibid, page 47, para 132

<sup>191</sup> Ibid, page 47, para 133

<sup>192</sup> Georgia v Russia No 2, page 47-48, para 134-135

<sup>193</sup> Ibid, page 48, para 137

<sup>194</sup> Ibid, page 48, para 137

<sup>195</sup> Milanovic, “Georgia v Russia No 2: The European Court’s resurrection of Bankovic in the Context of Chaos”, January 25<sup>th</sup> of 2021, page 4

<sup>196</sup> Ibid, page 4

“The shooting of an individual by State agents constitutes the ultimate form of the exercise of State control, no matter the precise location of the actual shooter or the victim, the control exerted over the area where the shooter or the victim find themselves or the deliberate or negligent nature of the shooting.”<sup>197</sup>

The partly dissenting judges Yudkivska, Wojtyczek, and Chanturia also distanced themselves from the idea of proximity used by the majority to not establish extraterritorial jurisdiction, stating:

“We do not see why proximity should be relevant. [...] More importantly, if jurisdiction has been established in respect of “isolated and specific acts”, it is obvious that the respondent State exercises jurisdiction within the meaning of Article 1 when it undertakes a large-scale operation involving innumerable acts with far-reaching consequences.”<sup>198</sup>

This case is still relatively new and thus we will have to wait and see how the Court chooses to read and interpret the element of proximity in future cases concerning lethal force by soldiers during armed conflicts abroad.

These cases are a long way from incident to judgment and subsequently there will naturally be a change of the sitting judges along the way and there will therefore be other eyes on this kind of case. It is therefore possible that later judgments do not follow this line of conclusion, as the Court has a dynamic style of interpretation and is a 'living instrument' as mentioned above in section 2.1.

### Conclusion – active phase

The Court maintained that the scale of the armed conflict prevented it from being able to establish extraterritorial jurisdiction in this present case<sup>199</sup>, stating:

“[...] [H]aving regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention (specifically, international humanitarian law or the law of armed conflict), the Court considers that it is not in a position to develop its case-law beyond the understanding of the notion of “jurisdiction” as established to date.”<sup>200</sup>

The Court concluded that Russia did not exercise either personal or spatial jurisdiction during the active phase of the conflict.

### Procedural limb of Article 2

Even though the Court concluded that Russia had no jurisdiction during the active phase, it concluded that Russia still had an obligation to investigate potential unlawful deaths even if they happened during the active phase.<sup>201</sup>

---

<sup>197</sup> Georgia v Russia No 2, (separate opinions), page 206, para 9

<sup>198</sup> Georgia v Russia No 2, (separate opinions), page 192, para 9

<sup>199</sup> Arato, “Georgia v Russia (II)”, page 289

<sup>200</sup> Georgia v Russia No 2, page 48, para 141

<sup>201</sup> Ibid, page 138-139, para 332 & 336-337

The Court referenced *Güzelyurtlu*<sup>202</sup>, which is described above in section 6.2., and noted three special features for establishing a jurisdictional link, which would trigger the procedural limb of Article 2.

Firstly, Russia had an obligation after both domestic law and IHL to investigate the events at issue, and Russia took steps to investigate those allegations.<sup>203</sup> Secondly, the Court found that Russia established effective control over the South Ossetia and Abkhazia territory shortly after the ceasefire.<sup>204</sup> Thirdly, all the potential suspects of the Russian personnel were located within the either the Russian Federation or in the territories under the control of the Russian Federation.<sup>205</sup>

This is an important part of the ruling, as it determines that States in the future may have an obligation to investigate possible war crimes after the procedural limb of Article, even if the war crimes themselves is not committed within the State's jurisdiction.<sup>206</sup>

Although the Court distinguishes between the active phase and the occupation phase, it concludes that everyone detained by Russia is within its jurisdiction regardless of whether they were detained during the active phase or the occupation phase.<sup>207</sup> The Court does not supply a reasoning for this conclusion<sup>208</sup>, simply noting:

“In so far as the Georgian civilians were mostly detained after the hostilities had ceased, the Court concludes that they fell within the jurisdiction of the Russian Federation within the meaning of Article 1 of the Convention. [...]”<sup>209</sup>

### The ceasefire

After the ceasefire on the 12<sup>th</sup> of August 2008, the Court ruled that Russia exercised effective control over the territory of South Ossetia, Abkhazia and the ‘buffer zone’.<sup>210</sup> The Court concluded this based on the strength and size of the Russian military present as well as at the economic, military and political support that Russia provided the Abkhazia and South Ossetian forces.<sup>211</sup>

Armed conflicts rarely have a clear dividing line between conflict and truce, and it is difficult to say how the Court will use this method in the future in situations that are even more fluid between when there is an active phase and a ceasefire. The precedent value of the judgment is weakened, as the on/off switch of jurisdiction is specific to the circumstance of this case at hand and cannot simply be applied to all future judgments concerning armed conflicts. If the Court's reasoning had been less categorical and more nuanced it would make it possible to use the reasoning on several future cases about armed conflicts.<sup>212</sup>

---

<sup>202</sup> Ibid, page 138, para 330

<sup>203</sup> Georgia v Russia No 2, page 138, para 331

<sup>204</sup> Ibid, page 138, para 331

<sup>205</sup> Ibid, page 138, para 331

<sup>206</sup> Milanovic, “Georgia v Russia No 2: The European Court's resurrection of Bankovic in the Context of Chaos”, page 10

<sup>207</sup> Georgia v Russia No 2, page 106, para 238-239

<sup>208</sup> Arato, “Georgia v Russia (II)”, page 290,

<sup>209</sup> Georgia v Russia No 2, page 106, para 239

<sup>210</sup> Ibid, para 214 and 294-295

<sup>211</sup> Ibid, page 66-69, para 165-175

<sup>212</sup> Milanovic, “Georgia v Russia No 2: The European Court's resurrection of Bankovic in the Context of Chaos”, January 25<sup>th</sup> of 2021, page 3-4

### 7.2.1.1 Partial conclusion

The Court appear to restrict the scope and applicability of the Convention during armed conflicts and undermines its position and function as protecting human rights as it refuses to apply the Convention in the context of armed conflicts, although it still opens the possibility for conceptualised jurisdiction under the procedural limb of Article 2 even during the active hostilities. The conclusions and solutions in this case is mainly applicable to the case at hand and does not provide clear standards on how it will apply to other matters of armed conflicts. This weakens the legal certainty<sup>213</sup> for the States concerning their obligations during armed conflicts.

The case resurrects the approach in *Bankovic* that the instantaneous act of a shooting or bombing is not enough in itself to establish a jurisdictional link.

The Court uses the phrase of “in the context of chaos” to state that in such situations no one has effective control over either the area nor can the soldiers exercise control and authority over individuals and therefore there can be no trigger of personal or spatial jurisdiction after Article 1 in such situations. As a result of this, the Court will have to separate such active phases of chaos and the occupation phase when it is to determine future issues of jurisdiction during armed conflicts in the context of chaos.

From the Court’s reasoning on ‘proximity’ it is unclear where the line is drawn between proximate or close combat lethal force that is not bombing or shelling which will trigger the personal jurisdiction and airstrikes or shelling in the context of chaos, which will not trigger the personal jurisdiction. This part of the judgement could be construed as an incentive for the States to create chaos and avoid detaining and arresting individuals, as this would create a jurisdictional link, and avoid targeted killing and instead commit remote large-scale killings.

As for the conceptualised jurisdiction regarding the procedural limb in Article 2, the later case of *Hanan*, mentioned in the following, will determine whether the Court follows this line.

### 7.2.2 Hanan v Germany

In the case of *Hanan*<sup>214</sup> the Court had the opportunity to follow the approach in *Georgia v Russia No 2* concerning the procedural limb of Article 2.

Following the attacks on 11<sup>th</sup> of September 2001 on the twin towers in New York, the US together with the UK sent armed forces to Afghanistan on the 7<sup>th</sup> of October 2001 with the purpose to destroy terrorist training camps and infrastructure as well as capture Al-Qaeda leaders to take away the power from Taliban.<sup>215</sup> On the 16<sup>th</sup> of November 2001 Germany authorised and deployed 3.900 German soldiers to cooperate in the same operation as the US and UK in Afghanistan.<sup>216</sup>

The case of *Hanan* concerns an incident on the 4<sup>th</sup> of September 2009, where a German colonel who served in an International Security Assistance Force under the mandate of the UN, issued an airstrike on two fuel tankers strongly suspected to have been hijacked by Taliban insurgents in Afghanistan. The strike led to the killing of both civilians and insurgents.<sup>217</sup> A German prosecutor instigated an investigation into the deaths, which was then discontinued as the prosecutor found lack of foundation for the colonel’s liability.<sup>218</sup>

The applicant only claimed that the procedural limb of Article 2 was violated.

The Court referenced *Güzelyurtlu*, mentioned above under 5.2. and concluded that the mere act of a domestic investigation concerning deaths that occurred outside a State’s *ratione loci*, was not in this

---

<sup>213</sup> Mentioned under section 2.1.

<sup>214</sup> *Hanan v Germany*, 16<sup>th</sup> of February 2021

<sup>215</sup> *Hanan v Germany*, page 3-4, para 10

<sup>216</sup> *Ibid*, page 4, para 11

<sup>217</sup> *Ibid*, page 6, para 25

<sup>218</sup> *Ibid*, page 8, para 32-33

present case enough to establish a conceptualised jurisdictional link. The Court found that this would broaden the scope of the application of the Convention too far and take away the exceptionality of the extraterritorial application.<sup>219</sup> As mentioned in section 5.2. *Güzelyurtlu* notes the possibility of establishing jurisdiction on the basis of ‘special features’.

In this present case the Court found three special features. Firstly, that Germany was obliged under IHL to investigate the airstrike. Secondly, that the Afghan authorities for legal reasons were prevented from making a criminal investigation and thirdly that the German prosecution authorities were obliged under domestic law to initiate an investigation.<sup>220</sup>

The Court concluded that these special features established a jurisdictional link triggering the procedural limb of Article 2, in line with what was found in *Georgia v Russia No 2* under section 5.2.1.<sup>221</sup>

### 7.2.3 Makuchyan and Minasyan v. Azerbaijan and Hungary – does the Convention apply to assassinations abroad?

According to Milanovic<sup>222</sup>, this recent judgement of *Makuchyan and Minasyan v. Azerbaijan and Hungary*<sup>223</sup>, is the first case where the Court has had to determine whether the Convention applied to extraterritorial targeted killings outside the context of an armed conflict. The Court did not expressly state whether this was the case, but instead left open the possibility that the Convention could apply to extraterritorial targeted killing.

The incident took place in 2004, where two Armenian army officers and one Azerbaijani officer went to Budapest, Hungary, to attend a NATO-sponsored English language course. During the stay in Hungary, the Azerbaijani officer (R.S.) beheaded one of the Armenian officers and attempted to do the same to the other but was apprehended by Hungarian police before he was able to do so.<sup>224</sup> R.S. was prosecuted in Hungary and sentenced to life in prison.<sup>225</sup> 8 years later he was transferred back to Azerbaijan to serve the remainder of his sentence. However, here he was pardoned, released, and promoted.<sup>226</sup>

The applicants are the surviving Armenian officer and the deceased officer’s relatives. They claimed that Azerbaijan had violated both the substantive and procedural limb of Article 2. The former because they claimed R.S. was an Azerbaijani State agent, and the latter because Azerbaijan released him from prison.<sup>227</sup>

Due to the limited scope of this thesis, I will not discuss the issue of jurisdiction concerning Hungary but will focus on the issue of jurisdiction regarding Azerbaijan. This thesis will only analyse Article 2 in so far as it is relevant in order to answer the question of extraterritorial jurisdiction satisfyingly. For an analysis of the issue of Article 2, see Milanovic<sup>228</sup>.

---

<sup>219</sup> Ibid, page 41, para 112

<sup>220</sup> Ibid, page 50-51, para 136-139

<sup>221</sup> Ibid, page 52, para 142

<sup>222</sup> Milanovic, “Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary”, 10<sup>th</sup> of July 2020, page 4

<sup>223</sup> Makuchyan and Minasyan v. Azerbaijan and Hungary, 26<sup>th</sup> of May 2020

<sup>224</sup> Makuchyan and Minasyan v. Azerbaijan and Hungary, page 2, para 8-9

<sup>225</sup> Ibid, page 4, para 15

<sup>226</sup> Ibid, page 5, para 20-21

<sup>227</sup> Ibid, page 1-2, para 4

<sup>228</sup> See Milanovic, “Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary”,

All alleged violations were extraterritorial in nature. The applicants claim that Azerbaijan is responsible after the substantive limb of Article 2 for R.S.'s actions in Hungary, and responsible after the procedural limb of Article 2 by releasing R.S. in Azerbaijan where the applicants never set foot.<sup>229</sup>

### Procedural limb of Article 2

As in *Georgia No 2*<sup>230</sup> and *Hanan*<sup>231</sup> the Court referenced *Güzelyurtlu*<sup>232</sup>, in order to determine the issue of jurisdiction concerning the procedural limb of Article 2.

The Court concluded that R.S.'s presence on Azerbaijani territory and the fact that Azerbaijan had sought his transfer in order to continue his prison sentence in his home country, constituted 'special features', which triggered the applicability of the Convention in relation to the procedural limb of Article 2.<sup>233</sup>

### Substantive limb of Article 2

The issue of the substantive limb was whether the Convention applied to extraterritorial assassinations by State agents outside of an armed conflict.<sup>234</sup> The Court framed the issue to be determined after the personal jurisdiction, which was intertwined with the applicant's allegations under Article 2 and was to be examined simultaneously.<sup>235</sup>

As seen in the above-mentioned cases of the thesis, the question of whether the Convention applies to the instantaneous acts abroad has been inconsistent. From *Bankovic*<sup>236</sup> where the Court reached the conclusion that an airstrike was not enough to create an extraterritorial jurisdictional link. To *Al-Skeini*<sup>237</sup> where the Court accepted that the shooting of an individual was an exercise of power and control over them, but at the same time incorporated a limiting principle of 'public powers' into the analysis of the personal concept of jurisdiction.

To the cases of *Pad v Turkey*<sup>238</sup> and *Andreou v Turkey*<sup>239</sup> where the mere shooting of the deceased was enough to establish a jurisdictional link.

The Court does not state whether the instantaneous act of beheading the first applicant was sufficient to establish a jurisdictional link.

The Court did, however, leave the door open to the possibility that the Convention could apply in these types of cases, by not saying that the Convention did not apply to the targeted killing by a State agent.<sup>240</sup> This implicit reading stems from the fact that the Court did not dismiss the case during an analysis of Article 1<sup>241</sup>, but rather assumed that Article 1 could apply to assassinations abroad and went on to examine whether Article 2 was violated.<sup>242</sup>

---

<sup>229</sup> Ibid, page 3 & Dzehtsiarou, "Makuchyan and Minasyan v. Azerbaijan and Hungary", April 2021, page 295,

<sup>230</sup> See section 5.2.1 for further analysis

<sup>231</sup> See section 5.2.2 for further analysis

<sup>232</sup> See section 5.2. for further analysis

<sup>233</sup> Makuchyan and Minasyan v. Azerbaijan and Hungary, page 23, para 49-51

<sup>234</sup> Milanovic, Article, "Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary", page 4,

<sup>235</sup> Makuchyan and Minasyan v. Azerbaijan and Hungary, page 23, para 52

<sup>236</sup> See section 4.3.1.3.

<sup>237</sup> See section 4.3.2.

<sup>238</sup> See section 4.3.1.3.

<sup>239</sup> See section 4.3.1.3.

<sup>240</sup> Milanovic, "Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary", page 5,

<sup>241</sup> Ibid

<sup>242</sup> Makuchyan and Minasyan v. Azerbaijan and Hungary, page 40, para 120

The Court reached the conclusion that the killing and attempted killing of the Armenian officers by R.S. was not attributable to Azerbaijan. Since there was no attribution to the state, the substantive limb of Article 2 was not violated, thus no jurisdictional link.<sup>243</sup>

#### 7.2.4 Carter v Russia – applying the Convention to extraterritorial assassinations

The case of *Carter v Russia*<sup>244</sup> touched on the element of proximity mentioned in *Georgia v Russia No 2*<sup>245</sup> and whether the Convention is applicable to assassinations committed abroad outside an armed conflict.

This judgement turned out to be remarkable as it was the first case where the Court expressly stated that the Convention applied to extraterritorial assassinations. The Court also used a new approach in interpreting “effective control and authority” under the personal jurisdiction doctrine and distanced itself from the approach in *Bankovic*, which was reaffirmed in *Georgia v Russia No 2*, about the question of whether an instantaneous act or the power to kill an individual in itself will trigger personal jurisdiction.<sup>246</sup>

The case concerns the deceased Mr Litvinenko, who worked in the USSR Committee for State Security<sup>247</sup>, before he fled from Russia in September 2000 and fled to the UK<sup>248</sup>, after going public with the allegations that he was asked to carry out unlawful operations, such as assassinations.<sup>249</sup>

In the UK Mr Litvinenko involved himself in exposing corruption in Russian intelligence service and their link to organised crime.<sup>250</sup> In November 2006 Mr Litvinenko was hospitalised after becoming ill and later passed away. The cause of death was exposure to high levels of the radioactive matter polonium 210, which he had ingested.<sup>251</sup> A police investigation in 2007 by UK authorities determined there was sufficient evidence to charge the Russian nationals Mr Lugovoy and Mr Kovtun for the murder of Mr Litvinenko.<sup>252</sup> In 2016 a public inquiry was carried out, which established that Mr Lugovoy and Mr Kovtun beyond reasonable doubt had poisoned Mr Litvinenko’s tea under the administration of Russian authorities.<sup>253</sup>

The applicant, Mr Litvinenko’s belated wife, claimed that Article 2 was violated in both its substantive; assassinated by Mr Lugovoy and Mr Kovtun acting as Russian State agents, and the procedural limb, Russia had not instigated an effective investigation into the death.<sup>254</sup>

#### Instantaneous act

Mr Litvinenko was assassinated by Russian State agents with a ‘one-off’ use of lethal force. In *Makuchyan* the Court left open the possibility of an extraterritorial assassination creating a jurisdictional link. In *Georgia No 2* the Court reached the conclusion that the Convention could not apply in ‘the context of chaos’<sup>255</sup> but did at the same time mention judgements such as *Pad* and

---

<sup>243</sup> Ibid, page 36-39, para 111-118

<sup>244</sup> *Carter v Russia*, 28<sup>th</sup> of February 2022

<sup>245</sup> See section 5.2.1.

<sup>246</sup> Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, September 23, 2021, page 1,

<sup>247</sup> *Carter v Russia*, page 2, para 6

<sup>248</sup> Ibid, page 2 para 8

<sup>249</sup> Ibid, page 2, para 7

<sup>250</sup> Ibid, page 2-3, para 10

<sup>251</sup> Ibid, page 6, para 30-34

<sup>252</sup> Ibid, page 7, para 37

<sup>253</sup> Ibid, page 12, para 62

<sup>254</sup> Ibid, page 24, para 111

<sup>255</sup> Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, page 1-2

*Andreou*, where the Court found personal jurisdiction as they concerned an element of ‘proximity’ and were ‘isolated acts’.<sup>256</sup>

The Court in this case referenced this distinction from *Georgia No 2*, noting:

“[I]n the view of the Court, the principle that a State exercises extraterritorial jurisdiction in cases concerning specific acts involving an element of proximity should apply with equal force in cases of extrajudicial targeted killings by State agents acting in the territory of another Contracting State outside of the context of a military operation.”<sup>257</sup>

Applying this to the case the killing of Litvinenko was a targeted killing with an element of proximity, as the State agents had lunch with the deceased as they put the lethal poison in his tea, which was an isolated act.

As will be demonstrated below, the Court emphasised the element of proximity in their analysis of whether the State agents exercised personal jurisdiction over Mr Litvinenko.

#### The Court’s interpretation of the ‘power and control’

In order to determine whether Russia exercised personal jurisdiction over Litvinenko the Court divided the reasoning into two questions:

“i) whether the assassination of Mr. Litvinenko amounted to the exercise of physical power and control over his life in a situation of proximate targeting, and (ii) whether it was carried out by individuals acting as State agents.”<sup>258</sup>

By doing this the Court intertwines Article 1 and 2, as it holds that jurisdiction after the substantive part of Article 2 requires further deliberations of the facts in the case, particularly whether the killing can be attributed to the Russian State. The Court states that there is a relationship between jurisdiction and attribution; in order for the Russian State to have jurisdiction over the deceased it has to be responsible for the killing<sup>259</sup>, similar to the approach the Court took in *Makuchyan and Minasyan v. Azerbaijan and Hungary*.

Due to the limited scope of this thesis only question 1 will be analysed, for an analysis of question 2 see Milanovic.<sup>260</sup>

The Court answered the first question in a very concise manor, noting:

“When putting the poison in the teapot from which Mr. Litvinenko poured a drink, they knew that, once ingested, the poison would kill Mr. Litvinenko. The latter was unable to do anything to escape the situation. In that sense, he was *under physical control of Mr. Lugovoy and Mr. Kovtun who wielded power over his life*.

---

<sup>256</sup> See section 4.3.1.3.

<sup>257</sup> Carter v Russia, page 31, para 131

<sup>258</sup> Ibid, page 36, para 150

<sup>259</sup> Ibid, page 38, para 161

<sup>260</sup> See Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, page 6-8

In the Court's view, the administration of poison to Mr. Litvinenko by Mr. Lugovoy and Mr. Kovtun amounted to the exercise of physical power and control over his life in a situation of proximate targeting [...]”<sup>261</sup> (emphasis added)

The remarkable thing about the statement is the use of “physical power and control *over his life*”.<sup>262</sup> It is the power and control over the person's *rights*<sup>263</sup>, which is the Court's focus as opposed to the power and control over his physical body, stating that extraterritorial jurisdiction cannot be confined to situations of detention and arrest.<sup>264</sup> With this conclusion the Court appears to distance itself from *Bankovic* and *Georgia No 2* concerning the approach to ‘instantaneous acts’. In *Carter* the Court states that the one-off use of force over the deceased was an exercise of power and control over that individual's life, whereas this cause-and-effect was not enough to trigger jurisdiction in *Bankovic* or *Georgia No 2*.

Even though the Court in this case provides a more general view of the personal jurisdiction doctrine, it holds all the exceptions mentioned in *Georgia No 2*<sup>265</sup>; proximity and a one-off killing. Thus, only new case law about armed conflicts will determine whether the approach in *Carter*, where the power to kill is enough to trigger personal jurisdiction, or whether the exception of ‘context of chaos’ from *Georgia No 2* will be justified and upheld.

#### Procedural limb of Article 2

Regarding the procedural part of Article 2, the Court follows the line specified in *Güzelyurtlu*, which was affirmed in *Georgia No 2* and *Hanan*.

Russia instigated an investigation into the death of Mr Litvinenko, which was described by domestic law. The Court stated that this in itself was enough to create a jurisdictional link.<sup>266</sup>

In addition to this, the Court noted there was a ‘special feature’, which established a jurisdictional link. This feature was that the murder suspects fled to Russia where they enjoyed constitutional protection from extradition to the UK. This prevented the UK authorities from prosecuting the suspects. This in addition to the fact that Russia had exclusive jurisdiction over the suspects who were accused of serious human rights violations triggered a jurisdictional link.<sup>267</sup> The Court's reasoning for this finding, was that the opposite finding would “undermine the fight against impunity for serious human-rights violations”.<sup>268</sup>

#### Partial conclusion

Jurisprudence from the Court has long needed a consistent approach to extraterritorial jurisdiction, with a coherent yet flexible approach to secure ‘legal certainty’ for the States.

The Court's approach in *Carter* appears to be in line with the jurisprudence from the Human Rights Committee in its General Comment 36 where the decisive factor is the State's direct and foreseeable impact on the right to life of individuals outside their territory.<sup>269</sup> The ‘right to life’ was also of

---

<sup>261</sup> *Carter v Russia*, page 38, para 160-61

<sup>262</sup> *Ibid*, page 38, para 160-61

<sup>263</sup> Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, page 5

<sup>264</sup> *Carter v Russia*, page 30, para 126-127

<sup>265</sup> See section 5.2.1.

<sup>266</sup> *Carter v Russia*, page 32, para 133

<sup>267</sup> *Ibid*, page 32, para 134

<sup>268</sup> *Ibid*

<sup>269</sup> CCPR/C/GC/36, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30<sup>th</sup> of October 2018, page 5, para 22

determining factor in *Carter*. As stated above, only future case law will determine whether this approach will be consistently applied.

## A proposal

Before the conclusion to this thesis, I will propose a new interpretation for the Court. The proposal will broaden the scope of the Convention's extraterritorial application, which could possibly lead to a broader protection after the Convention. However, the Court has restricted the scope of the Convention before, and this proposal could lead to an overflow in casework.

My proposal is to separate the question of jurisdiction concerning positive and negative obligations<sup>270</sup>. This will entail that the applicant's claim that a State has violated a negative obligation, such as that the State must refrain from taking life under Article 2, will always entail extraterritorial jurisdiction under Article 1. This does not mean that the State automatically has violated the claimed provision, but merely that jurisdiction as a preliminary admissibility is fulfilled. This solution has supporters such as Mallory<sup>271</sup>, and Milanovic<sup>272</sup> who has long advocated for this approach as he believes that the Convention should apply with no territorial limitation:

“[S]ince *any* act capable of violating that duty would be an exercise of authority, power or control over the victim.”<sup>273</sup>

This proposal will ensure that the negative obligations the State has ‘at home’ follows them abroad. In recent times, more technology has been implemented in warfare and inventive ideas used in assassinations which makes it possible to ‘kill from a distance’. This can make it difficult for the Court to assess whether the deceased was under the control of a State agent in such a way that it would trigger personal jurisdiction. However, if this solution is used, it should not be assessed whether the deceased was under the control of the State agent, but the Court can instead go directly to the question of whether the State is responsible for the death and whether it was justified under the reasons listed in Article 2. That way it will not matter whether the person died as a result of a drone strike, poison in his tea or from being stabbed. The question of proximity therefore becomes superfluous. This will result in the Convention being applied more equally on extraterritorial killings.

## Conclusion

Extraterritorial jurisdiction can be triggered from the State's exercise of spatial and personal jurisdiction. As seen in newer case law from the Court, such as *Georgia No 2*, *Makuchyan*, *Hanan* and *Carter*, a conceptualised version of extraterritorial jurisdiction can trigger the procedural limb of Article 2, and thus the application of the Convention.

Spatial jurisdiction has been applied consistently by both the Commission and the Court through the decades. This model of jurisdiction has, however, felt the impact from newer case law concerning the restrictive approach in *Bankovic*, rendering the extraterritorial application of the Convention exceptional and demanding justification from the facts of each case. This approach has held a consistent line in jurisprudence since.

---

<sup>270</sup> See section 2.4.

<sup>271</sup> Mallory, page 207-209

<sup>272</sup> See Milanovic “Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary”, page 4 & Milanovic “European Court finds Russia assassinated Alexander Litvinenko”, page 5

<sup>273</sup> Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, page 4,

When the Court determines if a State exercises spatial jurisdiction over a territory, it examines whether the State through the consent or invitation exercises some or all of the public powers in the territory or exercises effective control over the territory. The determining factor is the exercise of *de facto* control, thus rendering the legality of the action irrelevant to the Court. Some of the indicating factors of effective control is the size and strength of the military, the period of occupation and the extent to which the State's military, economic and political support to the local subordinate administration provides it with influence and control over the region.

Once the State exercises spatial jurisdiction over a territory abroad, it is responsible to fulfil all the obligations in the Convention to everyone within the occupied territory.

The Court's interpretation of the personal model has on the other hand been inconsistent and led to legal uncertainty for the States. The drafters of the Convention decided to exchange the word 'territory' with 'jurisdiction', as they believed it would be too restrictive. This could be interpreted to mean that the drafters did not intend to have a restrictive approach to the application of the Convention. This is also supported by the Commission's approach to the first cases concerning extraterritorial jurisdiction, where they, as a matter of course, applied the Convention to extraterritorial acts. However, the Court in *Bankovic* noted that the drafters also exchanged the phrase "residing within their territories" with "within their jurisdiction", as they believed the word 'residing' was too restrictive, and the Convention should apply to everyone on the territory of the Member State no matter the legality of their stay. However, as mentioned in section 2.3., preparatory work plays a limited role as an interpreting factor for the Court. This is closely linked to the fact that the Convention was drafted in 1949-1950, and the Court has a dynamic interpretation style, where the 'living instrument', mentioned in section 2.1., plays a huge role in order to apply the Convention in accordance with present day conditions.

The case law from the Commission and Court in the years from the Convention entered into force and onward to *Bankovic* in 2001 was applied consistently applied to State agents, such as diplomatic and consular representatives and armed forces, exercising control and authority over individuals abroad. *Bankovic* restricted the yearlong approach from the Commission and Court, as it stated that the application of the Convention is restricted to the 'legal space' of the Member States. This approach was quickly challenged and deviated from in the later cases of *Öcalan*, *Pad*, *Issa*, and decisively discarded in *Al-Skeini*, and has not been resurrected since.

The Court in *Bankovic* also noted that the instantaneous act, such as shooting or bombing an individual, could not amount to a "cause and effect" notion of jurisdiction. This approach has been challenged in case law post-*Bankovic* but jurisprudence has not been consistent as to whether an instantaneous act in itself is enough to trigger personal jurisdiction. *Pad* and *Andreou* established that the mere shooting of an individual was enough, but *Medvedyev* instead took the same approach as *Bankovic*.

*Al-Skeini* sought to recapitulate the bases for jurisdiction. The Court noted that the spatial and personal doctrine could establish extraterritorial jurisdiction, but it also interpreted the element of 'public powers' as a contribution to the personal jurisdiction model, thus creating a third 'personal plus' jurisdiction model. This model meant that if a State exercised some or all of the public powers in the territory of another state, the instantaneous act of shooting or bombing an individual would constitute the exercise of control and authority, thus triggering extraterritorial jurisdiction and the application of the Convention.

The Convention has been consistently applied to situations where the arrest and detention by State agents of individuals on territory abroad or international waters has constituted authority and control over that individual, thus triggering personal jurisdiction and the application of the Convention. However, case law concerning situations where State agents kill individuals abroad without prior detention or arrest has been inconsistent. Four new cases revolve around this issue and touches on the element of proximity and instantaneous acts. *Georgia No 2* resurrects the approach in *Bankovic* that the instantaneous act of shooting an individual does not in itself trigger personal jurisdiction. The Court notes that during the active war no one can exercise personal or spatial jurisdiction in the 'context of chaos'.

The Court confirmed that they had established personal jurisdiction in similar cases, such as *Pad* and *Andreou*, but distinguished these cases by noting that they concerned isolated and proximate acts, as opposed to *Georgia No 2*, which concerned bombing and artillery shelling in order to establish control over territory. The Court is being vague about how exactly their statement is supposed to be interpreted. The differences being that *Pad* and *Andreou* concerned some kind of one-off use of lethal force where *Georgia No 2* and *Bankovic* are instances of a systematic use of lethal force resulting in massive killings. Without a justification by the Court for this approach, this could be read to mean that the Court deems a one-off killing more deserving of protection than mass killing during armed conflicts, which appear to be an arbitrary application of the Convention. The dissenting judges disagreed with the majorities approach to proximity, and judge Albuquerque found the shooting of an individual by a State agent to be the ultimate form of control. The dissenting judges Yudkivska, Wojtyczek, and Chanturia noted that if an isolated and specific attack constitutes jurisdiction, it should be obvious that a large scale of systematic use of force would trigger jurisdiction.

In *Makuchyan* the Court left open the possibility that the Convention applied to extraterritorial targeted killing outside the context of an armed conflict, as it assumed jurisdiction but noted that the substantive limb of Article 2 was not violated, thus no jurisdictional link.

*Carter* is a remarkable judgement as it is the first case where the Court expressly states that the Convention applied to extraterritorial assassinations. The Court also interpreted the personal doctrine in a new approach as they concluded that it was the power and control over the individual's rights and his life that triggered extraterritorial jurisdiction. With this approach the Court appears to distance itself from the conclusion on instantaneous acts in *Bankovic* and *Georgia No 2*. However, *Carter* holds all the exceptions mentioned in *Georgia No 2*; proximity and a one-off killing. Thus, only new case law regarding armed conflicts will determine whether the approach in *Carter*, where the power to kill is enough to trigger jurisdiction or whether the exception of 'context in chaos' in *Georgia No 2* will be followed.

The Court's approach to conceptualised jurisdiction of the procedural limb of Article 2 in *Güzelyurtlu*, where an investigation described by domestic law is instigated by the State into the death is enough to trigger jurisdiction, and certain 'special features' also has the ability to establish jurisdiction, was reaffirmed in *Georgia No 2*, *Hanan*, *Makuchyan* and *Carter*. However, the Court has not provided general criteria for what can constitute as a 'special feature' but has instead noted that they are specific to each case and circumstances.

## Bibliography

### Preparatory work

Available in English, collected into one document downloaded from

<https://www.coe.int/en/web/human-rights-convention/preparatory-works>

- Council of Europe, European Court of Human Rights, Preparatory work on Article 1 of the European Convention on Human Rights, Cour (77) 9, Strasbourg, 31<sup>st</sup> of March 1977, [https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-ART1-COUR\(77\)9-EN1290551.PDF](https://www.echr.coe.int/LibraryDocs/Travaux/ECHRTravaux-ART1-COUR(77)9-EN1290551.PDF)

### Books

- Evald, Jens, *Juridisk teori, metode og videnskab*, 2nd edition, Jurist- og Økonomiforbundets Forlag, København, 2020.
- Fridrik Kjølbro, Jon, *Den Europæiske Menneskerettighedskonvention for praktikere*, 5th edition, Jurist- og Økonomiforbundets Forlag, København, 2020.
- Mallory, Conall, *Human Rights Imperialists – The Extraterritorial Application of the European Convention on Human Rights*, 1<sup>st</sup> edition, Bloomsbury Publishing Plc, Oxford & New York, 2020.
- Murdoch, Jim, *Reed and Murdoch: Human Rights Law in Scotland*, 4<sup>th</sup> edition, Bloomsbury Publishing Plc, Oxford & New York, 2017.
- Wallace, Stuart, *The Application of the European Convention on Human Rights to Military Operations*, 1<sup>st</sup> edition, Cambridge University Press, Cambridge, New York, Melbourne, New Delhi & Singapore, 2019.

### Case law from the Commission

All available in English and downloaded from [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)

- Cyprus v Turkey, App No 6780/74 and 6950/75, (Commission), 10<sup>th</sup> of July 1976.
- Freda v Italy, App No 8916/80, 7<sup>th</sup> of October 1980, (Commission).
- Hess v The United Kingdom, App No 6231/73, 28<sup>th</sup> of May 1975, (Commission plenary).
- M. v Denmark, App No 17392/90, 14<sup>th</sup> of October 1992, (Commission)
- Ramirez Sánchez v France, App No 28780/95, 24<sup>th</sup> of June 1996, (Commission plenary)
- Reinette v France, App No 14009/88, 2<sup>nd</sup> of October 1989, (Commission)
- X v Federal Republic of Germany, App No 1611/62, 25<sup>th</sup> of September 1965, (Commission plenary).
- X v The United Kingdom, App No 7547/76, 15<sup>th</sup> of December 1977, (Commission plenary)

### Case law from the Court

All available in English and downloaded from [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)

- Al-Saadoon & Mufdhi v United Kingdom, App No 61498/08, 4<sup>th</sup> of October 2010, (Court, Fourth Section).
- Al-Skeini v United Kingdom, App No 55721/07, 7<sup>th</sup> of July 2011, (Court, Grand Chamber), (referenced as ‘Al-Skeini’ in the thesis)
- Andreou v Turkey, App No 45653/99, 27<sup>th</sup> of January 2010, (Court, Fourth Section), (referenced as ‘Andreou in the thesis).

- Bankovic and Others v Belgium and 16 Other Contracting States, App No 52207/99, 12<sup>th</sup> of December 2001, (Court, Grand Chamber), (referenced as ‘Bankovic’ in the thesis).
- Behrami & Behrami v France & Saramati v France, Germany & Norway, App No 71412/01 & 78166/01, 2<sup>nd</sup> of May 2007, (Court, Grand Chamber).
- Carter v Russia, App No 20914/07, 28<sup>th</sup> of February 2022, (Court, Third Section), (referenced as ‘Carter’ in the thesis).
- Cyprus v Turkey, (merits), App No 25781/94, 10<sup>th</sup> of May 2001, (Court, Grand Chamber).
- Demir & Baykara v Turkey, App No 34503/97, 12<sup>th</sup> of November 2008, (Court, Grand Chamber).
- Drozd & Janousek v France & Spain, App No 12747/87, 26<sup>th</sup> of June 1992, (Court plenary).
- Georgia v Russia No 2, App No 38263/08, 21<sup>st</sup> of January 2021, (Court, Grand Chamber), (referenced as ‘Georgia No 2’ in the thesis).
- Güzelyurtlu & Others v Cyprus & Turkey, App No 36925/07, 29<sup>th</sup> of January 2019, (Court, Grand Chamber), (referenced as ‘Güzelyurtlu’ in the thesis)
- Hanan v Germany, App No 4871/16, 16<sup>th</sup> of February 2021, (Court, Grand Chamber), (referenced as ‘Hanan’ in the thesis).
- Hassan v United Kingdom, App No 29750/09, 16<sup>th</sup> of September 2014, (Court, Grand Chamber).
- Hirsi Jamaa & Others v Italy, App No 27765/09, 23<sup>rd</sup> of February 2012, (Court, Grand Chamber).
- Ilascu and Others v Moldova & Russia, App No 48787/99, 4<sup>th</sup> of July 2004, (Grand Chamber).
- Issa and Others v Turkey, App No 31821/96, 30<sup>th</sup> of March 2005, (Court Second Section).
- Loizidou v Turkey (merits), App No 15318/89, 18<sup>th</sup> of December 1996, (Court, Grand Chamber)
- Loizidou v Turkey, (Preliminary Objections), App No 15318/89, 23<sup>rd</sup> of March 1995, (Court Chamber)
- Makuchyan & Minasyan v Azerbaijan and Hungary, App No 17247/13, 26<sup>th</sup> of May 2020, (Court, Fourth Section), (referenced as ‘Makuchyan’ in the thesis).
- Medvedyev & Others v France, App No 3394/03, 29<sup>th</sup> of March 2010, (Court, Grand Chamber), (referenced as ‘Medvedyev’ in the thesis).
- Öcalan v Turkey, App No 46221/99, 12<sup>th</sup> of May 2005, (Court, Grand Chamber), (referenced as ‘Öcalan’ in the thesis).
- Öztürk v Germany, App No 8544/79, 21<sup>st</sup> of February 1984, (Court plenary).
- Pad v Turkey, App No 60167/00, 28<sup>th</sup> of June 2007, (Court, Third Section), (referenced as ‘Pad’ in the thesis).
- Tyrer v The United Kingdom, App No 5856/72, 25<sup>th</sup> of April 1978, (Court Chamber).

### **International cases**

- Alejandre v Cuba, Report No 86/99, IACmHR, 29<sup>th</sup> of September 1999, [http://www.worldcourts.com/iacmhr/eng/decisions/1999.09.29\\_Alejandre\\_Jr\\_v\\_Cuba.htm](http://www.worldcourts.com/iacmhr/eng/decisions/1999.09.29_Alejandre_Jr_v_Cuba.htm)

### **Articles, Dissertations, Conventions and Academic Sources**

- The European Convention on Human Rights Article 1, 2, and 19 [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

- Article by Marko Milanovic, “Attribution, Jurisdiction, Discrimination, Decapitation: A Comment on Makuchyan and Minasyan v Azerbaijan and Hungary”, published on EJIL:Talk! Blog of the European Journal of International Law, 10<sup>th</sup> of July 2020, (last accessed 23.05.22), <https://www.ejiltalk.org/attribution-jurisdiction-discrimination-decapitation-a-comment-on-makuchyan-and-minasyan-v-azerbaijan-and-hungary/>
- Article by Marko Milanovic, “European Court finds Russia assassinated Alexander Litvinenko”, published on EJIL:Talk! Blog of the European Journal of International Law, September 23, 2021, (last accessed 23.05.22), <https://www.ejiltalk.org/european-court-finds-russia-assassinated-alexander-litvinenko/>
- Article by Marko Milanovic, “Georgia v Russia No 2: The European Court’s resurrection of Bankovic in the Context of Chaos”, published on EJIL:Talk! Blog of the European Journal of International Law, January 25<sup>th</sup> of 2021, (last accessed 23.05.22), <https://www.ejiltalk.org/georgia-v-russia-no-2-the-european-courts-resurrection-of-bankovic-in-the-contexts-of-chaos/>
- CCPR/C/GC/36, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30<sup>th</sup> of October 2018, (last accessed 29.05.22), [https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1\\_Global/CCPR\\_C\\_GC\\_36\\_8785\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf)
- Introduction to the European Convention on Human Rights: The rights guaranteed and the protection mechanism, by Jean-Francois Renucci, Council of Europe Publishing, Strasbourg, 1<sup>st</sup> edition, 2005 (last accessed 18.05.22), [https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-01\(2005\).pdf](https://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-01(2005).pdf)
- Kanstantsin Dzehtsiarou, “Makuchyan and Minasyan v. Azerbaijan and Hungary”, American Journal of International Law, Volume 115, Issue 2, April 2021, (last accessed 26.05.22), <https://www.cambridge.org/core/services/aop-cambridge-core/content/view/F4AF8E5CCB85F305EF302F0CA8DD4DD0/S0002930021000063a.pdf/makuchyan-and-minasyan-v-azerbaijan-and-hungary.pdf>
- Julian Arato, “Georgia v Russia (II)”, American Journal of International Law, Volume 115, Issue 2, April 2021, (last accessed 26.05.22), <https://www.cambridge.org/core/journals/american-journal-of-international-law/article/georgia-v-russia-ii/2B9B61486C215969C7FD63CACCB72A31>