

**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. 2)**

In a judgement it delivers on 8 July 2004, the European Court of Human Rights does not dismiss as irrelevant the fact that the territory of the self-proclaimed "Moldovan Republic of Transdnistria" escapes the control of the central government of Moldova. Yet, the Court refuses to conclude that the situation complained of falls outside the "jurisdiction" of Moldova, and that Moldova therefore cannot be held responsible. Although it finds that "the Moldovan Government, the only legitimate government of the Republic of Moldova under international law, *does not exercise authority over part of its territory*, namely that part which is under the effective control of the [Moldavian Republic of Transdnistria]" [emphasis added], the Court does not conclude therefrom that – it being impossible for Moldova to exercise its jurisdiction on the said territory – this State may not be held responsible for what occurs in the region concerned. Instead, the Court considers that "*even in the absence of effective control over the Transdnistrian region*, Moldova still has a positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures that it is in its power to take and are in accordance with international law to secure to the applicants the rights guaranteed by the Convention" (paras. 330–1) [emphasis added]. It concludes (in para. 333 of its judgment):

"[W]here a Contracting State is prevented from exercising its authority over the whole of its territory by a constraining *de facto* situation, such as obtains when a separatist regime is set up, whether or not this is accompanied by military occupation by another State, it does not thereby cease to have jurisdiction within the meaning of Article 1 of the Convention over that part of its territory temporarily subject to a local authority sustained by rebel forces or by another State.

Nevertheless such a factual situation *reduces the scope of that jurisdiction* [emphasis added] in that the undertaking given by the State under Article 1 must be considered by the Court only in the light of the Contracting State's positive obligations towards persons within its territory. The State in question must endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms guaranteed by the Convention."