"INTERNATIONAL AND COMPARATIVE LAW CENTER – ARMENIA"

ICLAW STUDY ON THE CHIRAGOV CASE AND THE APPLICATION OF THE RULES OF ATTRIBUTION BY THE EUROPEAN COURT OF HUMAN RIGHTS[1†]

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1. On 22 January 2014 the Grand Chamber of the European Court of Human Rights (hereinafter "the ECHR" or "the European Court") held hearings on the merits of the *Chiragov and other v. Armenia* case. The question at issue was Armenia's responsibility for breaches of the right to peaceful enjoyment of possessions of certain individuals, who lived on the territory of Lachin, a region that is located outside of the internationally recognized borders of Armenia and is controlled by the yet unrecognized Artsakh (Nagorno-Karabakh) Republic (hereinafter also "the NKR").

2. However, the case, of course, is not so much about individuals and not so much about property rights, but rather about Armenia's alleged control over the Artsakh Republic, and the latter's qualification as a "puppet state" or a *de facto* body of Armenia. Such qualifications, of course, will cast serious doubts upon claims of self-determination and will stand as a strong underpinning for Azerbaijan's charges of aggression and illegal occupation of its by Armenia.

3. During the two hearings two separate grounds for supporting Armenia's extraterritorial jurisdiction over Lachin have been claimed by both the representatives of the Applicants and Azerbaijan itself, as an intervening third party: (1) the "agency exception" and (2) the "effective overall control" over the territory exception. While the first is concerned with situations were representatives of a state act extraterritorially, *inter alia* bringing an individual under the control of the state's authority,[4] the second addresses the issue of state control over the territory itself with a consequence of engaging that state's responsibility for acts committed on such territory.[5] And it is this latter case that this report will touch upon.

4. The concept of "effective overall control" should not be confused with the notions of "effective control" or "overall control", which are attribution tests used by the International Court of Justice and the International Criminal Tribunal for the Former Yugoslavia respectively. While the concept of "effective overall control", used by the ECHR, is a jurisdictional test and qualifies the level of control exerted by the state over territories outside of its recognized borders, the notions of "effective control" or "overall control" are attribution tests and refer to the state's control over individuals, groups or entities.[6]

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[4] *Öcalan v. Turkey*, Application no. 46221/99, GC Judgment of 12 May 2005, § 91; *Al-Skeini and Others v. the United Kingdom,* Application no. 55721/07, GC Judgment of 7 July 2011, §136

[5] *Al-Skeini*, *ibid.*, §138.

5. However, it is more than obvious that in situations when the state exercises "effective overall control" over a territory through individuals or groups that are not *de jure* agents of that State (in the words of the ECHR control through a "subordinate local administration"), attribution of the acts of those individuals or groups to the state is necessarily and inevitably implied.[7]

6. Therefore, we submit that logically no determination of Armenia's effective overall control over the territory of Lachin is possible without the determination that Armenia controls the forces of the Artsakh Republic and, *vise versa*, any determination that Armenia exercises effective overall control over the territory of Lachin will imply that Armenia has control over the forces of the Artsakh Republic.

7. This is because despite the special character of the European Convention on Human Rights as a human rights treaty,[8] the European Court has indicated on a number of occasions that "the principles underlying the Convention cannot be interpreted and applied in a vacuum" and that the Court "must also take into account any relevant rules of international law when examining questions concerning its jurisdiction and, consequently, **determine State responsibility in conformity and harmony with the governing principles of international law of which it forms par***t*…".[9]

8. Thus, since state responsibility is to be determined in conformity with the governing principles of international law, it must be noted that the rules of general international law are common and universal, and are not subject to modification or any form of bifurcation from one international institution to another. In the words of the International Court of Justice "The rules for attributing alleged international wrongful conduct to a State do not vary with the nature of the wrongful act in question in the absence of a clearly expressed *lex specialis*",[10] whereas a human rights convention is definitely no such self-contained regime, giving rise to a *lex specialis.*

9. Thus, under international law there is a strong presumption against a normative conflict. As it was vividly expressed by the International Law Commission's report on fragmentation of international law:

> Differing views about the content of general law create two types of problem. First, they diminish legal security. Legal subjects are no longer able to predict the reaction of official institutions to their behaviour and to plan their activity accordingly. Second, they put legal

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[6] *See e.g.* M. Milanovič, "State Responsibility for Genocide", 17 *European Journal of International Law* (2006), p. 586.
[7] *See e.g.* A. Cassese, "The *Nicaragua* and *Tadić* Tests Revisited in Light of the ICJ Judgment on Genocide in Bosnia", 18 *European Journal of International Law* (2007), p. 658, fn. 17.
[8] See e.g. *McElhinney v. Ireland,* Application no. 31523/96, Judgment of 21 November 2001, § 36.
[9] *Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, Application nos. 71412/01 & 78166/01, GC admissibility decision of 2 May 2007, emphasis added, § 122; see also *Bankovič and et al. v. Belgium and other NATO member states*, Application no. 52207/99, GC admissibility decision of 14 December 2006, § 57.
[10] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 2007 ICJ Reports 43, p. 208, § 401.

subjects in an unequal position vis-à-vis each other. The rights they enjoy depend on which jurisdiction is seized to enforce them.[11]

10. That said the uniformity of interpretation and application of general international law by different courts and other institutions stands as a prerequisite of international justice and legal order. Therefore, recourse must be had to the practice and the works of main international bodies in the field – the International Law Commission (hereinafter also "ILC"), responsible for the codification of customary international law, and the International Court of Justice, the leading institution on the international plane dealing with issues of state responsibility. And it is submitted that the interpretation of rules of state responsibility by the European Court must be in line with the interpretation of those rules by the aforesaid institutions.

11. Notably, the works of the International Law Commission on codification of rules of state responsibility, namely the articles on *Responsibility of States for Internationally Wrongful Acts* (hereinafter also "ASR")[12], are more than relevant. These articles have also been favoured by a General Assembly resolution,[13] which has been passed without vote; a factor highlighted by a number of experts as an indication of existence of custom. The ASR has also been referred to by the European Court in a number of cases.[14]

12. The same is true about the practice of the International Court of Justice, which is the primary international institution dealing with issues of state responsibility and whose practice has many a time been referred to by the European Court as well.[15]

13. Unfortunately, however, as we will show below in the most recent cases on the matter of extraterritorial jurisdiction through subordinate local administration, the European Court does not seem to adhere to the standards applied by the ICJ or the ILC and applies a standard which effectively results in the confusion and, what is even more disturbing, the fusion of notions of jurisdiction and attribution.

14. Given the importance of the factor of attribution in determination of Armenia's extraterritorial jurisdiction over Lachin, it comes as no surprise that during the hearings on the admissibility of the case that took place on 15 September 2010 Professor Malcolm N. Shaw touched upon the issue of "effective/overall control" over individuals and groups, trying to convince the ECHR that "it was not necessary to demonstrate detailed control over policies and actions of the authorities in the area,

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[11] Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law, UN Doc. A/CN.4/L.682, § 52.

[12] Report of the Commission to the General Assembly on the Work of its Fifty-Third Session, 2 *Yearbook of the International Law Commission* (2001) 2, at 26.

[13] GA Resolution 56/83, UN Doc. A/56/589, 28 January 2002.

[14] *See e.g. Blečič v. Croatia,* Application no. 59532/00, GC Judgment of 8 March 2006, §48; *see* also *Ilaşcu,* Application no. 48787/99, GC Judgment of 8 July 2004, §§ 319-321

[15] *See e.g. Behrami and Behrami v. France and Saramati v. France, Germany and Norway*, Application nos. 71412/01 & 78166/01, GC admissibility decision of 2 May 2007, § 27, quoting the pronouncements of the ICJ under the sub-chapter "Relevant Law and Practice"; see also *Loizidou (Merits)*, Application no. 15318/89, GC Judgment of 18 December 1996, § 45

overall control was sufficient to engage the responsibility of the contracting State concerned".[16] This same position was also reiterated during the hearings on the merits of the case.[17]

15. More importantly, according to the representatives of the Applicants and the intervening third party, earlier cases of the European Court support the "overall control" test; the cases referred to are the *Ilaşcu and others v. Moldova and Russia* case and the Cyprus cases. The present report tries to rebut this claim and show that in all those cases the line of distinction between extraterritorial jurisdiction (control over territory and/or individuals) and attribution was clearly drawn by the European Court. The situation, however, changed drastically in *Catan and Others v. Moldova and Russia*, since in that case the European Court blurred the distinction between these two notions.

The Ilaşcu case

16. During the hearings both the Representatives of the Applicant and the Representatives of the Intervening Third-Party referred to the ECHR's *Ilaşcu and others v. Moldova and Russia* judgment[18] as an example of State control, exercised over a subordinate local administration.

17. We submit, however, that the *Ilaşcu* was not a case of effective overall control over a territory – neither directly nor indirectly – but a case of a State agent authority exception and is, therefore, completely distinguishable and irrelevant.

18. Nowhere in the ECHR's analysis in *Ilaşcu* on Russia's extraterritorial exercise of jurisdiction[19] terms such as "effective overall control over a territory", "puppet state" or a "subordinate local administration" can be found: these terms are used only in the Courts general description of situations where a State's extraterritorial jurisdiction can be established (evaluation of the law on the matter of extraterritorial jurisdiction), but are not used where the Court applies the law to the facts of the case.

19. In our opinion, the ECHR's argumentation instead was based on a cause and effect connection between the acts of the Russian forces and the applicants' subsequent deprivation of liberty by the local administration, which although did get certain political and military support from the Russian Federation, but which support, however, was not the decisive factor in determining Russia's responsibility.

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[16] Webcast of hearings available at: http://www.echr.coe.int/Pages/home.aspx?p=hearings&w=1321605_15092010&language=lang (last visited on 4 January 2015).
[17] Webcast of hearings available at: http://www.echr.coe.int/Pages/home.aspx?p=hearings&w=1321605_22012014&language=lang&c=&py=2014 (last visited on 4 January 2015).
[18] Application no. 48787/99, GC Judgment of 8 July 2004.
[19] *Ibid.*, §§379-394.

20. If Russia's support to the Transdniestrian authorities would in itself suffice to qualify the latter as a "subordinate local administration" through which Russia would exercise effective overall control over the territory, there would be absolutely no need to establish the direct involvement of the Russian forces in the arrest and the subsequent treatment of the applicants in that case, since as the European Court has explained on a number of occasions, the "effective overall control over a territory" engages the State's responsibility for all events occurring on that territory irrespective of the State's direct involvement, given that 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".[20]

21. Thus, the Court did not indicate in *Ilaşcu* that all the acts of Transdniestrian authorities were attributable to the Russian Federation, but only that due to the support provided to those authorities "the Russian Federation's responsibility [was] **engaged** in respect of the unlawful acts **committed by the Transdniestrian separatists**, regard being had to the military and political support it gave them to help them set up the separatist regime and **the participation of its military personnel in the fighting**".[21]

22. In terms of public international law, this is not attribution of acts of Transdniestrian authorities to the Russian Federation as such (which is the same as qualifying the Moldovan Republic of Transdniestria as a "puppet state"), but establishment of a State's responsibility for aiding and assisting another entity. Thus, Article 16 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts provides for the responsibility of States for "[a]id or assistance in the commission of an internationally wrongful act". The latter stipulates:

> A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:
>
> (a) that State does so with knowledge of the circumstances of the internationally wrongful act;
> (b) the act would be internationally wrongful if committed by that State.[22]

23. Such responsibility, however, cannot be established *in abstracto*, but must be related to each and every specific act or violation in question, hence the requirement of Article 16(a) that the aiding and assisting State must have "knowledge of the circumstances of the internationally wrongful act". And the European Court was seemingly following that line of reasoning when it proved the direct involvement of Russian authorities in the detention of the applicants and emphasised their knowledge of the subsequent events at issue that took place after the applicants were handed over to Transdniestrian authorities:

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[20] *Ilaşcu, ibid*, §316; *Cyprus v. Turkey*, Application no. 25781/94, GC Judgment of 10 May 2001, §77.
[21] *Ibid.*, emphasis added, § 382.
[22] Responsibility of States for Internationally Wrongful Acts, GA Resolution 56/83, UN Doc. A/RES/56/83 (12 December 2001), Annex, art. 16.

> […] the events which gave rise to the responsibility of the Russian Federation must be considered to include not only the acts in which the agents of that State participated, like the applicants' arrest and detention, but also their transfer into the hands of the Transdniestrian police and regime, and the subsequent ill-treatment inflicted on them by those police, since in acting in that way the agents of the Russian Federation were fully aware that they were handing them over to an illegal and unconstitutional regime.
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> **In addition, regard being had to the acts the applicants were accused of, the agents of the Russian Government knew, or at least should have known, the fate which awaited them**.[23]

24. Thus, it seems that the European Court did not conclude that the acts of the Transdniestrian authorities were attributable to the Russian Federation, which would be the logical consequence should those authorities be qualified as a "puppet state", but only that the responsibility of the Russian Federation was engaged in relation with the specific acts, which is a language peculiar to the State's responsibility for aiding and assisting:

> In the Court's opinion, all of the acts committed by Russian soldiers with regard to the applicants, including their transfer into the charge of the separatist regime, in the context of the Russian authorities' collaboration with that illegal regime, are capable of engaging responsibility for the acts of that regime.[24]

25. Thus, it is the accumulation of Russia's collaboration with the Transdniestrian authorities (not control thereof), knowledge of the fate of the victims as well as the direct involvement of the agents of the Russian Federation in the events at issue that together engaged the responsibility of the latter. These elements are completely in line with the above mentioned rule of State responsibility for aiding and assisting the commission of illegal acts.

26. Another important element here is the causal link between the acts of the agents of the Russian Federation and the subsequent treatment of the victims.

27. This, however, was not defined by the European Court in *Ilaşcu* for the first time, but in an earlier case of *Soering v. United Kingdom*, where it applied the same language as in *Ilaşcu*:

> The question remains whether the extradition of a fugitive to another State where he would be subjected or be likely to be subjected to torture or to inhuman or degrading treatment or punishment would itself engage the responsibility of a Contracting State […]. It would hardly be compatible with the underlying values of the Convention, that "common heritage of political traditions, ideals, freedom and the rule of law" to which the Preamble refers, were a Contracting State knowingly to surrender a fugitive to another State where there were substantial grounds for believing that he would be in danger of being subjected to torture, however heinous the crime allegedly committed.[25]

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[23] *Ilaşcu*, §384.
[24] *Ibid.*, §385.

28. The above wording used in the *Soering* judgment clearly and manifestly shows that the mere fact that the responsibility of a State is engaged through certain acts has nothing to do with attribution. The contrary argument would bring us to the preposterous conclusion that the potential acts of the US authorities were attributable to the UK. Thus, in case of the *Soering* judgment, too, we were in fact dealing with the responsibility for aiding and assisting.

29. As for the period following the date of ratification of the Convention by the Russian Federation, the European Court did indicate that the Transdniestrian authorities were provided military, economic, financial and political support by Russia, however the conclusion was not that Transdniestria was definitely under the effective control of the Russian Federation, but "at the very least under the decisive influence".[26] The notion of "decisive influence", however, is not synonymous to and in fact has nothing to do with the concept of attribution under the law of State responsibility.

30. Thus, we conclude that in *Ilaşcu* the responsibility of the Russian Federation was established due to the cumulative combination of several factors: (1) direct involvement of Russian troops in the detention of the applicants, (2) the handing over of the applicants by the Russian troops to the Transdniestrian authorities and their knowledge of the fate of the applicants, (3) support provided by the Russian authorities to Transdniestria. Therefore, in *Ilaşcu* the responsibility of the State was established due to its aid and assistance to the group perpetrating the illegal acts, while the threshold criterion of extraterritorial exercise of jurisdiction was established through the agency exception and by no means through the "effective overall control over a territory" exception, which is manifest from the Court's reliance on the causality between the acts of the Russian troops and the subsequent treatment and deprivation of liberty that the applicants were subjected to.

The Cyprus cases

31. Despite the fact that the European Court has indicated on a number of occasions that a State's effective overall control over a territory can be established through a subordinate local administration, until quite recently the Court had not had a clear-cut case where control would be established through such administration only, and the Cyprus cases are not an exception. Indeed, in all cases addressed by the European Court, except but one, the Contracting State was directly involved either due to its significant military presence[27] or through its direct involvement in the violations at issue (which is already a case of "State agent authority" exception).

32. In this regard the Cyprus cases stand as an important guideline. It is true that in both *Loizidou v. Turkey* and *Cyprus v. Turkey* the European Court indicated that an "effective overall control over a

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[25] Application no. 14038/88, Judgment 7 July 1989, §88.
[26] *Ibid.*, §392.
[27] *Loizidou v. Turkey (Merits)*, Application no. 15318/89, GC Judgment of 18 December 1996, §56; *Cyprus v. Turkey*, Application no. 25781/94, GC Judgment of 10 May 2001, §77

territory" can be exercised through a subordinate local administration,[28] however, eventually such control was, in fact, established not due to the control of the territory by the TRNC, but due the significant military presence of Turkey in northern Cyprus and their direct involvement in both occupation of northern Cyprus and in preventing the applicant from gaining access to her property.[29] The ECHR indicated in *Loizidou*:

> It is obvious from the large number of [Turkey's] troops engaged in active duties in northern Cyprus … that her army exercises effective overall control over that part of the island.[30]

The Court then proceeded to conclude that Turkey's responsibility for the acts of TRNC was engaged but it was not the level of control over the TRNC that was decisive but the fact of direct control over the territory itself.

33. Notably the European Court has indicated on a number of occasions that "[t]he 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".[31]

34. This means that the degree of control exercised over the subordinate local administration was not really important in Cyprus cases, since irrespective of the degree of control over the TRNC itself the fact that Turkey had direct control over the island through its own forces would engage Turkey's positive and negative human rights obligations.

35. Thus, the ECHR indicated in *Cyprus v. Turkey*:

> Having effective overall control over northern Cyprus, its [Turkey's] responsibility cannot be confined to the acts of its own soldiers or officials in northern Cyprus but must also be engaged by virtue of the acts of the local administration […].[32]

In that respect whether that local administration survives through Turkey's support or not, or what degree of control Turkey exercises over that administration are secondary issues, it is Turkey's direct control over the territory that matters.

36. Thus, the Cyprus cases, in fact, do not provide a conclusive rational for establishing a State's indirect control over a territory through a subordinate administration either, since in these cases the subordinate local administration, in fact, was not the means for the establishment of the effective overall control over the territory; the Turkish army was.

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[28] *Loizidou v. Turkey (Preliminary Objections)*, Application no. 15318/89, GC Judgment of 23 March 1995, §62; *Loizidou v. Turkey (Merits)*, *ibid.*, §52.
[29] *Loizidou (Preliminary Objections)*, *ibid.*, §63.
[30] *Loizidou (Merits)*, §56.
[31] *See e.g. Al-Skeini*, *supra* note 1, §138.
[32] *Cyprus v. Turkey*, *supra* note 17, §77.

37. The *Chiragov* case is, however, totally distinguishable. Absent any direct proof of involvement of the forces of the Republic of Armenia in the deprivation of the Applicants of their property or proof of huge numbers of those forces directly controlling the territories at issue, the only way for proving Armenia's extraterritorial exercise of jurisdiction is to prove the subordination of NKR to Armenia, *i.e.* the NKR must be the means for establishing the control over the territory. This argumentation, however, seems to be challenged by one of the more recent judgments of the European Court.

Catan and Others v. Moldova and Russia

38. Apart from the judgments referred to during the *Chiragov* hearings, the European Court lately had yet another occasion for touching upon the issue of subordinate local administrations. In *Catan and Others v. Moldova and Russia*,[33] *inter alia*, the question of the Russian Federation's responsibility for the policies of the Transdniestrian authorities with respect to Moldovan language schools was raised (the schools were closed and, in the words of the ECHR, subject to "measures of harassment").

39. This judgment strangely, was not invoked by the Applicants or the intervening third party during the hearings on the merits of the *Chiragov* case. We say strangely, because not only does it support the Applicants' case, but also sets an extremely low threshold for engaging the responsibility of a state providing support to unrecognised *de facto* regimes.

40. Unlike the *Ilaşcu* case, in *Catan* there was no direct involvement of the Russian agents. So it was responsibility for the acts of the subordinate local administration pure and simple. And it is in this case that the argumentation of the European Court becomes self-contradictory, at best.

41. Interestingly enough, the *Catan* judgment is the first and the only one of all relevant cases, where the European Court refers to Article 8 of the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts under the section of "Relevant International Law".[34] The European Court also refers to the 2007 Judgment of the International Court of Justice (hereinafter "the ICJ") in the case concerning the *Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*,[35] a case where the ICJ did reemphasise once again its adherence to the "effective control" test.[36]

42. Despite that fact, however, the European Court later in its judgment claims that the case has nothing to do with attribution at all. It is worth citing the relevant paragraph of the judgment in its entirety:

> The Government of the Russian Federation contend that the Court could only find that Russia was in effective control if it found that the "Government" of the "MRT" could be

[33] Application nos. 43370/04, 8252/05 and 18454/06, GC Judgment of 19 October 2012.
[34] *Ibid.*, §74.
[35] 2007 ICJ Reports 43.
[36] §§391-392.

> regarded as an organ of the Russian State in accordance with the approach of the International Court of Justice in the *Case Concerning the Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro* [..]. The Court recalls that in the judgment relied upon by the Government of the Russian Federation, the [ICJ] was concerned with determining when the conduct of a person or group of persons could be attributed to a State, so that the State could be held responsible under international law in respect of that conduct. In the instant case, however, the Court is concerned with a different question, namely whether facts complained of by an applicant fell within the jurisdiction of a respondent State within the meaning of Article 1 of the Convention. As the summary of the Court's case-law set out above demonstrates, the test for establishing the existence of "jurisdiction" under Article 1 of the Convention has never been equated with the test for establishing a State's responsibility for an internationally wrongful act under international law.[37]

43. However, after claiming that the case has nothing to do with attribution, the European Court went to conclude that "the "MRT""s high level of dependency on Russian support provides a strong indication that Russia exercised effective control and decisive influence over the "MRT" administration during the period of the schools' crisis".[38]

44. It is true, of course, that the notions of jurisdiction and attribution are different. However, as we have already indicated above, we submit that if the extraterritorial jurisdiction of a state is established due to the control that that state exercises over a territory through a subordinate local administration, the attribution of the acts of that subordinate local administration to the state is a necessary precondition. Otherwise, there will be a gap in the chain of argumentation.

45. Furthermore, it is strange – to say the least – that after indicating that the case had nothing to do with attribution, the European Court came to the conclusion that Russia exercised "effective control" over "MRT". As already highlighted above, such "effective control" over groups, individuals or entities is a test of attribution and not a test of jurisdiction (like the "effective overall control over territory" applied in *Loizidou* and *Cyprus v. Turkey*).

46. We submit that through such argumentation the European Court has exhibited a manifest inconsistency in its application of legal categories and confusion of tests of attribution and jurisdiction. In its attempt to avoid a "lacuna in the system of human-rights protection" the European Court seems to have adopted a policy of holding states responsible for all situations where support is being provided to unrecognised entities.

47. If that is the case, then the nature of the judgment that the ECHR will pass on the *Chiragov* case is more than obvious.

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[37] *Catan*, *supra* note 30, §115.
[38] *Ibid.*, §122.

48. However, there is one way to save the reasoning of the European Court and to bring it out of a kerfuffle of legal categories to a field of legal reasoning. One might claim that in finding the Russian Federation to be responsible, the European Court applied a reasoning similar to that applied by the ICJ in the *Bosnian Genocide* case, where the ICJ determined that the acts of Republika Srpska were not attributable to Serbia, however, still found the latter to be responsible for its failure to prevent the genocide.[39]

49. It thus would be possible to claim that similar to the ICJ's reasoning, in *Catan* case it was in fact the responsibility of the Russian Federation to prevent violations of human rights by the local administration over which it had a certain amount of influence, and that this positive obligation to prevent such breaches existed irrespective of attribution of the acts of Transdniestria to Russia.

50. Such interpretation would not directly flow from the language of the judgment (since nowhere in it does the Court speak of the obligation of the Russian Federation to prevent the acts of Transdniestria), however it will also not contradict it and, most importantly, will be consistent with the practice of other international institutions so that no problems of further fragmentation would occur.

Conclusion

51. Before the *Catan* judgment, one could hope that the European Court, if it were to apply the standards of attribution defined by the ICJ, would not find Armenia responsible for any acts committed on the territory of Lachin. The reasoning of the ECHR in *Ilascu*, *Loizidou* and *Cyprus* provided relevant grounds for claiming that those were cases concerning the direct involvement of state agents and that they were not applicable in the *Chiragov and others v. Armenia* case.

52. The *Catan* judgment, however, casts a shadow on all such hopes. It shows that the exercise of extraterritorial jurisdiction is possible without the attribution of the acts of the local administration to the state and absent the direct involvement of the state agents. How this magic works, of course, is yet to be clarified, however, it is in this lack of attribution that there is some light at the end of the tunnel for both Armenia and NKR.

53. If jurisdiction can be established without attribution, then the extraterritorial responsibility of Armenia on the territory of Lachin would have nothing to do with qualifying NKR as a *de facto* body of Armenia. This would mean that the case will not serve its political purpose and goals, pursued by Azerbaijan and the determination on Armenia's responsibility will not have additional legal and/or political ramifications on the global scale. And, after all, the case will be about individuals and property rights only, despite all the hopes cherished by certain powers.

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[39] *Application of the Convention on the Prevention and Punishment of Genocide*, *supra* note 32, §438.