



GRAND CHAMBER

**CASE OF UKRAINE AND THE NETHERLANDS v. RUSSIA**  
**(nos. 8019/16, 43800/14, 28525/20 and 11055/22)**

**QUESTIONS AND EVIDENTIAL ISSUES TO BE ADDRESSED IN THE  
MEMORIALS AND SUPPORTING DOCUMENTS**

**A. Questions for the applicant Ukrainian Government and the respondent Government**

**1. Concerning admissibility**

(a) As regards the case as a whole

1. Do the applicant Ukrainian Government's complaints of shelling fall within the Article 1 jurisdiction of the respondent State? The parties are invited to address in particular paragraphs 125-39 of the Court's judgment in *Georgia v. Russia (II)* ([GC], no. 38263/08, 21 January 2021) and the observations in paragraphs 140-42 of the said judgment. Reference is further made to paragraph 700 of *Ukraine and the Netherlands v. Russia* [GC] (dec.), nos. 8019/16, 43800/14, 28525/20, 30 November 2022.

(b) As regards application no. 11055/22

2. Do the applicant Ukrainian Government's complaints fall within the Article 1 jurisdiction of the respondent State?

3. Do the applicant Ukrainian Government's complaints as set out in their application, composed of their application form of 23 June 2022 and supplementary submissions of 14 April 2023 and their annexes (set out below), comply with the admissibility criteria applicable to inter-State applications (see, *inter alia*, *Ukraine v. Russia (re Crimea)* [GC] (dec.), nos. 20958/14 and 38334/18, 16 December 2020, and *Ukraine and the Netherlands v. Russia*, cited above):

- a) Article 2 of the Convention, see §§ 164-187 of the application form and §§ 40-50 of the supplementary submissions;
- b) Article 3 of the Convention, see §§ 189-205 of the application form and §§ 51- 59 of the supplementary submissions;
- c) Article 4 § 2 of the Convention see §§ 206-214 of the application form and §§ 60-62 of the supplementary submissions;
- d) Article 5 of the Convention see §§ 215-230 of the application form and §§ 63-75 of the supplementary submissions;
- e) Article 8 of the Convention see §§ 231-252 of the application form and §§ 76-103 of the supplementary submissions;
- f) Article 9 of the Convention see §§ 253-268 of the application form and §§ 104-105 of the supplementary submissions;

- g) Article 10 of the Conventions, see §§ 269-281 of the application form and §§ 106-113 of the supplementary submissions;
- h) Article 11 of the Convention, see §§ 282-292 of the application form and §§ 114-118 of the supplementary submissions;
- i) Article 13 of the Convention, see §§ 293-303 of the application form and §§ 119- 120 of the supplementary submissions;
- j) Article 14 read in conjunction with the other complaints under the Convention and its Protocols, see §§ 304- 308 of the application form and §§ 121- 123 of the supplementary submissions;
- k) Article 1 of Protocol No. 1 to the Convention, see §§ 309-341 of the application form and §§ 124-134 of the supplementary submissions;
- l) Article 2 of Protocol No.1 to the Convention, see §§ 342-352 of the application form and §§ 135-141 of the supplementary submissions;
- m) Article 2 of Protocol No.4 to the Convention, see §§ 353-356 of the application form and §§ 142-146 of the supplementary submissions; and
- n) Article 3 of Protocol No.4 to the Convention, see §§ 357-360 of the application form and §§ 147- 150 of the supplementary submissions?

**2. Concerning the merits of the case as a whole**

4. Having regard to the Court’s findings on admissibility in *Ukraine and the Netherlands v. Russia* (cited above, §§ 828-98), to the application in no. 11055/22 as summarised in the preceding paragraph and to the decision to join the applications, and having regard, where appropriate, to the content of international humanitarian law, have general administrative practices in violation of the following Articles, taken alone and in conjunction with Article 14, been demonstrated beyond reasonable doubt on the basis of evidence:

- a) Article 2 of the Convention?
- b) Article 3 of the Convention?
- c) Article 4 § 2 of the Convention?
- d) Article 5 of the Convention?
- e) Article 8 of the Convention?
- f) Article 9 of the Convention?
- g) Article 10 of the Convention?
- h) Article 11 of the Convention?
- i) Article 13 of the Convention?
- j) Article 1 of Protocol No. 1 to the Convention?
- k) Article 2 of Protocol No. 1 to the Convention?
- l) Article 2 of Protocol No. 4 to the Convention?
- m) Article 3 of Protocol No. 4 to the Convention

5. Has there been a specific administrative practice in violation of Articles 3, 5 and 8 of the Convention and Articles 2 and 3 of Protocol No. 4 to the Convention in respect of the alleged abduction and transfer to Russia of children, including the three groups of children considered in *Ukraine and the Netherlands v. Russia* (cited above, §§ 891-98), and in some cases the adoption in Russia of such children ?

*The applicant Ukrainian Government are invited to set out in their memorials a clearly identified and exhaustive list of the administrative practices alleged, articulating clearly their temporal and geographical extent and their substantive content throughout the period concerned.*

## **B. Questions for the applicant Dutch Government and the respondent Government**

6. Has there been a violation of the substantive limb of Article 2 of the Convention, having regard to the content of international humanitarian law, in respect of the downing of flight MH17?
7. Has there been a violation of the procedural limb of Article 2 of the Convention in respect of the downing of flight MH17?
8. Did the suffering of the relatives of the victims of the downing of flight MH17 meet the minimum threshold of severity to fall within the scope of Article 3 of the Convention? If so, has there been a violation of this Article?
9. Has there been a violation of Article 13 of the Convention on account of a lack of an effective remedy in respect of the violations alleged under Articles 2 and 3?

## **C. Question for all Governments**

10. Has there been a violation of Article 38 on account of the failure of the respondent Government to engage constructively with the proceedings for the examination of the case (see *Ukraine and the Netherlands v. Russia* (cited above, §§ 456-459)?

## **D. Evidential issues**

The parties are invited to refer in support of their arguments to relevant paragraphs of the annex to the Court's admissibility decision in the case *Ukraine and the Netherlands v. Russia* (cited above).

They are further invited to include relevant submissions as to their views on evidence collected by international bodies (in particular the OHCHR and the OSCE) and non-governmental organisations which might be pertinent to the assessment of the legal issues identified.

Finally, the parties are asked to provide copies in their original language and in English or French translation of all relevant evidence, which is not already summarised in the annex to the decision and to which they have access, on which they wish to rely or which is, or might be said to be, wholly or in large part within the exclusive knowledge or access of their authorities.

## **QUESTIONS FOR THE PARTIES AND THIRD-PARTY GOVERNMENTS TO BE ADDRESSED AT THE ORAL HEARING ON 12 JUNE 2024**

In their common submission, the 26 intervening States have called for the "effective control over an area" principle to be applied "generously" within the Convention legal space and have submitted that it would be incorrect to conclude that jurisdiction on the basis of State agent authority and control could never arise in the context of an international armed conflict. How should the Court approach Article 1 jurisdiction in respect of complaints of bombing and shelling?

1. To what extent is there a zone between "isolated and specific acts of violence involving an element of proximity" (see *Georgia v. Russia (II)*, cited above, § 132) and "armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos" (*Georgia v. Russia (II)*, cited above, § 137) where (personal) jurisdiction could be found and, if so, what would be the test for armed attacks to fall within that zone?

2. Could it be argued that there will be Article 1 jurisdiction:

- Where State agents use (armed) force abroad?
- Where a High Contracting Party is engaged in military activity with a view to

(a) acquiring territory from the territorial High Contracting Party, and thereby

(b) removing the latter's effective control over its own territory? If so, could these requirements apply in the alternative or only cumulatively?

- Where there is armed conflict in Council of Europe territory, having regard, for example, to the origins of the Council of Europe and the object and purpose of the Convention?

3. If the Court were to find Article 1 jurisdiction in this case based on a development of or departure from its conclusions in *Georgia v. Russia (II)*, whether by reference to one of the above bases or otherwise, would it be appropriate to limit this basis for a finding of jurisdiction to "Convention legal space", and if so how might this be done?

4. If the view was that there could be no such limited extra-territorial jurisdiction, to what extent:

- does this find support in the practice of other comparable international dispute settlement mechanisms?
- can this be reconciled with the assumption which underlies the authorities cited in *Banković and Others v. Belgium and Others (dec.)* [GC], no. 52207/99, §§ 59 and 60, ECHR 2001-XII, namely that states enjoy equal and exclusive (territorial) sovereignty and that they respect each other's (territorial) sovereignty in the exercise of their own sovereign powers?
- could the resultant vacuum in human rights protection over significant parts of the European legal space be reconciled with the Court's responsibility under Article 19 of the Convention and/or the Convention's object and purpose as a collective guarantee of the fundamental freedoms to be enjoyed by the people of Europe?"