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WHERE IS THE EUROPEAN COURT OF HUMAN RIGHTS HEADING? COMMENTS ON THE GRAND CHAMBER ADMISSIBILITY DECISION IN *UKRAINE V. RUSSIA (RE CRIMEA)* (APPLICATIONS NO. 20958/14 AND 38334/18)*

Abstract: The aim of this article is to analyse the European Court of Human Rights (hereinafter: the Court) decision on admissibility in the *Ukraine v. Russia (re Crimea)* case from the perspective of the Court's comments on the status of Crimea and the legality of Russia's actions. The Court itself observed that it cannot make such findings; nevertheless, did it really refrain from examining facts and evidence which could also be used to prove the illegality of Russian actions? The article is divided into four parts. The first presents the factual background of the case. The next highlights the Court's declarations about the scope of the case and refusal to engage in assessment of the legality of Russian actions. The third and fourth parts focus on the Court's examination of the effective control by Russia over Crimea and the issue of jurisdiction, assessing whether the Court limited itself solely to the issues indispensable for a decision on admissibility.

Keywords: Crimea, ECHR, Russia, Ukraine

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1. Introduction

The aggression and annexation of Crimea by Russia undoubtedly constituted a flagrant violation of public international law. Not only this, in addition to breaching the principles of international law, the actions by Russia affected the lives of almost 2 million people living in Crimea and the city of Sevastopol.¹ The international community is informed about major political news concerning Crimea and the Ukrainian-Russian conflict, but rarely do reports about the state of rights and freedoms of the inhabitants of the peninsula reach the media. The Ukrainian application to the European Court of Human Rights (the Court, ECHR) concerned allegations of an administrative practice driving violations of the European Convention on Human Rights² by the Russian Federation in Crimea.³ The protection of human rights cannot be separated from inter-state conflicts; even if the State exercising effective control over a territory changes, it cannot mean that the human rights of inhabitants are no longer protected.⁴

The aim of this article is to analyse the Court's decision on admissibility, from the perspective of the Court's comments on the status of Crimea and the legality of Russia's actions. The Court itself observed that it cannot make such findings; nevertheless, did it really refrain from analysing the facts and evidence which could also be used to prove the illegality of Russian actions? It seems that the ECHR used the opportunity of examining the effective control and jurisdiction by Russia over Crimea to point out certain aspects and statements which highlight the illegality of Russia's actions, not only from the perspective of human rights, but also from public international law, even if these points were not explicitly made.

The article is divided into four parts. The first presents the factual background of the case. The next highlights the Court's declarations

¹ Ray, 'Crimea'.

² Convention for the Protection of Human Rights and Fundamental Freedoms. Signed in Rome on 4 November 1950, UN Treaty Series 1955, vol. 213, no. 2889, p. 221 (hereinafter: Convention).

³ *Ukraine v. Russia (Re Crimea)*, nos. 20958/14 and 38334/18, decision of 16 December 2020 (hereinafter: *Ukraine v. Russia (Re Crimea)*).

⁴ Human Rights Committee, *General comment on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights*, General Comment No. 26 (61), 8 December 1997, CCPR/C/21/Rev.1/Add.8/Rev.1, para. 4; Berkes, 'Human', 198.

about the scope of the case and refusal to engage in assessment of the legality of Russian actions. The third and fourth parts focus on the Court's examination of the effective control by Russia over Crimea and the issue of jurisdiction, assessing whether the Court limited itself solely to the issues indispensable for a decision on admissibility.

2. Factual background

The origins of the crisis in Ukraine date back to November 2013, when the ruling authorities of Ukraine announced that they had suspended preparations for the conclusion of an Association Agreement with the European Union, which triggered mass protests. Demonstrators soon started to demand not only integration with the EU, but also the deposition of President Viktor Yanukovich and the entire government. Even though Ukrainian political leaders managed to reach an agreement, when President Yanukovich left Kyiv on 22 February 2014, the Ukrainian parliament removed him from office and voted for Oleksandr Turchynov to become the new acting president of Ukraine. On 26 February 2014, a new government was formed.⁵ On 27 February armed men took over governmental buildings in Simferopol in Crimea; it is believed that they formed part of the Russian Special Forces.⁶ On 16 March 2014 the authorities of Crimea organised a referendum during which voters had to answer two questions: 'Do you support reunifying Crimea with Russia as a subject of the Russian Federation?' and 'Do you support the restoration of the 1992 Crimean Constitution and the status of Crimea as a part of Ukraine?'.⁷ Even though the referendum was declared illegal and invalid by many States and international bodies, it became grounds for the Russian annexation of Crimea.⁸

⁵ Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 April 2014, paras. 2-6; International Criminal Court, Report on Preliminary Examination Activities (2016), para. 153.

⁶ International Criminal Court, *ibid.*, para. 155, 157-158.

⁷ 'Crimea Referendum: What Does the Ballot Paper Say?', BBC News, <https://www.bbc.com/news/world-europe-26514797> (accessed 25 August 2021).

⁸ See 'Agreement on the Accession of the Republic of Crimea to the Russian Federation Signed', <http://en.kremlin.ru/events/president/news/20604>; 'Crimea,

Initially, Ukraine submitted two cases against Russia: no. 20958/14 on 13 March 2014 and no. 42410/15 26 August 2015, both concerning events in Crimea and Eastern Ukraine. On 11 June 2018 these were joined and given a new name *Ukraine v. Russia (re Crimea)* under application no. 20958/14. On 10 August 2018 Ukraine submitted another case concerning the so-called ‘transfer of convicts’ from Crimea to correctional institutions on the territory of Russia (application no. 38334/18). The Court decided to join both applications in the case under review.⁹

3. ‘Not called upon to decide whether Crimea’s admission was lawful’

At the beginning of its analysis, the Court marked the scope of the case by stating that it ‘is not called upon to decide in the abstract on the ‘legality’ of the Russian Federation’s purported ‘invasion’ and ‘occupation’ of Crimea.’¹⁰ It also repeated that this was not the ruling that Ukraine had sought from the Court, so these matters ‘will not be directly considered by the Court.’¹¹ Thus, the Court did not deny that indirectly its comments may relate to issues connected with the legality of the Russian actions in Crimea. Likewise, in a further part of the examination of the case, it highlighted that ‘it is not called upon to decide whether Crimea’s admission, as a matter of Russian law, into the Russian Federation was lawful from the standpoint of international law’;¹² as well as that ‘it is not for the Court to determine whether and to what extent the Accession Treaty of 21 March 2014 has, consistently with public international law, changed the sovereign territory of either the respondent or the applicant State’.¹³

The ECHR also replied to objections made by Russia that Ukraine did not genuinely wish to ‘raise issues related to the protection of human rights

Sevastopol Officially Join Russia as Putin Signs Final Decree’, RT, 21 March 2014, <https://www.rt.com/news/russia-parliament-crimea-ratification-293/>.

⁹ Complaints brought by Ukraine against Russia concerning a pattern of human rights violations in Crimea declared partly admissible, Press Release, 14 January 2021, ECHR 010 (2021).

¹⁰ *Ukraine v. Russia (Re Crimea)*, para. 244.

¹¹ *Ibid.*, para. 244.

¹² *Ibid.*, para. 339.

¹³ *Ibid.*, para. 348.

under the Convention’, but that instead the ‘application had been brought to seek a decision on political questions and issues of general international law, such as the lawfulness of the ‘referendum’ held in Crimea on 16 March 2014 and the ‘reunification that flowed from it’, which were outside the Court’s competence.’¹⁴ The Court’s answer to these objections was that the questions it was asked to rule on are legal ones.¹⁵ However, even if these questions have political aspects or may have political implications, as well as if Ukraine might have had political motives to raise the case, these concerns ‘are of no relevance in the establishment of its jurisdiction to adjudicate the legal issues submitted before it.’¹⁶ This is not the first time the Court has had to deal with the accusation that the problem it is about to decide upon is in fact political in nature; nevertheless, it has rejected such allegations and continued proceedings.¹⁷

These declarations were consistent with the Court’s obligation to remain within the scope of the Ukrainian submission and to refrain from dealing with political, not legal issues. The question is however, whether the Court, despite making such declarations, really refrained from looking beyond matters of admissibility.

4. Effective control over Crimea from 27 February to 18 March

To sort through the facts it is helpful to note that the Court had to address the problem of whether Russia had exercised jurisdiction over the Crimean Peninsula from 27 February or only since 18 March. Ukraine claimed that since 27 February, Russia had exercised effective control over the Peninsula because of the military occupation of this territory; consequently it had extraterritorial jurisdiction over Crimea and the city of Sevastopol which continued after 18 March.¹⁸

¹⁴ Ibid., para. 267.

¹⁵ Ibid., para. 271.

¹⁶ Ibid., para. 273.

¹⁷ *Loizidou v. Turkey (Preliminary Objections)*, no. 15318/89, judgment of 23 March 1995, para. 42, 44-46 (hereinafter: *Loizidou v. Turkey (Preliminary Objections)*); *Denmark v. Turkey*, no. 34382/97, decision of 8 June 1999, p. 29.

¹⁸ *Ukraine v. Russia (Re Crimea)*, para. 287-288.

On the other hand, Russia claimed that before 18 March it did not have effective control, and thus no extraterritorial jurisdiction over the Crimean Peninsula. Since 18 March, and so since the signing of the Accession Treaty,¹⁹ Russia started to exercise effective control over Crimea because it became part of the Russian Federation; thus, since that day it also started to have territorial jurisdiction over the Crimean Peninsula.²⁰

To address these discrepancies, the ECHR started with the question of whether Russia had effective control over Crimea between 27 February and 18 March.

To decide whether the control established over a territory is effective is an imponderable problem.²¹ In general, one can say that a government has effective control over territory and a population when internally, it has the capacity 'to establish and maintain a legal order in the sense of constitutional autonomy'; and externally, it is able 'to act autonomously on the international level without being legally dependent on other states within the international legal order.'²² While proper identification of the moment when a government becomes 'effective' is usually the most challenging task, the case under review refers not to this simplest scenario but to aggression and the illegal acquisition of the territory of another sovereign State.

It was not the first time the ECHR has had to investigate the issue of effective control in the context of jurisdiction and Article 1 of the Convention.²³ Previously, to decide whether effective control was established, it decided that it was indispensable to take into account the 'strength of the State's military presence in the area' and 'the extent to which its military, economic and political support for the local subordinate administration provides it with influence and control over the region'.²⁴ In

¹⁹ Treaty between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea to the Russian Federation and the Formation of New Constituent Entities of the Federation (hereinafter: the Accession Treaty). Excerpts from the Accession Treaty were referred in the decision under review (para. 209). Full text of the Treaty can be found here: <http://www.kremlin.ru/acts/bank/38220> (in Russian).

²⁰ *Ukraine v. Russia (Re Crimea)*, para. 277-278.

²¹ Dinstein, *International*, 43-44.

²² Malanczuk, *Akehurst's*, 77.

²³ 'The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.'

²⁴ *Al-Skeini and Others v. the United Kingdom*, no. 55721/07, judgment of 7 July 2011, para. 139 (hereinafter: *Al-Skeini and Others v. the United Kingdom*).

Loizidou vs. Turkey, the Court paid attention to the size of the Turkish army stationed in the north of Cyprus²⁵ and concluded that since Turkey's army exercised effective overall control over Northern Cyprus, it was responsible for the policies and actions of the Turkish Republic of Northern Cyprus.²⁶ Moreover, the ECHR pointed out that when effective control relates to 'the relevant territory and its inhabitants abroad as a consequence of military occupation or through the consent, invitation or acquiescence of the Government of that territory', a State must exercise 'all or some of the public powers normally to be exercised by that Government' to establish effective control.²⁷

The Court also drew on these experiences this time; what differentiates this analysis from previous ones is, as claimed by Marko Milanovic, 'the most elaborate analysis in human rights case law.'²⁸ To find out whether Russia exercised effective control over Crimea and the city of Sevastopol between 27 February and 18 March, the Court investigated a number of facts. Firstly, in the diplomatic note dated 30 December 2013, Russia communicated that the maximum number of personnel of the Russian Black Sea Fleet in Crimea for 2014 was set at 10,936.²⁹ Despite that declaration, the Court noted that the number of Russian troops in the Crimean Peninsula doubled between late January and mid-March 2014.³⁰ Secondly, Russian military forces stationed in Crimea belonged to 'elite forces', trained to seize and retain territory.³¹ Thirdly, the Court paid attention to the statement made by President Vladimir Putin during a meeting with the heads of security agencies on the night of 22 to 23 February 2014, that he had taken the decision to 'start working on the return of Crimea to the Russian Federation.'³² Fourthly, the ECHR referred to information brought to the Court by Ukraine which 'provided highly detailed, chronological and specific information, as well as video footage,

²⁵ *Loizidou v. Turkey (Preliminary Objections)*, para. 16.

²⁶ *Ibid.*, para. 56.

²⁷ *Banković and Others v Belgium*, no. 52207/99, decision of 19 December 2001, para. 71.

²⁸ Marko Milanovic, 'ECtHR Grand Chamber Declares Admissible the Case of Ukraine v. Russia re Crimea', EJIL: Talk!, 15 January 2021, <https://www.ejiltalk.org/ecthr-grand-chamber-declares-admissible-the-case-of-ukraine-v-russia-re-crimea/>.

²⁹ *Ukraine v. Russia (Re Crimea)*, para. 317.

³⁰ *Ibid.*, para. 321.

³¹ *Ibid.*, para. 322.

³² *Ibid.*, para. 324.

showing active participation of Russian servicemen in the immobilization of Ukrainian forces'.³³ Fifthly, Russia admitted that between 1 and 17 March 2014, Russian troops located in Crimea were ready 'to assist the Crimean people in resisting attack by the Ukrainian armed forces'.³⁴ Sixthly, 'Resolution no. 48-SF of 1 March 2014 authorised the President of the Russian Federation to use armed forces on the territory of Ukraine 'until the social and political situation in the country becomes normal'.³⁵ Seventh, the Russian Defence Minister, Sergey Shoigu, in the documentary 'Crimea: The way home' admitted that Russian Special Forces seized the building of the Supreme Council in Simferopol on 27 February 2014.³⁶ Finally, during an interview with Rossiya TV, President V. Putin said that:

we had to disarm the military units of the Ukrainian army and law enforcement agencies or to convince them not to interfere with people expressing their opinion and, actually, to collaborate with us in that. (...) Of course, the Russian servicemen did back the Crimean self-defence forces.³⁷

Concluding this elaborate analysis, the Court stated that 'there is sufficient evidence for the Court to conclude that during the relevant period the respondent State exercised effective control over Crimea'.³⁸ This means that Russia had jurisdiction over Crimea from 27 February. Likewise, when it comes to the responsibility of Russia in the domain of public international law in general, some violations of international law already starting from 27 February may also be attributed to Russia.

³³ Ibid., para. 328.

³⁴ Ibid., para. 331.

³⁵ Ibid., para. 331.

³⁶ Ibid., para. 331.

³⁷ Ibid., para. 332.

³⁸ Ibid., para. 335. See also: Situation of Human Rights in the Temporarily Occupied Autonomous Republic of Crimea and the City of Sevastopol (Ukraine), 25 September 2017, A/HRC/36/CRP.3, para. 38.

5. Question of Jurisdiction

5.1. General Remarks about Jurisdiction

As mentioned above, both Ukraine and Russia claimed that Russia had jurisdiction over Crimea after 18 March, although pointing out to two types of jurisdiction: territorial and extraterritorial jurisdiction.

Territorial jurisdiction is exercised by States over all events on their territory.³⁹ It is the most basic type of jurisdiction and a manifestation of the monopoly of a State's power within its borders.⁴⁰ Consequently, 'a State may not exercise its power in any form in the territory of another State'.⁴¹ The flip-side of this State prerogative is extraterritorial jurisdiction, that is exercised outside State's territory.⁴² It is an exception to the rule that a State's jurisdiction is limited only to its territory. A State may exercise such extraterritorial jurisdiction legally, e.g. on the grounds of economic agreements,⁴³ as well as without legal grounds. However, if the latter situation occurs, the main international bodies competent to decide on the human rights claim that they can still make a ruling, as otherwise there would be a legal lacuna in the protection of human rights these bodies are supposed to provide.⁴⁴ Thus, the parties to human rights treaties, even if they infringe the sovereignty of other States and exercise their jurisdiction extraterritorially, are not allowed to escape their obligations.⁴⁵

That is also the path adopted by the ECHR. In the case under review, the Court reminded the parties that it had recognised the extraterritorial jurisdiction and human rights obligations of a State which exercises such jurisdiction in its previous case law, which was summarised in *Al-Skeini and Others v. the United Kingdom*:⁴⁶

³⁹ Cryer, Friman, Robinson and Wilmshurst, 'Introduction', 46.

⁴⁰ Colangelo, 'What Is', 1311.

⁴¹ International Law Association Tokyo Conference August, 1964, Resolution of the Committee on Extra-territorial Application of Restrictive Trade Legislation, p. 90, para. B(ii).

⁴² Stern, 'Une tentative', 51; Załucki, 'Extraterritorial', 403-404.

⁴³ Shaw, *International*, 688.

⁴⁴ Report No. 112/10 Inter-state Petition IP-02 Admissibility Franklin Guillermo Aisalla Molina (Ecuador-Colombia), Report No. 112/10, Inter-American Commission on Human Rights (IACHR), 21 October 2011, para. 98; *Mansur Pad and Others v Turkey*, no. 60167/00, decision of 28 June 2007, para. 53. See also Berkes, 'Human', 211-212.

⁴⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ advisory opinion of 9 July 2004, ICJ Reports 2004, para. 109.

⁴⁶ *Ukraine v. Russia (Re Crimea)*, para. 303.

Another exception to the principle that jurisdiction under Article 1 is limited to a State's own territory occurs when, as a consequence of lawful or unlawful military action, a Contracting State exercises effective control of an area outside that 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 the Contracting State's own armed forces, or through a subordinate local administration (*Loizidou* (preliminary objections), cited above, § 62; *Cyprus v. Turkey* [GC], no. 25781/94, § 76, ECHR 2001-IV, Banković, cited above, § 70; *Ilaşcu*, cited above, §§ 314-316; *Loizidou* (merits), cited above, § 52). Where the fact of such domination over the territory is established, it is not necessary to determine whether the Contracting State exercises detailed control over the policies and actions of the subordinate local administration. The fact that the local administration survives as a result of the Contracting State's military and other support entails that State's responsibility for its policies and actions. The controlling State has the responsibility under Article 1 to secure, within the area under its control, the entire range of substantive rights set out in the Convention and those additional Protocols which it has ratified. It will be liable for any violations of those rights (*Cyprus v. Turkey*, cited above, §§ 76-77).⁴⁷

In the case of *Cyprus v. Turkey*, the Court decided that Turkey exercised extraterritorial jurisdiction over northern Cyprus as 'in terms of Article 1 of the Convention, Turkey's 'jurisdiction' must be considered to extend to securing the entire range of substantive rights set out in the Convention and those additional Protocols which she has ratified, and that violations of those rights are imputable to Turkey.'⁴⁸ In case of *Loizidou vs. Turkey*, the ECHR said that the obligation to secure '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'.⁴⁹ Also in *Ilaşcu and Others v. Moldova and Russia*, the ECHR came to the conclusion that 'the applicants therefore come within the 'jurisdiction' of the Russian Federation for the purposes of Article 1 of the Convention and its responsibility is engaged with regard to the acts complained of'.⁵⁰

⁴⁷ *Al-Skeini and Others v. the United Kingdom*, para. 138.

⁴⁸ *Cyprus v. Turkey*, no. 25781/94, judgment of 10 May 2001, para. 77.

⁴⁹ *Loizidou vs. Turkey*, no. 15318/89, judgment of 18 December 1996, para. 52.

⁵⁰ *Ilaşcu and Others v. Moldova and Russia*, no. 48787/99, judgment of 8 July 2004, para. 394.

5.2. The Court's Considerations about Jurisdiction in Case under Review

The Court determined that Ukraine and Russia are in dispute over whether Russia exercised jurisdiction over Crimea before 18 March. To this end, the Court decided that:

it has to be established whether it has been shown to the appropriate standard of proof (...) that there are exceptional circumstances capable of giving rise to the exercise of extraterritorial jurisdiction by the respondent State on a part of the territory of the applicant State during that time.⁵¹

Here the Court proceeded to analyse whether Russia exercised effective control over Crimea between 27 February and 18 March. In the paragraph summing up this analysis there is no mention of 'extraterritorial jurisdiction'; apart from the determination that Russia indeed had effective control over Crimea in the specific time period, the Court only stated that it did not have to investigate in detail the control by Russia over the policies and actions of the local administration to establish jurisdiction under Article 1.⁵²

When it comes to the period after 18 March, the Court observed that both Ukraine and Russia are in agreement that Russia had jurisdiction over the Crimean Peninsula. However, the Court found that such an assertion is insufficient, as it is also empowered to determine the legal basis for the Russian jurisdiction after 18 March, since Russia and Ukraine disagreed over this issue (Ukraine claimed that the grounds for jurisdiction was effective control, while Russia insisted that the Court should not decide this question at all as it would involve the issue of sovereignty which was outside the scope of the proceedings).⁵³ According to the Court, such an approach was in line with the position taken by other international bodies.⁵⁴ Importantly, the Court did not state that determining the grounds

⁵¹ *Ukraine v. Russia (Re Crimea)*, para. 314.

⁵² *Ibid.*, para. 335. M. Milanovic points out that Russia's jurisdiction before 18 March 'was clearly extraterritorial in the sense that Russia did not even claim sovereignty over Crimea before that date' (Marko Milanovic, 'ECtHR Grand Chamber Declares Admissible the Case of Ukraine v. Russia re Crimea', EJIL: Talk!, 15 January 2021, <https://www.ejiltalk.org/ecthr-grand-chamber-declares-admissible-the-case-of-ukraine-v-russia-re-crimea/>).

⁵³ *Ukraine v. Russia (Re Crimea)*, para. 338, 341.

⁵⁴ *Ibid.*, para. 341.

for Russian jurisdiction over Crimea was indispensable for the case, nor that it was obliged by the Convention to determine them, but only that it is 'empowered' to do so. Thus, it voluntarily decided to use its competences and drill into of one of the aspects of the case, which was not necessary for ruling on admissibility.

In the results of the investigation, the Court decided that it 'will proceed on the basis of the assumption that the jurisdiction of the respondent State over Crimea is in the form or nature of 'effective control over an area' rather than in the form or nature of territorial jurisdiction.'⁵⁵ Thus, in the end, the ECHR did not label Russia's jurisdiction over Crimea as territorial or extraterritorial, nor did it differentiate whether the period before 18 March or after 18 March 2014 was at stake. Ultimately, for the Court, the Russian jurisdiction over the Crimean Peninsula was based on effective control over the area for the entire period starting from 27 February.

Even though the Court could arrive at the latter conclusion by relying on the consistent positions of Ukraine and Russia, the investigation of the grounds of the Russian jurisdiction allowed the Court to refer to some legal acts which described the legal situation of Crimea. For instance, the Court mentioned the articles of the Ukrainian Constitution which claim Crimea as part of Ukraine and proclaim the indivisibility and inviolability of the State's territory.⁵⁶ It also mentioned that when the Convention entered into force with regard to Ukraine on 11 September 1997, the scope of its application embraced the entire Ukrainian 'territory within the internationally recognised borders as at that time, including Crimea.'⁵⁷ Given that, the Court observed that since then Ukraine had not notified the Court of a change to its sovereign territory; also Russia, when ratifying the Convention in 1998, did not claim that Crimea was part of its territory.⁵⁸ The ECHR also noted that Russia did not advance the case 'that the sovereign territory of either party to the proceedings

⁵⁵ *Ibid.*, para. 349.

⁵⁶ Article 2 of the Ukrainian Constitution stated that 'The sovereignty of Ukraine extends throughout its entire territory. Ukraine is a unitary state. The territory of Ukraine within its present border is indivisible and inviolable.', while Article 134: 'The Autonomous Republic of Crimea is an inseparable constituent part of Ukraine and decides on the issues ascribed to its competence within the limits of authority determined by the Constitution of Ukraine.'

⁵⁷ *Ukraine v. Russia (Re Crimea)*, para. 346.

⁵⁸ *Ibid.*, para. 347.

has been changed'. On the contrary, 'a number of States and international bodies have refused to accept any change to the territorial integrity of Ukraine in respect of Crimea within the meaning of international law.' Here the Court referred to the Award of 21 February 2020 concerning the Preliminary Objections of the Russian Federation in respect of the Dispute concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait between Ukraine and the Russian Federation, issued by the Arbitral Tribunal which listed UN General Assembly Resolutions 68/262, 73/263, 71/205, and 72/190.⁵⁹ The resolutions, *inter alia*, noted that 'the referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 was not authorized by Ukraine';⁶⁰ called upon 'all States to desist and refrain from actions aimed at the partial or total disruption of the national unity and territorial integrity of Ukraine';⁶¹ condemned 'the ongoing temporary occupation' of Crimea by the Russian Federation, reaffirmed the non-recognition of its annexation;⁶² and affirmed that 'the seizure of Crimea by force is illegal and a violation of international law.'⁶³ The Court cautiously quoted the passage from the Arbitral Tribunal's Award which stated that 'the effect of factual and legal determination' in these UN General Assembly resolutions 'depends largely on their content and the conditions and context of their adoption [, as] does the weight to be given to such resolutions by an international court or tribunal.'⁶⁴

Summing up, throughout the process the ECHR highlighted that it is not interested in deciding upon the legality of the annexation of Crimea and questions of sovereignty. However, every time it had the chance to provide evidence on the illegality of Russia's actions towards Ukraine, it exposed them. The Court did not make an explicit statement on the

⁵⁹ Ibid., para. 348.

⁶⁰ UN General Assembly Resolution 68/262 'Territorial integrity of Ukraine' of 27 March 2014, A/RES/68/262, preamble.

⁶¹ UN General Assembly, *ibid.*, para. 2.

⁶² UN General Assembly Resolution 73/263 'Situation of Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol, Ukraine' of 22 December 2018, A/RES/73/263, preamble.

⁶³ UN General Assembly, *ibid.*, 73/263, preamble.

⁶⁴ Arbitral Tribunal constituted under Annex VII to the 1982 United Nations Convention on the law of the sea, Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait, Award concerning the preliminary objections of the Russian Federation, 21 February 2020, PCA Case No. 2017-06, par. 174; *Ukraine v. Russia (Re Crimea)*, para. 348.

legality of the use of force by Russia against Ukraine or illegal acquisition of the territory of the sovereign State because it could not. Seemingly, it held regular proceedings on admissibility, making only minor departures from its previous practice – it investigated the problem of effective control in detail and it sought grounds for Russia’s jurisdiction over Crimea even though it did not have to do so. In each case it had the chance to make reference to statements from Russian authorities which highlighted how blatant the aggression against Ukraine was, or to bring up condemnations by international bodies. Even though all the Court could do was to refer to these quotations as part of the admissibility proceedings, in fact it seems that it is how the Court manifested its support for them.

6. Conclusions

The Court, analysing the facts and evidence linked with effective control and jurisdiction, did not limit itself only to those issues which were indispensable to rule on the admissibility of the case, but also referred to some statements which unequivocally told of the illegality of the annexation of Crimea and the violation of Ukrainian sovereignty.

The Court was not allowed to make an explicit statement on the issue, so it seems that it used alternative measures to convey its standpoint. The question remains of whether the ECHR was expected to manifest its views on such matters, either explicitly or implicitly. The Court’s positive decision on admissibility opens the way to ruling on merits; it will be interesting to see how the Court relates to those questions in the judgment.

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