

## ***The European Court of Human Rights: the prospects for protection of human rights in the Autonomous Republic of Crimea***

***Європейський суд з прав людини: перспективи  
захисту прав людини в Автономній Республіці Крим***

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*European Court of Human Rights, Autonomous Republic of Crimea, human rights.*

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The situation of human rights and freedoms in the Autonomous Republic of Crimea has extremely deteriorated since the beginning of February-March 2014. A number of violations were reported by such authoritative governmental and non-governmental international organisations as Human Rights Watch, Amnesty International, The Office of the United Nations High Commissioner for Human Rights (OHCHR), The Organization for Security and Co-operation in Europe (OSCE) etc. Both Ukraine and the Russian Federation are member states to the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (hereinafter – ECHR) and accordingly both states are within the jurisdiction of the European Court of Human Rights (hereinafter – ECtHR). Hence, the territory of Crimea is covered by the power of the ECHR, meaning that its institutional mechanism, namely the ECtHR can be used as one of the possible means of human rights protection in the Autonomous Republic of Crimea. However, various issues may arise on the way of application of such a mechanism. In particular, the key question is which state will appear to be a respondent in individual cases. Likewise, the question of the future of inter-state cases, filed by Ukraine against the Russian Federation. These and other factors form the actuality of this article.

The purpose of the article is to appraise the current and possible role of the ECtHR for the protection of human rights in the Autonomous Republic of Crimea (through the examination of both individual and inter-state applications, invoked by the current situation on the territory of Crimean peninsula); to analyze the relevant practice of the ECtHR and to identify the challenges related to the execution of possible decisions of the ECtHR in cases that concern the situation in Crimea.

And we would like to begin with the assessment of current applications that have already been invoked by the events after the 27 of February 2014. According to the recent data (last updated in the April 2017), there are almost four thousand individual applications submitted to the ECtHR due to the events in Crimea or the hostilities in Eastern Ukraine<sup>1</sup>. This number includes individual applications filed against Russia and Ukraine separately or simultaneously against both states.

As to the inter-state applications lodged by Ukraine according to the article 33 of the ECHR, there are currently five of them pending before the ECtHR. The first among them (I) (no. 20958/14), was lodged on 13 March 2014, a few days before the illegal referendum took place in Crimea. In this application Ukraine stated that since the 27 February 2014, the Russian Federation – by exercising effective control over the Autonomous Republic of Crimea, an integral part of Ukraine, and by exercising control over the separatists and armed groups operating in Eastern Ukraine – exercised jurisdiction over the situation which resulted actually in numerous violations of the ECHR. These include violations of Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 5 (right to liberty and security), 6 (right to a fair trial), 8 (right to respect for private life), 9 (freedom of religion), 10 (freedom of expression), 11 (freedom of assembly and association), 13 (right to an effective remedy) and 14 (prohibition of discrimination) of the ECHR, Article 1 of the Protocol No. 1 to the ECHR (protection of

<sup>1</sup> Press Country Profile: Russia, Registrar of the Court // The Official Site of the ECtHR [Electronic resource]. – Access mode : [http://www.echr.coe.int/Documents/CP\\_Russia\\_ENG.pdf](http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf).

property) and Article 2 of Protocol No. 4 (freedom of movement) to the ECHR<sup>2</sup>. As A. S. Dovhert points out, this application was supplemented with the economic part, which provides for the compensation of losses arising out of the impossibility to use the property<sup>3</sup>.

With respect to the first application of Ukraine, the ECtHR decided to rely on the Rule 39 of the Rules of Court and has applied the interim measures calling both states in question to refrain from taking any measures, in particular military action, which might bring about violations of the ECHR rights of the civilian population<sup>4</sup>.

The second inter-state application of Ukraine (II) (no. 43800/14) that deals with alleged abduction of three groups of children in Eastern Ukraine, is not related to the events in Crimea and hence goes beyond the topic of this research. The first and second applications were communicated to Russian Federation on 20 November 2014. The next application of Ukraine (IV) (no. 42410/15), related to the events in Crimea since September 2014, was lodged on 27 August 2015. It was communicated to the Russian Federation on 29 September 2015. In February 2016 the ECtHR decided to divide the first inter-state complaint according to the geographical criteria in order to increase effectiveness of the processing of the case. For this reason, all the complaints related to the events in Crimea up to September 2014 are currently registered under the case number 20958/14 Ukraine v. Russia while the complaints concerning the events in Eastern Ukraine up to September 2014 are registered under the case no. 8019/16 Ukraine v. Russia (V). The ECtHR applied the same rule to the case no. 42410/15 (IV). Since November 2016 all the complaints, related to the events in Crimea after September 2014 are currently registered under the number 42410/15 (IV), while events related to the Eastern Ukraine after September 2014 are included in case no. 70856/16 (VI).

There was one more inter-state application of Ukraine, no. 49537/14 (III), which, however was delisted on 1 September 2015 when Ukraine informed the ECtHR that it wants no longer to proceed with this application as it concerns the same subject matter as the individual application Dzhemilov v. Ukraine and Russia no. 49522/14<sup>5</sup>.

Because of intense workload, there is so far (as to the April 2017) no judgment of the ECtHR related to the situation in Crimea since February 2014. That's why in order to understand a possible outcome of the application lodged so far and of possible future applications, it is necessary and usefully to analyze the practice of the ECtHR in its previous judgments, especially the cases related to the Turkish Republic of Northern Cyprus or Transnistria. However, the differences of the situation should be taken into account. In particular, Crimea is different, since it does not position itself as a separate state, but it is claimed by the Russian Federation to be a part of its territory and shall be treated as an occupied territory from the viewpoint of international law<sup>6</sup>. The application of the international law of armed conflict to the situation in Crimea after 26 February 2014 is also confirmed in the Report on Preliminary Examination Activities issued by the Office of the Prosecutor of the International Criminal Court<sup>7</sup>. According to the norms of international humanitarian law "the international human rights law remains valid on the occupied territory and the occupying authority is responsible for compliance with its norms"<sup>8</sup>. Nonetheless, this does not mean that the Russian Federation should be a sole respondent before the ECtHR in cases related to the Crimea. The case of *Ilaşcu and others v. Moldova and Russia* is illustrative in this respect. In its judgment of 2004 the Grand Chamber recognised the partial responsibility of both Moldova and Russia. Even though the Moldovan Government submitted that it was impossible for them to exercise effective control over Transnistrian territory and the situation was similar to that described by the Court in *Cyprus v. Turkey*, the ECtHR held that even in the absence of effective control over the Transnistrian region, Moldova still has a positive obligation under Article 1 of the ECHR to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants

<sup>2</sup> Press release ECHR 345 (2014) of 26.11.2014: European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine // The Official Site of the ECtHR [Electronic resource]. – Access mode: <https://goo.gl/6d7E3v>.

<sup>3</sup> Українська революція гідності, агресія РФ і міжнародне право. – К.: К.І.С., 2014. – С. 601.

<sup>4</sup> Press release ECHR 345 (2014) of 26.11.2014: European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine // The Official Site of the ECtHR [Electronic resource]. – Access mode: <https://goo.gl/6d7E3v>.

<sup>5</sup> Press release ECHR 345 (2014) of 26.11.2014: European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine // The Official Site of the ECtHR [Electronic resource]. – Access mode: <https://goo.gl/6d7E3v>.

<sup>6</sup> Українська революція гідності, агресія РФ і міжнародне право. – К.: К.І.С., 2014. – С. 555.

<sup>7</sup> Report on Preliminary Examination Activities 2016 of 14 November 2016, made by the Office of the Prosecutor of the ICC, para 158 // The Official Site of the ICC [Electronic resource]. – Access mode: [goo.gl/oHGds7](http://goo.gl/oHGds7).

<sup>8</sup> Українська революція гідності, агресія РФ і міжнародне право. – К.: К.І.С., 2014. – С. 555.

the rights guaranteed by the ECHR.<sup>9</sup> It is also important to examine a more recent (2012) case of *Catan and Others v. Moldova and Russia*, related to the language restrictions imposed on schools using Moldovan language in Transdniestria. In this case the Great Chamber referring to its previous judgment in *Ilaşcu and others v. Moldova and Russia* stated that “although Moldova has no effective control over the acts of the “MRT” in Transdniestria, the fact that the region is recognised under public international law as part of Moldova’s territory gives rise to an obligation, under Article 1 of the ECHR, to use all legal and diplomatic means available to it to continue to guarantee the enjoyment of the rights and freedoms defined in the ECHR to those living there”<sup>10</sup>.

However, this time the ECtHR found that unlike the *Ilaşcu case*, in the *Catan case* Moldova has complied with its positive obligations, as its Government “have made considerable efforts”<sup>11</sup>, and it is only the Russian Federation that has violated Article 2 of Protocol No. 1 to the ECHR. Such a practice of the ECtHR might mean for Ukraine, that in order to fulfil its obligations under the ECHR with regard to the population of Crimea, it is important to take all possible measures, including diplomatic, economic, judicial and other measures targeted at protection of rights and freedoms of individuals living on the territory of Crimea even though it does not *de facto* control it. It should be noted that Ukraine has already made certain steps in that direction *inter alia* by enacting the Law of Ukraine “On Promotion of the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine” of 15 April 2014. However, Ukraine should implement further active steps – both legal and practical.

Analysing the ECtHR practice related to the non-recognised Turkish Republic of Northern Cyprus (“TRNC”), it should be pointed out that both inter-state application *Cyprus v. Turkey* and individual applications were examined by the ECtHR. One of the most famous individual cases is the case *Loizidou v. Turkey* (1996), followed by decision on just satisfaction of 1998. In this case the ECtHR found Turkey in breach of Article 1 of Protocol No. 1 to the ECHR because of denial of access to the applicant’s property and consequent loss of control thereof. It’s important, that the ECtHR also found that as the international community does not regard the “TRNC” as a State under international law and that the Republic of Cyprus has remained the sole legitimate Government of Cyprus, the ECtHR cannot attribute legal validity for purposes of the ECHR to Article 159 of “TRNC” Constitution on which the Turkish Government rely<sup>12</sup>. This case can be important for understanding the validity (or rather its absence) of the “Constitution of the Republic of Crimea” of 2014, adopted at a time of Russian occupation. With respect to the just satisfaction, the ECtHR held that Turkey is to pay a large sum of compensation<sup>13</sup>. That is why we agree with A. S. Dovhert that the losses of private persons, related to the annexation of Crimea, can be compensated through the mechanism of ECtHR, which already has relevant practice, including the cases of Cyprits<sup>14</sup>.

As to the inter-state application of Cyprus against Turkey, it is important for the understanding of several aspects of the perspectives of Ukraine v. Russia cases. One of them is the length of procedure. For instance, the Government of the Republic of Cyprus lodged a case against the Republic of Turkey with the then existing European Commission of Human Rights on 22 November 1994, the case was referred to the ECtHR on 30 August 1999 and the judgment was delivered on 10 May 2001. However, the issue of just satisfaction was postponed and the Grand Chamber delivered its just satisfaction judgment only on 12 May 2014, meaning that overall examination of the situation took twenty years. In the 2001 judgment the ECtHR found numerous violations of human rights by Turkey and in the 2014 judgment – the first in the history of the ECtHR decision on just satisfaction in inter-state complaints – the ECtHR obliged Turkey to pay in total 90 million Euros to the Republic of Cyprus<sup>15</sup>. Thus the practice of ECtHR in *Cyprus v. Turkey* means for Ukraine that there is a high probability of similar judgments in Ukrainian inter-state complaints, however it also indicated that Ukraine should not expect quick results.

<sup>9</sup> Case of *Ilaşcu and others v. Moldova and Russia* (Application no. 48787/99), Judgement of 8 July 2004, para 331 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-61886>.

<sup>10</sup> Case of *Catan and Others v. Moldova and Russia* (Applications nos. 43370/04, 8252/05 and 18454/06), Judgement of 19 October 2012, para 110 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-114082>.

<sup>11</sup> Case of *Catan and Others v. Moldova and Russia* (Applications nos. 43370/04, 8252/05 and 18454/06), Judgement of 19 October 2012, para 147 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-114082>.

<sup>12</sup> Case of *Loizidou v. Turkey* (Application no. 15318/89), Judgement of 18 December 1996, para 44 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-58007>.

<sup>13</sup> Case of *Loizidou v. Turkey* (Article 50) (40/1993/435/514), Judgement of 28 July 1998 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-58201>.

<sup>14</sup> Українська революція гідності, агресія РФ і міжнародне право. – К. : К.І.С., 2014. – С. 602.

<sup>15</sup> Case of *Cyprus v. Turkey* (Application no. 25781/94), Judgement of 12 May 2014 // The official Site of ECtHR [Electronic resource]. – Access mode : <http://hudoc.echr.coe.int/eng?i=001-144151>.

With regard to the other relevant examples of inter-state applications, the case of *Georgia v. Russia* (II) (no. 38263/08) related to the events in the South Ossetia of 2008 may possibly be one of them, however, it is still pending before the ECtHR and thus no conclusions as to its impact on the practice of the ECtHR may be made so far.

Having established that there is a high level of probability of the judgments in which the Russian Federation will be held responsible in both individual and interstate applications, it should, however, be noted that there are impediments on the way of factual execution of such possible judgments. One of key hurdles in this respect is the Constitutional Court of the Russian Federation Judgment of 14 July 2015, where the Constitutional Court of the Russian Federation found that the judgments of ECtHR will not be executed if they contradict the Constitution of the Russian Federation<sup>16</sup>. As L. Mälksoo noticed, in this judgment the Russian Federation “redefined its relationship with the European Convention on Human Rights and the European Court of Human Rights”<sup>17</sup>. The European Commission for Democracy through Law (Venice Commission) stated that this judgment violates Russian international obligations<sup>18</sup>. However, as legal nihilism continues to prevail in Russia, the issue of factual implementation of the decisions of ECtHR with respect to the situation in Crimea is still unclear.

In conclusion it should be said that taking into account that, on the one hand, the ECHR continues to be in force on the territory of Crimea and on the other hand, there is a number of cases related to the situation in Crimea currently pending before ECtHR, the role of the ECtHR might be of great importance for the protection of human rights and freedoms that have been violated after the events of 26 of February 2014. The practice of the ECtHR contains examples of analogous situations of both inter-state and individual applications concerning territories belonging *de jure* but not controlled *de facto* by a state and there is a high probability of analogous findings with regard to the cases related to Crimea. Thus it is reasonable for the individuals whose rights are violated in Crimea to lodge an application simultaneously against the Russian Federation and Ukraine as both of them may be held responsible. This also means that Ukraine shall implement all the possible measures to protect human rights of the population of Crimea in order to comply with its positive obligations under the ECHR. There is a high probability of Ukraine’s success in the inter-state cases against the Russian Federation, although their examination by the ECtHR may take considerable amount of time. The main obstacle on the way of implementation of possible judgments related to the situation in Crimea is the 2014 Judgment of the Constitutional Court of the Russian Federation.

## Summary

The article is devoted to the clarification of prospects of the ECtHR for the protection of human rights in the Autonomous Republic of Crimea because of the occupation and annexation of Crimea by the Russian Federation. The article reveals the status of both individual and inter-state cases concerning the situation in Crimea, which are currently pending before the ECtHR, analyzes the practice of the ECtHR in analogous cases and defines potential obstacles on the way of realisation of possible ECtHR judgments.

## Анотація

Статтю присвячено з’ясуванню перспектив Європейського Суду з прав людини у сфері захисту прав людини в Автономній Республіці Крим у зв’язку з окупацією та анексією останньої Російською Федерацією. У статті розкрито сучасний стан розгляду міждержавних та індивідуальних скарг у ЄСПЛ, зумовлених ситуацією у Криму, проаналізовано практику ЄСПЛ в аналогічних справах та визначено потенційні перешкоди на шляху виконання можливих рішень ЄСПЛ.

<sup>16</sup> Постановление Конституционного Суда Российской Федерации № 21-П/2015 от 14.07.2015 г. // Официальный сайт КСРФ [Electronic resource]. – Access mode : <http://doc.ksrf.ru/decision/KSRFDecision201896.pdf>.

<sup>17</sup> Mälksoo L. Russia’s Constitutional Court Defies the European Court of Human Rights: Constitutional Court of the Russian Federation Judgment of 14 July 2015, No 21-П/2015 / L. Mälksoo // *European Constitutional Law Review*. – 2016. – No. 12. – P. 377.

<sup>18</sup> Interim Opinion on the Amendments to the Federal Constitutional Law on the Constitutional Court of the Russian Federation, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11–12 March 2016) // The Official Site of the COE [Electronic resource]. – Access mode : [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)005-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)005-e).

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