



ECCHR BACKGROUND PAPER

Universal jurisdiction

All national legal systems must devise rules for who and what is to be covered by these systems. Normally, this is done through linking the crime or the individual to the state in some way: a state has jurisdiction if the crime occurs on its territory, or if the perpetrator or the victim is a national of that state.

Under the principle of universal jurisdiction, however, national courts are able to try individuals for crimes committed outside the state borders, where neither the perpetrators nor the victims are nationals. This applies only to what are considered to be the most serious violations of international law, such as war crimes, crimes against humanity (which includes, for example, genocide, torture and forced disappearances). All states are considered to have an interest in prosecuting and punishing such crimes, and the purpose of universal jurisdiction is to ensure that those responsible are held accountable wherever possible, and to deter potential future violations.¹

The UN Convention Against Torture (UNCAT) requires its parties to exercise universal jurisdiction over those suspected of the crime of torture, if these people are found in their jurisdiction. Article 5 (2) explicitly provides for the obligation of the State Party to enable, through legislative or other means, their courts to exercise jurisdiction when a person suspected of torture is present on the territory regardless of where the relevant acts occurred: *“Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.”*

Manfred Nowak, UN Special Rapporteur on Torture, confirms that this implementation of the principle of universal jurisdiction obligates all 154 contracting states of the UN Convention Against Torture to institute penal investigations against every person suspected of torture who is present in its territory – for whatever reason. This obligation stands irrespective of where the crime was committed and the nationality of the offenders and victims. The only precondition necessary to establish the jurisdiction of the state is the presence of the alleged offender.

Articles 6 and 7 oblige the "third state" to either prosecute or extradite the torture suspect found on its territory. Article 6, paragraph 1 of the UNCAT reads that a Party State, *“in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence.”* According to this provision, persons accused of torture shall be arrested immediately and criminal investigations shall ensue.

¹ International Council on Human Rights Policy, “Hard cases: bringing human rights violators to justice abroad. A guide to universal jurisdiction”, <http://www.ichrp.org/en/projects/201?theme=12>



States' obligations to protect ECtHR applicants

The parties to the European Convention on Human Rights have an obligation “not to hinder in any way” the effective exercise of the right to individual applications. In the case law of the European Court of Human Rights (ECtHR), this has been interpreted as encompassing practices such as indirect coercion (for example, questioning applicants with the intention of forcing them to withdraw their application; obstructing the applicants' communication with the court or bringing proceedings against the applicants' representatives) and direct coercion and intimidation.² Violations of article 34 have not often been found, but in such cases the Court has treated them as a priority.

Given the number of ECtHR applicants, their lawyers and families that have faced threats, the Parliamentary Assembly of the Council of Europe has called on all member states to “*take positive measures to protect applicants, their lawyers or members of their families from reprisals by individuals or groups, including, where appropriate, allowing applicants to participate in witness protection programmes, providing them with special police protection [...].*” It also called for the thorough investigation, prosecution and punishment of alleged crimes committed against applicants, their lawyers or their families so as to send out a message that such conduct will not be tolerated by the authorities. This resolution was issued as a result of several cases of intimidation, killings, disappearances and beatings of applicants and their families, as well as pressure brought to bear upon their lawyers.³

Parties to the Convention also have an obligation to secure the rights contained within the Convention to everyone within their jurisdiction, regardless of their nationality. Particularly where fundamental rights are concerned, such as the right to life and the prohibition on torture, it is required that states take positive steps to ensure that these rights are not violated. The Court has found that this includes an obligation of the authorities, once they are aware of a “real and immediate risk to life”, to take preventative measures to protect individuals whose lives may be at risk from the criminal acts of other individuals.⁴

More recently, as a result of the well-documented human rights abuses in Chechnya and the pressure put on Chechen exiles by emissaries of the Chechen leadership to return, the Parliamentary Assembly has also called on members of the Council of Europe to “*guarantee adequate protection to the Chechen exiles who have been harboured in their territory and are still in danger as a result of threats; and to co-operate with each other to neutralise the networks that target Caucasian refugees*”.⁵

² Christos Pourgourides, “Members states' duty to co-operate with the European Court of Human Rights”, PACE, Doc. 11183, 9 February 2007, http://assembly.coe.int/ASP/Doc/DocListingDetails_E.asp?DocID=11929

³ Ibid.

⁴ *Osman v UK*, ECtHR judgement, 28 October 1998, case no. 87/1997/871/108, § 115-122.

⁵ Dick Marty, “Legal remedies for human rights violations in the North-Caucasus Region”, PACE, 4 June 2010, <http://assembly.coe.int/Main.asp?link=/Documents/WorkingDocs/Doc10/EDOC12276.htm>