



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Conference 70th anniversary of the European Convention on Human Rights

Promoting Peace and Integration among States

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Change of perspective – wars seen “from below”

Grozny, October 1999. There is war between the Russian army and Chechen resistance fighters. The war is not called a “war”. Russia has not invoked Article 15 of the ECHR. Nevertheless, on October 26, 1999, heavy air raids are carried out on Grozny. The radio reports that on October 29, a corridor will be created for civilians to safely get into Ingushetia. A large convoy of civilians starts moving, but is prevented by the Russian military from advancing to the border between Chechnya and Ingushetia. When, after a few hours of waiting, it is announced that the border cannot be crossed that day, people turn back. In this situation of confusion, Russian planes fly over the convoy and drop bombs. Medka Chuchuyevna Isayeva's children and sister-in-law are killed and she herself is injured.

On 25 April 2000 Medka Chuchuyevna Isayeva appeals to the European Court of Human Rights and asserts a violation of the right to life on the basis of Art. 2 ECHR. The Russian Government oppose her view and argue that the use of force was justified under Article 2, Paragraph 2 (a) of the ECHR, since Chechen fighters had mixed with the civilians and their killing was what is to be understood as a “military necessity”.

The very fact that such a question is being debated in the year 2005 before a European court is sensational.

Regulations for the protection of combatants and civilians in military conflicts have existed since the 19th century – the famous rules of international humanitarian law. They go back to the initiative of the Swiss Henri Dunant and were codified for the first time at the beginning of the 20th century. But no international court was ever empowered to rule on compliance of military actions with these rules on the basis of individual complaints. Now, Medka Chuchuyevna Isayeva, a simple woman from Chechnya, one victim of many thousands, is discussing right and wrong in the war in Chechnya before a court composed of judges from 47 different countries. And – she wins, the Court finds a violation of her human rights.

The European Court of Human Rights' legal answer

During the proceedings, the Russian Government refused to provide the relevant documents on the planning and execution of the attack. Therefore, the Court could not conclusively judge whether the attack, as required by the Convention, pursued a "legitimate aim". It argued, however, that even assuming such a legitimate aim, the attack was not planned and executed with the requisite care for the lives of the civilian population. The Russian Federation was therefore convicted for having violated Art. 2 ECHR, the right to life, and had to pay Medka Chuchuyevna Isayeva EUR 25,000 in non-pecuniary damages.

The reasoning of the judgment is very elaborate. The Court goes into all the details, analyses the exact planning of the action. It shows that the threat to the lives of civilians, which the military command must have been aware of, had not been sufficiently communicated to the pilots. Ultimately, the Court found that the fate of the civilians had not been a relevant factor when deciding to have recourse to the use force.

Armed conflicts under the aegis of the Convention

There are many comparable judgments, just as there were many armed conflicts in Europe after the Second World War. One of them was the conflict between Cyprus and Turkey which exploded in 1974 and led to the Turkish invasion of the Northern part of the island. The armed conflict between Russia and Georgia in 2008 lasted only for five days, but nevertheless claimed many victims and turned many people into refugees. In 2014 Russia claimed that Crimea was part of its national territory. The armed conflict in the Donbass region is still ongoing. Neither is the dispute over Nagorny Karabakh settled.

All these conflicts happened and happen under the aegis of the European Convention on Human Rights. Those who have recourse to military force in order to solve their conflicts are European States bound by the Convention. In addition, European states send their troops outside Europe to Iraq, Afghanistan, Syria, and Mali. The list is too long to enumerate all the crisis regions, all the "hot spots".

Human rights as a means to stop wars?

This brings me to the crucial question: Have human rights managed to stop wars? Have they managed to put an end to the indiscriminate use of weapons and the ensuing suffering, injustice, and cruelty? Have they, at the very least, tamed wars, made them less painful?

I would like to answer this question with a confident "yes". But such an answer would reflect wishes, not reality. Reality is more complicated. Let's have a close look.

The human rights protection systems worldwide could not and cannot prevent wars. There have been attempts with best intentions; but they have failed. Let me give you two examples. The process of admission of the Russian Federation to the Council of Europe was suspended in 1996 because of the first war in Chechnya. Peace was made a condition for membership. Nonetheless, after the first war had stopped and the Russian Federation had become a member in 1998, the second war in Chechnya broke out. A second example is the five-days war. When Russian troops invaded Georgia after Georgian troops had attacked South Ossetia, Georgia petitioned the ECHR for an urgent decision based on the

right to life. It wanted the Court to apply Rule 39. The Court – its then President – did apply Rule 39. But it was without any tangible effect.

Anyhow, in international law the instrument for securing peace is not the ECHR, but the UN Charter with the prohibition of the use of force. Even if the ECHR is an agreement on common values – among them friendship among peoples – it is not fit to stop military action when hostilities get out of control. But that is not yet the full answer to my question. Even if the Convention cannot stop wars, can it contain them? Can it provide a “climate” in which the escalation of conflicts can become less likely?

Human rights as a means to “tame” wars?

Here the answer is: “yes”! Let’s analyse in how far the Convention can be helpful to secure peace.

The most important aspect is what I wanted to show with the example of Medka Chuchuyevna Isayeva: victims can turn to the Court, be it in cases of lethal use of force, be it in cases of other human rights violations during armed conflicts – the disappearance of people without trace, torture and inhuman treatment (not only of civilians but also of military personnel), destruction of property. The Court can decide on all the complaints brought forward. Whenever the allegations hold true, wrongdoing will be condemned.

Follow-up to the Court’s judgments

The compensations fixed by the Court certainly have more of a symbolic effect in view of the sufferings, but they are not “nothing”. Even more importantly, such judgments can help the victims to come better to terms with what has happened; the psychological effect should not be underestimated.

The judgments may even have an effect that goes beyond the individual cases and may help to elaborate guidelines. In the best scenario such guidelines would even be included in military manuals or taken up in the legislation. Such a follow-up would be a real success as it could then set standards for future military actions.

What is most important, however, is the effect of awareness-rising. Human rights do not “disappear”, but, on the contrary, they are upheld during conflicts. The Court explicitly contradicts the old Roman proverb “inter arma enim silent leges” (in times of war the laws fall silent). This is a real important sign of progress.

That means that in armed conflicts not only humanitarian law, but also the European Convention applies. The latter has teeth as there is a court enforcing it. In the case of Medka Chuchuyevna Isayeva, Russia paid the 25,000 euros, as did other member states, such as the United Kingdom when it was convicted for inadequate investigation of civilian deaths in the Iraq war. It is true, that sometimes States have refused to implement such judgments, especially in delicate and highly politicized cases.

The follow-up might also last for a very long time. This is especially true in inter-State cases where judgments concerned large-scale human rights violations. A famous example for what “long time” can mean is the 2014 ruling by the European Court of Human Rights in the case Cyprus v. Turkey. In 2014 the Court condemned Turkey to pay 90 million euros to family members of those 1,456 people

in the Cyprus who had disappeared in the 1970s. As far as I know the judgment has not yet been implemented. The human rights violations have happened almost half a century ago.

The Court's jurisdiction

The judgments in cases of war and peace often have to solve highly complex and intricate legal questions relating to the Court's jurisdiction, especially if the conflict happens outside the territory of the 47 member States. Does it make a difference when a State uses only the air force but no ground troops? What is the scope of the Court's control in cases where the deployment of the military is based on a UN mandate or where the NATO is involved? Furthermore, questions of fact-finding are very difficult. Often – for lack of sufficient evidence – it is not the substantive human rights violation itself that can be criticized, but only the procedural aspect, i.e. the lack of a thorough investigation. The Court has worked hard to sort out these issues and give adequate legal answers.

When it comes to the “taming” of war, small successes are great achievements.

Furthermore, the Convention creates a climate in which the escalation of conflicts is less likely. It means for the States not only being part of Europe, but also being part of a European organisation based on common values. That is the aspect of “integration” alluded to in the title of my speech.

The Convention as an instrument for peace

Today we celebrate the 70th anniversary of the Convention. The Convention could not make the impossible possible and stop military hostilities. But it could drive home the message that human rights always matter, even during wars, even during periods of time where lawlessness seems to reign.

With that let me look back to the origins of the Convention, to the immediate aftermath of the Second World War. Let's compare what happened after 1945 to what happened after the First World War. In 1919 with the Treaty of Versailles the map of Europe was re-designed. Self-determination was understood to be a leading principle in international law. The League of Nations was founded and legal mechanisms were foreseen to adjudicate conflicts between States, to protect national minorities and to avoid a race to the bottom in labour rights. Yet, all these mechanisms, be it the Permanent Court of Justice, the Minority Treaties or the International Labour Organisation, turned out to be insufficient to foster peace and well-being in Europe and worldwide in the long run.

There was no such peace treaty after the Second World War. But there was the European Convention on Human Rights, a multilateral treaty based on humanism and rule of law “according to which right is pre-eminent over might and the purpose of the State ... is not its own greatness, power or riches but the individual self-fulfilment of everybody subject to its rule with due respect for his or her dignity and freedom” as stated by one of its drafters, the former French Minister of Justice Pierre-Henri Teitgen. This message of the 1950s is still the message of today. It turns the spotlight away from the States' perspective to the individuals' perspective. The Convention is not about victory or defeat, it is about human suffering. This is what really counts, in times of peace and in times of war.

That is why the Convention is a cornerstone in the historical development of international law on war and peace.