INTERNATIONAL HUMAN RIGHTS
LouvainX online course [Louv2.01x] - prof. Olivier De Schutter

READING MATERIAL
Related to: section 2, sub-section 1, unit 3: *Territories escaping State control* (ex. 1)

Case of Assanidze v. Georgia (application n° 71503/01), Grand Chamber Judgment on Merits and Just Satisfaction, 08/04/2004

139. The Ajarian Autonomous Republic is indisputably an integral part of the territory of Georgia and subject to its competence and control. In other words, there is a presumption of competence. The Court must now determine whether there is valid evidence to rebut that presumption.

140. In that connection, the Court notes, firstly, that Georgia has ratified the Convention for the whole of its territory. Furthermore, it is common ground that the Ajarian Autonomous Republic has no separatist aspirations and that no other State exercises effective overall control there (see, by converse implication, *Ilascu, Lesco, Ivantoc and Petrov-Popa* v. *Moldova and the Russian Federation* [GC], No. 48787/99, decision of 4 July 2001; and *Loizidou* v. *Turkey* (preliminary objections) [judgment of 23 March 1995, Series A No. 310]). On ratifying the Convention, Georgia did not make any specific reservation under Article 57 of the Convention with regard to the Ajarian Autonomous Republic or to difficulties in exercising its jurisdiction over that territory. Such a reservation would in any event have been ineffective, as the case law precludes territorial exclusions (*Matthews* v. *United Kingdom* [GC], No. 24833/94, ECHR 1999-I, §29) other than in the instance referred to in Article 56 §1 of the Convention (dependent territories).

141. Unlike the American Convention on Human Rights of 22 November 1969 (Article 28), the European Convention does not contain a 'federal clause' limiting the obligations of the federal State for events occurring on the territory of the states forming part of the federation. Moreover, since Georgia is not a federal State, the Ajarian Autonomous Republic is not part of a federation. It forms an entity which – like others (the Autonomous Republic of Abkhazia and, before 1991, the Autonomous District of South Ossetia) – must have an autonomous status ..., which is a different matter. Besides, even if an implied federal clause similar in content to that of Article 28 of the American Convention were found to exist in the European Convention (which is impossible in practice), it could not be construed as releasing the federal State from all responsibility, since it requires the federal State to 'immediately take suitable measures, in accordance with its constitution ..., to the end that the [states forming part of the federation] may adopt appropriate provisions for the fulfillment of [the] Convention'.

142. Thus, the presumption referred to in paragraph 139 above is seen to be correct. Indeed, for reasons of legal policy – the need to maintain equality between the State Parties and to

ensure the effectiveness of the Convention – it could not be otherwise. But for the presumption, the applicability of the Convention could be selectively restricted to parts only of the territory of certain State Parties, thus rendering the notion of effective human-rights protection underpinning the entire Convention meaningless while, at the same time, allowing discrimination between the State Parties, that is to say between those which accepted the application of the Convention over the whole of their territory and those which did not.