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The Inter-State Application to the European Court of Human Rights in Strasbourg – Potential Revival

Skarga międzypaństwowa do Europejskiego Trybunału Praw Człowieka w Strasburgu – potencjalne odrodzenie

This article deals with the theoretical, legal, and practical aspects of filing inter-state complaints to the European Court of Human Rights (ECtHR) and their consideration by the Court. It describes the evolution, essence, and current legal regulation of the institution of inter-state application expressed in the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the ECtHR's regulations. The article compares the qualitatively different complaints filed by post-Soviet states with those lodged by the so-called senior members of the Council of Europe (CoE) and examines the possible correlation between them. The article describes to what extent the inter-state application is the primary mechanism for ensuring verification of mutual compliance with the provisions of the ECHR as objective obligations, and to what extent it reflects the political aspirations of states-parties. However, the analysis shows that, in the vast majority of cases, states submit complaints in order to obtain short-term political and economic benefits. It has been shown that some inter-state applications are in fact disguised individual complaints.

Keywords: inter-state application, European Court of Human Rights, Council of Europe, diplomatic affairs, human rights, international law

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Artykuł dotyczy teoretycznych, prawnych i praktycznych aspektów wnoszenia skarg międzypaństwowych do Europejskiego Trybunału Praw Człowieka i ich rozpatrywania przez ten Trybunał. Zaprezentowano ewolucję instytucji skargi międzypaństwowej, jej istotę i obecne uregulowanie

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prawne wyrażone w Konwencji o ochronie praw człowieka i podstawowych wolności. Z jakościowo odmiennymi skargami składanymi przez państwa byłego obszaru postsowieckiego skonfrontowano skargi wnoszone przez tzw. starych członków Rady Europy oraz zbadano możliwą korelację między nimi. Przedstawiono, w jakim zakresie skarga międzypaństwowa jest podstawowym mechanizmem zapewniającym weryfikację wzajemnego przestrzegania postanowień Konwencji o ochronie praw człowieka i podstawowych wolności, a w jakim odzwierciedla polityczne aspiracje państw-stron. Jednakże z przeprowadzonej analizy wynika, że w zdecydowanej większości przypadków państwa składają skargi w celu uzyskania doraźnych korzyści politycznych i ekonomicznych. W artykule wykazano, że niektóre skargi międzypaństwowe w rzeczywistości są zamaskowanymi skargami indywidualnymi.

Słowa kluczowe: skarga międzypaństwowa, Europejski Trybunał Praw Człowieka, Rada Europy, sprawy dyplomatyczne, prawa człowieka, prawo międzynarodowe

I. Introduction

Inter-state application is an integral component of the Strasbourg mechanism. Based on Article 33 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[1] each party to it has the right to bring inter-state applications to the European Court of Human Rights (ECtHR).[2] For over 60 years, the institution of inter-state applications has not been used extensively by states. However, as the statistics show, this trend has been reversed in recent years. Since 2018, states have been noticeably more interested in the possibility of submitting complaints against other participants of the Strasbourg mechanism. The breakthrough took place on 20 March 2018, when the ECtHR referred to the request to review the famous first case of Ireland v. The United Kingdom (UK).[3] In 2020 alone, the ECtHR received five such applications, followed by the 30th in February 2021 and, in August 2022, the 36th inter-state application in the history of the ECtHR. Thus, the forecasts concerning end of the Strasbourg mechanism of inter-state applications have not come true.[4] It is quite the opposite.[5] As Helen Küchler reports, the doctrine mentions a kind of golden age of

[1] European Convention on Human Rights, *European Treaty Series*, no. 5 (1950), <https://rm.coe.int/1680a2353d>, accessed 10 February 2023; I. Risini, 'The Inter-State Application Under the European Convention on Human Rights', *German Yearbook of International Law*, vol. 62, no. 1 (2021), p. 621.

[2] M. Kowalski, 'Skarga międzypaństwowa', in M. Balcerzak, S. Sykuna (eds), *Leksykon ochrony praw człowieka. 100 podstawowych pojęć* (C.H.Beck, Warszawa, 2010), p. 468.

[3] Judgement (Revision) of the ECtHR in the case of Ireland v. UK (I) on 20 March 2018, application no. 5310/71, HUDOC.

[4] A. Ploszka, 'Koniec strasburskiego mechanizmu skargi międzypaństwowej?', *Studia Europejskie*, no. 2(66) (2013), pp. 171–184.

[5] I. Risini, 'The Inter-State Application', pp. 621–624; P. Leach, 'On Inter-State Litigation and Armed Conflict Cases in Strasbourg', *European Convention on Human Rights Law Review*, vol. 2, is. 1 (2021).

inter-state applications.[6] The aim of the article is to verify whether indeed inter-state matters, which during the first decades of existence in the Strasbourg system constituted the original mechanism for guaranteeing compliance with the provisions of the ECtHR by member states, are now experiencing a renaissance after years of practical non-existence, or whether this interest in complaints is only a diplomatic game that does not translate into an actual assertion of rights and freedoms.

The thesis has been put forward that the hitherto practice of states, that only incidentally used inter-state applications, is undergoing a fundamental change. In order to verify it, research questions have been asked: 1) Do the nature and principles of bringing inter-state applications remain constantly the same, or is this changing?; 2) Does a case initiated by a state party under the inter-state procedure undermine the chance for agreement and permanent dialogue before the ECtHR?; 3) What is the real purpose of the use of inter-state applications by state parties?; 4) To what extent is the number of submitted and examined complaints a function of the rules expressed in the ECHR and the Rules of Court,[7] and to what extent does it reflect the political aspirations of the applicant states? The study was carried out using a dogmatic method, an analysis of jurisprudence and an analysis of statistical data on the number of complaints received and examined by the ECtHR. Due to volume limitations, a special analysis was carried out on inter-state applications and previous decisions made by the ECtHR over the last four years.

II. The nature and formal requirements of an inter-state application

From the very beginning of the Strasbourg mechanism, an inter-state application has been the main adversarial means of the peaceful settlement of international disputes.[8] Bogusław Banaszak, describing this procedure as a 'state complaint', considered it to be a peculiar, original feature of the ECHR system, which any member of the Council of Europe (CoE) can bring to the ECtHR, "if it believes that another state party to the convention has violated the provisions of the convention or its protocols".[9] Thus, states with standing may also bring complaints against other state parties to ECHR (passive standing) if they consider that they have not complied with the final judgement of the ECtHR

[6] H. Küchler, *Die Renaissance der Staatenbeschwerde. Potenzial und Gefahr der vermehrten Nutzung des Art. 33 EMRK* (Brill-Nijhoff, Saarbrücken, 2020), pp. 246–301. *Cf.* L. Kleinert, J. Batura, I. Risini, *A 'Golden Age' of Inter-State Complaints?* (Brill-Nijhoff, Berlin, 2020).

[7] *Rules of Court*, Registry of the Court, Strasbourg 2020, <https://echr.coe.int/Documents/Rules_Court_ENG.pdf>, accessed 10 February 2023 (RoC).

[8] K. Łasak, 'Normatywna konstrukcja skarg międzypaństwowych w Europejskiej Konwencji Praw Człowieka', in *Stosowanie prawa Unii Europejskiej w wewnętrznym porządku prawnym* (CEUW, Warszawa, 1998), p. 148.

[9] B. Banaszak, 'Skarga państwa', in *Encyklopedia prawa* (C.H.Beck, Warszawa, 2007), p. 772. [Translation of quotation from Polish into English – authors' own translation].

in all cases to which they are parties.[10] This means that each state party to ECHR may object to violations of substantive law, as well as the procedural provisions of ECHR, which have the nature of an *erga omnes* objective obligation.[11]

Originally, the issues related to the submission of inter-state applications were included in former Article 24 of the ECHR, applying to the possibility of referring any alleged violation of the provisions of the ECHR by other signatories to the former European Commission of Human Rights (the Commission), through the Secretary General.[12] The provisions of Articles 44 and 48 of the ECHR[13] were also important as they enabled the initiation of a complaint procedure between states directly before the ECtHR if the case was not resolved at the stage of proceedings before the Commission.[14]

As the ECHR has evolved as a 'living instrument' for implementing fundamental rights and freedoms, the very essence and purpose of lodging an inter-state application has not undergone a fundamental evolution. Over the next several decades of operation of the Strasbourg system, an inter-state application gave way in terms of popularity to an individual complaint. At the moment, the provision allowing for the initiation of inter-state proceedings before the ECtHR is included in Article 33 of the ECHR.[15] It enables any state party to the ECHR to bring a complaint before the ECtHR if it considers that another state party to the ECHR has violated the provisions of the ECHR or its protocols.[16] The current rule recognises that the ECtHR has jurisdiction to hear all matters relating to the interpretation and application of the ECHR, in all cases that will be referred to it on the basis of inter-state applications and individual complaints,

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[10] U. Karpenstein, Ch. Johann, 'Art. 33 – Staatenbeschwerden', in U. Karpenstein, F.C. Mayer (Hrsg.), *Konvention zum Schutz der Menschenrechte und Grundfreiheiten*, Legalis Aufl. 2015, EMRK, no. 1, 3.

[11] J. Meyer-Ladewig, A. Kulick, 'Artikel 33 Staatenbeschwerden', in A. Kulick, M. Nettesheim, S. Raumer (Hrsg.), *Europäische Menschenrechtskonvention* (C.H.Beck, Basel, 2017), no. 1–2.

[12] See initial text of the Convention: Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol / Convention de sauvegarde des droits de l'Homme et des libertés fondamentales et Protocole Addittionel, Strasbourg 1950, <https://www.echr.coe.int/Documents/Archives_1950_Convention_ENG.pdf>, accessed 10 February 2023.

[13] In this process, the position of the Commission was crucial. The Commission analysed the facts and made decisions on admissibility. Its tasks also included persuading the parties to ECHR to reach a settlement. For details on the role of the former Commission on Human Rights in this process. *Cf.* Kondak, 'Art. 33', in L. Garlicki (ed.), *Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności*, t. 2 (C.H.Beck, Warszawa, 2011), pp. 112–113.

[14] Importantly, in a situation where the case would not be referred by one of the entities competent to the ECtHR, the final power to decide on a possible violation of the provisions of the ECHR rested with the CM. *Cf.* M. Balcerzak, *Zagadnienie precedensu w prawie międzynarodowym praw człowieka* (TNOiK, Toruń, 2008), p. 151.

[15] I. Risini, 'The Accession of the European Union to the ECHR and the Inter-State Application under Article 33 ECHR', in *Contemporary Issues of Human Rights Protection in International and National Settings*, S. Lorenzmeier, V. Sancin (eds) (Nomos, Baden-Baden, 2017), pp. 180–182.

[16] It is possible for a state party to the convention to bring forward claims against other state parties to the convention not only for violation of the provisions of an additional protocol, but even for delay in its ratification. Meyer-Ladewig, Kulick, 'Artikel 33', no. 4.

as well as those related to the binding force and interpretation of the ECHR and its protocols.[17]

From a structural point of view, the initiation of an interstate case also does not differ significantly from the original rule.[18] The only change has been introduced by Protocol No. 11, which has eliminated the Commission's mediation in the ECtHR process for examining complaints.[19] Therefore, as is the case with an individual complaint, an inter-state application is now brought directly to the ECtHR. When intending to bring a case to ECtHR under Article 33 of the ECHR, a state party or state parties to the ECHR shall submit a complaint to the Court. ECtHR's Registry containing: the name of the state against which the complaint is brought; a statement of the facts about the alleged violation or violations of the ECHR, together with the arguments relevant to the case; a statement on the fulfilment of admissibility requirements, i.e. the exhaustion of domestic remedies and fulfillment with the time-limit for bringing submissions;[20] demonstration of claims for just satisfaction for the party or parties claiming to be the aggrieved party; and the name(s) and address(es) of the person or persons appointed as agents. The state should also attach copies of all relevant documents, in particular those related to the ECtHR or other decisions, needed to evaluate the complaint.[21]

Formal assessment of the fulfilment of the conditions rests with the ECtHR Registry, which examines the completeness of the inter-state application in terms of its compliance with the requirements contained in Rule 46 of Rules of Court. In the case of Georgia v. Russia, the ECtHR *expressis verbis* ruled that in principle, Article 35(2)–(3) of the ECHR does not apply.[22] Therefore, in order to examine the requirements of Rule 46 of Rules of Court, the chamber constituted to consider the case shall designate one or more of its judges as judge rapporteur(s), who shall submit a report on admissibility of the case when the written observations of the contracting parties concerned have been received. This is important because, at a later stage, any objection of inadmissibility may be only raised by the state against which the complaint has been lodged under strict procedures and only to the extent that its nature and circumstances permit.[23]

Rules of Court, without diametrically differentiating between the interstate and individual modes, provide for a slightly different path for dealing with complaints

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[17] H. Bajorek-Ziaja, *Skarga do Europejskiego Trybunału Praw Człowieka oraz skarga do Europejskiego Trybunału Sprawiedliwości* (LexisNexis, Warszawa, 2008), p. 31.

[18] The issues of the structure and formal requirements of an interstate complaint are set out in Rule 46 of the RoC.

[19] Kondak, 'Art. 33', pp. 112–113.

[20] Where a complaint is directed against an administrative practice, the ECtHR does not take account of measures that occurred more than six months before the complaint was lodged.

[21] Rule 46 of the RoC, Registry of ECtHR, Rules of European Court of Human Rights, Strasbourg, 3 October 2022, <https://www.echr.coe.int/documents/rules_court_eng.pdf>, accessed 10 February 2023.

[22] *Cf.* Decision in the application of Georgia v. Russia on 13 December 2011, application no. 38263/08, HUDOC; J. Jorritsma, 'Unravelling Attribution, Control and Jurisdiction: Some Reflections on the Case Law of the European Court of Human Rights', in B. Hess, H.R. Fabri (eds), *International Law and Litigation. A Look into Procedure* (Nomos, Baden-Baden, 2019), p. 662; Karpenstein, Johann, 'Art. 33', no. 10.

[23] Rule 55 of the RoC.

submitted by states than for individual complaints.[24] In this respect, a modification significant for inter-state applications was made in 2006.[25] The current Rule 51 of the Rules of Court provides that the president of the ECtHR shall immediately give notice of the application to the respondent contracting party and shall assign the application to one of the sections of the ECtHR.[26] Judges authorised by the parties to the dispute, that is, the applicant state and the state complained against, sit *ex officio* in the chamber appointed to hear the case, which is important for the implementation of the ECHR's principle of equality. The same is true when there are more than one applicant state parties. Another difference relates to the post-assignment status and the responsibility of the section president, who asks the state complained against to submit any written comments on the admissibility of the complaint.

The subsequent provisions on verification of admissibility do not fundamentally differentiate between interstate cases and cases initiated by an individual complaint.[27] This applies both to formal issues: the integral components of decisions and judgements, the language and procedure of their publication and announcement, and the manner in which settlements and judgements are executed before the Committee of Ministers (CM).[28] Differences relate to the scope of the possibility for the president of the chamber to consult the representatives of the state parties on matters relating to the waiver of the rule of writing and the determination of the oral procedure, the time limits for submitting written comments on the subject of the dispute, as well as the manner for presenting further evidence and conducting a hearing regarding the complaint.[29] Like individual complaints, inter-state applications can also be reviewed and, in both cases, just satisfaction may be awarded at the applicant's request.[30] The abovementioned differences in the scope of the procedure result from the very essence of the inter-state

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[24] Meyer-Ladewig, Kulick, 'Artikel 33', no. 6.

[25] P. Wiater, 'Teil – Eine Konfrontation Völkerrechtlicher und Ontologischer Grundsatz Reflexionen zu Kultur- und Rechtspluralismu', in *ead.*, *Kulturpluralismus als Herausforderung für Rechtstheorie und Rechtspraxis* (Nomos, Baden-Baden, 2019), p. 369.

[26] D. Zimmermann, *Judicial Independence in the European Court of Human Rights* (Verlagsort, Baden-Baden, 2014), p. 474. Pursuant to Article 26 Section 1(a) of the ECHR, judges elected under the authority of the state parties to the ECHR, that is, the applicant party and the party complained against, sit *ex officio* as members of the chamber established to hear the case. Article 30 of the ECHR shall apply if the complaint has been filed by several state parties to the ECHR or if complaints of the same object lodged by several state parties to the ECHR are examined jointly under Article 42 of the ECHR. The president of the section, upon receipt of notification of their assignment to the section, forms a chamber in accordance with Article 26 Section 1 of the ECHR.

[27] The rules provide that, before the announcement of a decision on the admissibility of a complaint, the chamber or its president may decide to invite the state parties to the convention to submit additional written comments. An exceptional hearing may be held on the admissibility of a complaint if one or more interested state parties to the ECHR so request or if the chamber decides so in its own motion.

[28] *Cf.* Rule 56^2 and 57^1 of the RoC.

[29] They were expressed in Rules 55, 56^2 and 57^1 of the RoC.

[30] Rule 80 of the RoC; Judgement (Revision) of the ECtHR in the case of Ireland v. UK (I) on 20 March 2018, application no. 5310/71, HUDOC.

judicial dialogue between state parties to the ECHR, who wish to convince not only the ECtHR, but also other members of the international community that they are right.

III. Past practice of the ECtHR in the area of inter-state matters

Based on the existing precise rules relating to the conditions of admissibility and the manner in which the ECtHR proceeds and adjudicates in inter-state cases, it is possible to define not only the declared, but also the actual purpose for which state parties use inter-state applications. In many cases, states only formally declare that their complaints are in the public interest, and, in fact, the vast majority of complaints are initiated to pursue the particular interests of the applicants.[31] The practice of the ECtHR also shows that inter-state applications are objectively less relevant than individual complaints.[32] The formal and legal premise for lodging a complaint from the very beginning of the Strasbourg mechanism was the conviction of the applicant state that the state complained against breached provisions of the ECHR and, consequently, violated the principle of respect for human rights and the rule of law. The quantitative and qualitative analysis of inter-state applications leads to the conclusion that the actual intentions of the applicant state rarely coincide with the objectives declared by them when they initiated the proceedings.

From the case of Greece v. UK (I) in 1956 until now, the ECtHR has received dozens of inter-state applications (some of them have been combined), 21 of which can be classified as closed cases[33] (Table 1).

Table 1. Inter-State Applications (closed cases)

Inter-State Application	Case no.	Dates of introduction	Dates of decisions
Greece v. UK (I)	176/56	7.5.1956	2.6.1956
Greece v. UK (II)	299/57	17.7.1957	12.10.1957
Austria v. Italy	788/60	11.7.1960	11.1.1961
Denmark, Norway, Sweden and the Netherlands v. Greece (I)	3321/67-3323/67 3344/67	27.9.1967 25.3.1968	24.1.1968 31.5.1968

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[31] Kondak, 'Art. 33', p. 117. In practice, the public interest was the subject of the so-called Greek cases (applications no. 3321/67-3323/67, 3344/67, 4448/70, HUDOC) and Turkish cases (applications no. 9940/82-9944/82, HUDOC), because in these cases the applicant states brought complaints in order to protect the rule of law and the rights and freedoms of persons in the territory ruled by military junta.

[32] M.E. Villiger, 'The European Court of Human Rights and its Role in the European Legal Order', *ZEuS*, no. 4 (2017), p. 543.

[33] A.H. Robertson, 'Inter-State Applications', *Yearbook of the European Convention on Human Rights / Annuaire de la Convention Europeenne des Droits de l'Homme* (1963), p. 54.

Inter-State Application	Case no.	Dates of introduction	Dates of decisions
Denmark, Norway, Sweden and the Netherlands v. Greece (II)	4448/70	10.4.1970	26.5.1970 16.7.1970
Ireland v. UK (I)	5310/71	16.12.1971	1.10.1972 Judgements on 18.1.1978 and 20.3.2018
Ireland v. UK (II)	5451/72	6.3.1972	1.10.1972
Cyprus v. Turkey (I)	6780/74	10.9.1974	26.5.1975
Cyprus v. Turkey (II)	6950/75	21.3.1975	26.5.1975
Cyprus v. Turkey (III)	8007/77	6.9.1977	10.7.1978
Denmark, France, Norway, Sweden and the Netherlands v. Turkey	9940/82-9944/82	1.7.1982	6.1.1983
Cyprus v. Turkey (IV)	25781/94	22.11.1994	28.6.1996 Judgements on 10.5.2001 and 12.5.2014
Denmark v. Turkey	34382/97	7.1.1997	8.6.1999 Judgement on 5.4.2000
Georgia v. Russia (I)	13255/07	26.3.2007	30.6.2009 Judgements on 3.7.2014 and 31.1.2019
Georgia v. Russia (II)	38263/08	12.8.2008	13.12.2011 Judgement on 21.1.2021
Georgia v. Russia (III)	61186/09	3.12.2009	16.3.2010
Ukraine v. Russia (re Crimea)	20958/14	13.3.2014	14.1.2021
Ukraine v. Russia (III)	49537/14	9.7.2014	24.9.2015
Latvia v. Denmark	9717/20	19.2.2020	16.6.2020
Slovenia v. Croatia	54155/16	15.9.2016	18.11.2020

Source: European Court of Human Rights, <https://www.echr.coe.int>, accessed 5th March 2023.

Until 1997, as many as 10 out of 13 cases were examined and adjudicated solely based on this procedure, in which the Commission and CM were involved,[34], and only three cases, after the report was prepared by the Commission, were examined

[34] This applies to cases: Greece v. UK (I), application no. 176/56, HUDOC; Greece v. UK (II), application no. 299/57, HUDOC; Austria v. Italy, application no. 788/60, HUDOC; Denmark, Norway, Sweden and the Netherlands v. Greece (I), applications no. 3321/67-3323/67 and 3344/67, HUDOC; Denmark, Norway, Sweden and the Netherlands v. Greece (II), application no. 4448/70, HUDOC; Ireland v. UK (II), application no. 5451/72, HUDOC; Cyprus v. Turkey (I), application no. 6780/74, HUDOC; Cyprus v. Turkey (II), application no. 6950/75, HUDOC; Cyprus v. Turkey (III), application no. 8007/77, HUDOC; Denmark, France, Norway, Sweden and the Netherlands v. Turkey, applications no. 9940/82-9944/82, HUDOC.

by the ECtHR.[35] The remaining eight cases, which were also examined by the ECtHR, were dealt with because the provisions of Additional Protocol No. 11 of 11 May 1994 (AP No. 11) had entered into force.[36] Thanks to this reform, numerous inter-state applications heard by the ECtHR and its judgements in inter-state cases has increased significantly. The number of complaints with a positive response to their admissibility has also increased. These include the case of Denmark v. Turkey;[37] the first,[38] second[39] and third[40] cases of Georgia v. Russia; the first,[41], third[42] and seventh cases[43] of Ukraine v. Russia, as well as the case of Slovenia v. Croatia, in which the Grand Chamber issued a decision on 16 December 2020.[44] However, only three of the eight cases mentioned above have been ruled on by the ECtHR: Denmark v. Turkey;[45] and the first[46] and second cases of Georgia v. Russia.[47]

From the point of view of the legal consequences related to the judgement issued in an inter-state case, the judgement in the first case of Ireland v. UK was the most important.[48] The applicant, Ireland, did not act in the public interest but had a particular interest in bringing the complaint.[49] In its judgement of 18 January 1978, the ECtHR found that: "In a judgment delivered on 18 January 1978 ('the original judgment'), the Court held, in so far as relevant in the context of the present revision request, that the use of the five techniques of interrogation in August and October 1971 constituted a practice of inhuman and degrading treatment, in breach of Article 3 of the Convention, and that the said use of the five techniques did not constitute a practice of torture within the meaning of Article 3".[50] However, the ECtHR did not stop at stating that the ECHR obliged the

[35] These included: Judgement of the ECtHR in the case of Ireland v. UK (I) on 18 January 1978, application no. 5310/71, HUDOC and Judgement (Revision) of the ECtHR in the case of Ireland v. UK (I) on 20 March 2018, application no. 5310/71, HUDOC; Judgement of the ECtHR in the case of Denmark v. Turkey (IV) on 5 April 2000, application no. 34382/97, HUDOC and Judgement of the ECtHR in the case of Cyprus v. Turkey (IV) on 12 May 2014, application no. 25781/94, HUDOC.

[36] Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby (ETS no. 155), <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=155>, accessed 10 February 2023.

[37] Application no. 34382/97, HUDOC.

[38] Application no. 13255/07, HUDOC.

[39] Application no. 38263/08, HUDOC.

[40] Application no. 61186/09, HUDOC.

[41] Application no. 20958/14, HUDOC.

[42] Application no. 49537/14, HUDOC.

[43] Application no. 38334/18, HUDOC.

[44] Application no. 54155/16, HUDOC.

[45] Application no. 34382/97, HUDOC.

[46] Application no. 13255/07, HUDOC.

[47] Application no. 38263/08, HUDOC.

[48] Karpenstein, Johann, 'Art. 33', no. 1.

[49] Kondak, 'Art. 33', p. 117.

[50] Judgement (Revision) of the ECtHR in the case of Ireland v. UK (I) on 20 March 2018, application no. 5310/71, HUDOC.

authorities of the state parties to respect the rights and freedoms expressed therein, but also held that its provisions required the state parties to ensure the enjoyment of these rights and freedoms, including by preventing violations or removing their effects under the ECHR.[51] Therefore, in the event of a finding of an infringement as a result of an inter-state application, the state infringing the ECHR has the obligation to amend or repeal the infringing act, which does not necessarily apply to judgements given in individual cases.[52]

Although several decades have passed since the judgement in the case of Ireland v. UK, due to journalistic investigation and new material that appeared on 4 June 2014 after the broadcast of television material, the Irish authorities informed the ECtHR that they had obtained information "about documents that had not been known to the ECtHR at the time of its judgement and which could have had a decisive influence on the Court's judgement as regards the specific question of whether the use of the five interrogation techniques had constituted torture".[53] In 2018, the ECtHR negatively referred to the possibility of revising this judgement, finding that the revision was unjustified, because the alleged new facts might have had a decisive influence on the original judgment could not constitute grounds for a review. The ECtHR justified this by the fact that a request for a review was not intended as an opportunity for a party to apply for a change in a judgement in the event of a later change in the case law of the Court.[54] This comment also applies to state parties to the ECHR.

Of the dozen or so inter-state cases conducted until the late 20th century, two complaints against Turkey brought before the ECtHR, first by Denmark and then by Cyprus, had a major impact on the increased use of inter-state applications. The first was brought in defence of the rights and freedoms of a Danish citizen (of Turkish origin) who complained about inhuman, degrading treatment and punishment during detention.[55] This case, however, was not of a particular nature, but a mixed one, meaning it combined the features of the public interest with the necessity to defend the individual interest (in this case the rights and freedoms of the detained person). This forced the ECtHR to verify whether the interrogation techniques tolerated by the Turkish authorities were applied only to the Danish citizen or even if they were a generally accepted method, widespread throughout Turkey.[56] The case was closed with a settlement, in which the Turkish party

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[51] J. Laffranque, 'Can't Get Just Satisfaction', in A. Seibert-Fohr, M.E. Villiger (eds), *Judgments of the European Court of Human Rights – Effects and Implementation* (Nomos, Luxemburg, 2014), pp. 106–107.

[52] J. Czepek, *Zobowiązania pozytywne państwa w sferze praw człowieka pierwszej generacji na tle Europejskiej Konwencji Praw Człowieka* (UWM, Olsztyn, 2014), pp. 33, 48.

[53] *ECHR Rejects Irish Request to Find Torture in 1978 Judgment against UK*, <http://hudoc.echr.coe.int/eng-press?i=003-6037261-7753992>, accessed 10 February 2023.

[54] Rule 80 of the RoC.

[55] Judgement (Friendly settlement) of the ECtHR in the case of Denmark v. Turkey on 5 April 2000, application no. 34382/97, HUDOC.

[56] Laffranque, 'Can't Get Just Satisfaction', p. 107; M.A. Nowicki, 'Dania przeciwko Turcji – wyrok ETPC z dnia 5 kwietnia 2000 r., skarga międzypaństwowa no. 34382/97', in *id.*, *Nowy Europejski Trybunał Praw Człowieka. Wybór orzeczeń 1999–2004* (Zakamycze, Kraków, 2005), p. 229.

undertook to make major changes in its legislation, had a significant impact on the further development of inter-state applications. The so-called fourth case against Turkey, which resulted in a judgement, had a similar impact.[57] However, unlike the case initiated by the Danish complaint, the fourth case of Cyprus v. Turkey was of a particular nature and concerned the restriction of the exercising of many rights and freedoms by Cypriot nationals after the Turkish invasion of Northern Cyprus. The particular dimension of this complaint is also indicated by the fact that the ECtHR granted a request for just compensation amounting to euros 90 million, which cannot be paid to the state, but only to the victims of violations.[58] Moreover, the judgement in the Cyprus case directly influenced the decisions of the ECtHR in subsequent cases in which the applicants were states from the post-Soviet area.[59]

New dynamics in the popularisation of inter-state applications were brought about by two of the aforementioned Georgian cases out of the four submitted so far.[60] They were lodged by Georgia against Russia in the context of the diplomatic conflict and then the armed conflict that took place in the South Ossetia region in August 2008.[61] The first of the complaints was of an eminently particular nature and concerned the admissibility of measures applied by Russia, considered as the collective expulsion of foreigners under Article 4 of Additional Protocol No. 4 of 16 September 1963 (AP No. 4),[62] in this case against a group of Georgian citizens who were accused of espionage.[63] In the judgement of the Grand Chamber of 31 January 2019, the ECtHR found that in August 2006, a coordinated policy of the detention, arrest and expulsion of

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[57] Judgement of the ECHR in the case of Cyprus v. Turkey (IV) on 12 May 2014, application no. 25781/94, HUDOC.

[58] K. Warecka, *Strasburg: 90 mln euro słusznego zadośćuczynienia dla cypryjskich Greków od Turcji. Cypr przeciwko Turcji – wyrok ETPC z dnia 12 maja 2014 r., application no. 25781/94*, LEX/el. 2014.

[59] S. Zaręba, 'Specyfika odpowiedzialności za naruszenia europejskiej konwencji praw człowieka związane z działalnością nieuznawanych reżimów – analiza orzecznictwa', *Studia Prawnicze*, no. 3 (2016), p. 30; G. Baranowska, 'ETPC i słuszne zadośćuczynienie w skargach międzypaństwowych – wyrok w sprawie Cypr przeciwko Turcji z 12.05.2014 r.', in M. Balcerzak, J. Kapelańska-Pręgowska (eds), *Odpowiedzialność międzynarodowa w związku z naruszeniem praw człowieka i międzynarodowego prawa humanitarnego* (UMK, Toruń, 2016), pp. 41–47.

[60] The so-called third Georgian case brought by Georgia against Russia on 3 December 2009 (complaint no. 61186/09, HUDOC) was deleted from the ECtHR's list of cases on 16 March 2010, and the fourth case, brought on 22 August 2018 (complaint no. 39611/18, HUDOC), is pending a decision on admissibility.

[61] M. Balcerzak, *Odpowiedzialność państwa-strony Europejskiej konwencji o ochronie praw człowieka i podstawowych wolności. Studium prawnomiędzynarodowe* (TNOiK, Toruń, 2013), p. 216.

[62] Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto (ETS No. 046), <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=046>, accessed 10 February 2023.

[63] Judgement (Merits) of the ECtHR in the case of Georgia v. Russia (I) on 3 March 2014, application no. 13255/07, HUDOC.

Georgian citizens, was implemented on the territory of Russia, having the character of an administrative practice constituting the collective expulsion of foreigners.[64] The ECtHR also stated that due to the arbitrary nature and conditions of imprisonment of the detained persons, this practice violated not only Article 4 of AP No. 4, but also, most of all, Article 5(1) and (4), Article 3 and Article 13 of the ECHR. The ECtHR obliged the Russian authorities to pay just satisfaction directly to the victims of the violations.

Far-reaching legal implications have been brought by the judgement of 21 January 2021, which was issued in the second Georgian case. The complaint submitted by Georgia on 11 August 2008 against Russia was parallel to the complaint lodged by Georgia on 12 August 2008 to the International Court of Justice in The Hague.[65] It concerned assigning Russia the responsibility for violations of the provisions of the ECHR during the effective control exercised by its troops on the territory of South Ossetia, Abkhazia and in the buffer zone. Importantly, the complaint had been brought by Georgia the day before the truce entered into force on 11 August 2008, and thus during the time of military operations. The Georgian side, accusing Russia of violating the provisions of the ECHR and its additional protocols, presented *prima facie* evidence of the existence of a permanent administrative practice in this respect.[66] Additionally, Georgia requested interim measures be taken by the ECtHR, obliging Russia to cease operations in the conflict area. In this respect, the complaint was also declared admissible.[67]

In its judgement of 21 January 2021, the ECtHR found that from the moment of the effective ceasefire agreement between the fighting parties until the official withdrawal of Russian troops from the territory over which it had effective control that is, in the period from 12 August to 10 October 2008, Russia should be held responsible for: actions against prisoners of war, the unlawful detention of the civilian population, making it impossible for these civilians to return to their homes after the conclusion of the truce, as well as unreliability in the scope of the conducted investigation into establishing the actual course of events during the hostilities and after their completion. Due to the nature of the judgement, which obliges the Russian authorities to pay just satisfaction, regardless of whether or not Russia will seek to negate it, it will certainly provide an impulse for similar complaints filed with the ECtHR by post-Soviet states, perhaps in a larger dimension than before.

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[64] Judgement (Just satisfaction) of the ECtHR in the case of Georgia v. Russia (I) on 31 January 2019, application no. 13255/07, HUDOC.

[65] *Cf.* E.H. Morawska, 'Środki tymczasowe w stanach nadzwyczajnych. Uwagi na tle sprawy Gruzja v. Federacja Rosyjska przed Międzynarodowym Trybunałem Sprawiedliwości', *Polski Rocznik Praw Człowieka i Prawa Humanitarnego*, no. 9 (2018), pp. 181–182.

[66] Karpenstein, Johann, 'Art. 33', no. 11.

[67] *Cf.* Decision in the case of Georgia v. Russia on 13 December 2011, application no. 38263/08, HUDOC.

IV. The dynamics of examining inter-state cases by the ECtHR since 2018

From 2018, pursuant to Article 33 of the ECHR, 16 inter-state applications were filed with the ECtHR, five of which were lodged in 2020, four in 2021 and three in 2022, which is a unique quantitative increase from the very beginning of the Court's operation. Such a large increase in the number of complaints may indicate the deteriorating observance of human rights in Europe or a growing trust in the ECtHR as the guardian of the ECHR[68] (Table 2). Currently, there are few inter-state applications pending before the ECtHR which have been declared admissible.[69] In turn, another inter-state applications are awaiting a decision on admissibility, three of which concern the aforementioned complaints brought by Ukraine v. Russia,[70] one by Russia v. Ukraine,[71] one by Georgia v. Russia,[72] and three are connected with the conflict in Nagorno-Karabakh and were lodged successively: four by Armenia v. Azerbaijan,[73] one by Armenia v. Turkey,[74] and two by Azerbaijan v. Armenia.[75] The case, initiated in 2020, in which the so-called old members of the CoE are involved, is Liechtenstein v. the Czech Republic.[76] Attention should be paid, in particular, to the case of Latvia v. Denmark,[77] regarding the arrest and detention of a Latvian woman on Danish territory, who was accused of parental abduction and wanted by Interpol. This case quickly reached its conclusion because it was closed by the decision of the ECtHR of 16 June 2020 to remove it from the list of cases. The handover of the detainee to Latvia by the Danish authorities, and thus the end of the case brought on 19 February 2020 after only a few months on 16 June 2020, proves that the ECtHR also has a strong position in the international political space.

This recognised role of the ECtHR is used by the states of the post-Soviet region to pursue their vested interests. The judgement issued on 21 January 2021[78] undoubtedly influenced subsequent decisions in similar cases, including the so-called fourth Georgian case,[79] which confirmed the existence of the permanent administrative practice of systematic violations of human rights in areas occupied by separatists from

[68] Meyer-Ladewig, Kulick, 'Artikel 33', no. 2.

[69] *Inter-Cases before the ECHR*, <https://rm.coe.int/overview-of-inter-cases-before-the-echr-non-paper/16809f02db>, accessed 10 February 2023.

[70] Cases no. 38334/18, 55855/18, 10691/21, 11055/22, HUDOC.

[71] Case no. 36958/21, HUDOC.

[72] Case no. 39611/18, HUDOC.

[73] Cases no. 42521/20, 33412/21, 42445/21, 15389/22, HUDOC.

[74] Case no. 43517/20, HUDOC.

[75] Cases no. 47319/20 and 39912/22, HUDOC.

[76] Case no. 35738/20, HUDOC.

[77] Case no. 9717/20, HUDOC.

[78] I. Risini, *The Inter-State Application under the European Convention on Human Rights. Between Collective Enforcement of Human Rights and International Dispute Settlement* (Brill, Leiden, 2018), pp. 140–143.

[79] Case no. 39611/18, HUDOC.

the republics of South Ossetia and Abkhazia, as well as being administered by Russian forces.[80] However, the complaint filed by Georgia on 22 August 2018 is of a mixed nature in this regard, as it was brought both in the public interest and for the particular purpose of explaining the disappearance of Archil Tatunashvili and the murders of David Basharuli, Giga Otkhozoria, and A. Tatunashvili. This case has the chance of a final judgement by the ECtHR, unlike the case of the so-called third Georgian complaint, which was eventually withdrawn by Georgia, following the effective mission of the CoE Commissioner for Human Rights to release Georgian minors detained in South Ossetia.[81]

The practice of the ECtHR to date with regard to complaints filed by Georgia about establishing the existence of a permanent administrative routine may also have a significant impact on the final decisions in the Ukrainian cases.[82] So far, it is the Ukrainian authorities that have filed a record number of inter-state applications, all against Russia.[83] In connection with the armed conflict in Ukraine, the country filed a complaint against Russia in February 2022. At present, no complaint can be made against Russia because this country was excluded from the CoE in September 2022. However, the previous cases against Russia are still being processed. This includes interim measures which can also be applied – pursuant to Article 39 of the Rules – for the aggrieved party, but not for the applicant state.[84] So far, however, only one of the complaints (the so-called seventh) has been found admissible and is pending examination by the ECtHR.[85] The third case (Georgia v. Russian Federation (III)), the subject matter of which in part overlapped with the individual complaint, was deleted from the list on 1 September 2015.[86] In turn, one application against Russia was jointly filed by Ukraine and the Netherlands.[87] The complaint of 13 March 2014, in which Ukraine accused Russia of the occupation and annexation of the Autonomous Republic of Crimea and the city of Sevastopol, was found to be partially admissible on 14 January 2021.[88] Two more inter-state applications (the eighth and ninth) are pending the ECtHR's decision on admissibility.[89]

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[80] *Cf.* Karpenstein, Johann, 'Art. 33', no. 7.

[81] Decision in the case of Georgia v. Russia of 16 March 2010, case no. 61186/09, HUDOC; M.A. Nowicki, *Wokół Konwencji Europejskiej. Komentarz do Europejskiej Konwencji Praw Człowieka* (Wolters Kluwer, Warszawa, 2017), p. 54; Risini, *The Inter-State*..., pp. 142–143.

[82] Villiger, 'The European Court', p. 543.

[83] I.C. Kamiński, 'Gdzie i jak mogą się skarżyć uczestnicy konfliktu na Ukrainie?', *Studia Prawnicze KUL*, no. 2(62) (2015), pp. 132–134; Nowicki, *Wokół*..., pp. 55–56.

[84] Meyer-Ladewig, Kulick, 'Artikel 33', no. 7.

[85] Decision in the case of Ukraine v. Russia 14 January 2021 on the admissibility, application no. 38334/18, HUDOC.

[86] *Cf.* Application no. 49537/14, HUDOC.

[87] Applications no. 8019/16, 43800/14, 28525/20, HUDOC.

[88] Application no. 20958/14, HUDOC.

[89] Application no. 55855/18, HUDOC and application no. 10691/21, HUDOC. Complaint no. 55855/18, HUDOC, filed on 29 November 2018, concerns a maritime incident in the Kerch Strait in 2018, while the complaint filed on 19 February 2021 concerns the finding of a permanent administrative practice of Russia involving deliberate assassination and actions against alleged opponents of Russia, on both its territory and the territory of other countries.

Table 2. Inter-State Applications (pending cases)

Inter-State Applications	Case no.	Dates of introduction
Ukraine and the Netherlands v. Russia	8019/16 43800/14 28525/20 11055/22	13.3.2014 13.6.2014 10.7.2020 28.2.2022
Ukraine v. Russian Federation (VII)	38334/18	14.1.2021
Georgia v. Russia (IV)	39611/18	22.8.2018
Ukraine v. Russia (VIII)	55855/18	29.11.2018
Liechtenstein v. Czech Republic	35738/20	19.8.2020
Armenia v. Azerbaijan (I)	42521/20	27.9.2020
Armenia v. Türkiye	43517/20	4.10.2020
Azerbaijan v. Armenia (I)	47319/20	27.10.2020
Ukraine v. Russia (IX)	10691/21	19.2.2021
Russia v. Ukraine	36958/21	22.7.2021
Armenia v. Azerbaijan (II)	33412/21	29.6.2021
Armenia v. Azerbaijan (III)	42445/21	24.8.2021
Armenia v. Azerbaijan (IV)	15389/22	24.3.2022
Azerbaijan v. Armenia (II)	39912/22	18.8.2022

Source: European Court of Human Rights, <https://www.echr.coe.int>, accessed 5th March 2023.

Among all the complaints filed by Ukraine, the cases concerning the determination of liability for the shooting down of a Malaysia Airlines passenger plane (MH17) over Ukrainian territory on 17 June 2014, in which 298 people were flying from Amsterdam to Kuala Lumpur, deserve special attention due to their subject matter and complex legal implications.[90] Ukraine filed the relevant complaints with the ECtHR on 1 March 2014 and 13 June 2014. As the majority of the fatalities were Dutch citizens, a separate complaint was lodged on 10 July 2020 by the Dutch government. This is the third inter-state application filed with the ECtHR by the authorities of that state.[91] By submitting the complaint, the Netherlands not only represents the public interest but also, above all, aims to pursue the particular interest of its own citizens, which is the right to life (Article 2 of the ECHR).[92] This was confirmed in the joint case of Ayley and Others v. Russia and in

[90] Applications no. 8019/16, 43800/14, 28525/20, HUDOC.

[91] In addition to the cases of Denmark, Norway, Sweden and the Netherlands v. Greece (I), there are complaints no. 3321/67-3323/67, 3344/67, HUDOC, and Denmark, France, Norway, Sweden and the Netherlands v. Turkey, complaints no. 9940/82-9944/82, HUDOC.

[92] Introducing an interstate complaint in this regard does not prevent the possibility of submitting individual complaints by persons representing the victims of the MH17 crash. *Cf.* case of Varnava *et al.* v. Turkey, applications no. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, 16073/90, HUDOC.

the case of Angline and Others v. Russia, in which the Netherlands acted as *amici curiae* under Article 36(1) of the ECHR.[93] By filing a separate complaint in 2020, the Dutch government not only treated the inter-state application as a form of political pressure on Russia, but also opened up the field for the intervention by other state parties to the ECHR, such as Germany, Belgium, and the UK, which, pursuant to Article 36 of the ECHR, can submit written comments and participate in hearings.[94] From the Ukrainian perspective, the most important issue to be dealt with by the ECtHR will be to determine the scope of responsibility for events over which the state party does not exercise effective control (Article 1 of the ECHR). The complaints are currently pending before the Grand Chamber.

Inter-state applications have become the means by which Armenia[95] and Azerbaijan[96] are trying to resolve the conflict in Nagorno-Karabakh in their favour. At the end of 2020, these state parties to the ECHR lodged inter-state applications against each other based on the classic principle of reciprocity. Additionally, Armenia applied for interim measures to be taken by the ECtHR. Importantly, on 29 September 2020, the ECtHR responded positively to this application and, consequently, in accordance with Rule 46 of the Rules of Court, these measures were submitted. Similarly to the so-called second Georgian case and the so-called first Ukrainian case, the ECtHR urged both parties to refrain from any action, including military action, which could result in violation of the rights of the civilian population.[97] The interim measures applied by the ECtHR proved to be partially effective, as evidenced by the content of the ceasefire agreement concluded on 9 November 2020 under the auspices of Russia.[98] This partial success of the ECtHR resulted in the filing of further complaints after the conclusion of the ceasefire. In the case of Armenia, this also applies to the complaint against Turkey, which the country considers to be a hidden aggressor.[99] Other 'disguised' individual complaints that have been submitted in recent years by Azerbaijani and Armenian citizens against Armenia and Azerbaijan, respectively, should also be identified.[100]

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[93] Applications no. 25714/16 and 56328/18, HUDOC.

[94] *Cf.* I. Risini, G. Ulfstein, *The Netherlands' Inter-State Application against Russia Six Years After MH 17*, <https://www.ejiltalk.org/the-netherlands-inter-state-application-against-russia-six-years-after-mh-17/>, accessed 8 February 2022.

[95] Cases Armenia v. Azerbaijan, applications no. 42521/2, 33412/21, 42445/21, 15389/22, HUDOC.

[96] Cases Azerbaijan v. Armenia, applications no. 47319/20 and 39912/22, HUDOC.

[97] *Cf.* ECtHR Press Release, *The Court Makes a Statement on Requests for Interim Measures Concerning the Conflict in and around Nagorno-Karabakh*, ECtHR, 314 (2020), HUDOC, <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-6844996-9168687&filename=Statement%20on%20requests%20for%20interim%20measures%20concerning%20the%20conflict%20in%20and%20around%20Nagorno-Karabakh.pdf>, accessed 10 February 2023.

[98] *Cf.* ECtHR Press Release, *Receipt of Applications in Two Inter-State Cases Related to the Conflict in Nagorno-Karabakh*, ECtHR 314 (2020), <https://hudoc.echr.coe.int/eng-press#%7B>, accessed 10 February 2023.

[99] *Cf.* Application no. 43517/20, HUDOC.

[100] Such 'disguised' complaints include the applications of Chiragov *et al.* v. Armenia, complaint no. 13216/05, HUDOC, and Sargsyan v. Azerbaijan, complaint no. 40167/06, HUDOC.

A similar situation occurs with regard to cases brought by citizens of Georgia and Ukraine against Russia, the dominant of which are allegations of violation of Article 5 of the ECHR and Article 1 of AP No. 1.[101]

The case of Slovenia v. Croatia is among the key cases confirming the practice of the ECtHR to date.[102] The complaint, brought on 15 September 2016, concerned unpaid debts incurred by Croatian companies and owed to the Ljubljana Bank. A significant number of the bank's liabilities belonged to Croatian entities which, according to the Slovenian applicant, were not repaid in spite of civil lawsuits pending since 1994. Slovenia alleged that, since 2004, based on a ruling by the Croatian Constitutional Court, Croatian courts refused to give the Ljubljana Bank official status and consequently prevented the effective pursuit of claims. Due to the nature of the case, on 18 December 2018, the case was referred the Grand Chamber, which decided that the ECtHR was not competent to hear the case because it did not have jurisdiction to consider the inter-state application for pursuing the rights of the bank as a legal person that does not qualify as a 'non-governmental' body. The ECtHR found that the ECHR, did not create fundamental rights for states and governmental organisations, as well as for individuals, in which the complaining party had an interest.[103] In this case, the Ljubljana Bank did not enjoy sufficient institutional and operational independence from the state and therefore could not be considered a 'non-governmental organisation' within the meaning of Article 34 of the ECHR. The decision is final.

The complaint filed by Liechtenstein against the Czech Republic on 19 August 2020 was another complaint, which was submitted due to the domestic judgement of the Constitutional Tribunal.[104] It is also the aftermath of the judgement issued by the ECtHR in the case of Jan Adam II, Prince of Liechtenstein, v. Germany, concerning the return of the painting 'Szene um einen römischen Kalkofen' by Pieter van Laer.[105] The complaint submitted by Liechtenstein refers directly to the Czech rules, which maintain in force the so-called Beneš decrees of 1945, based on which the property of the Liechtenstein family was recognised as post-German property and then nationalised by Czechoslovakia. The subject of the ECtHR's examination will therefore be whether the law enacted in the state that is a party to the contract introduces or allows for measures inconsistent with the ECHR or its additional protocol. While the Liechtenstein authorities argue that the eventual judgement is relevant to the 29 Liechtenstein citizens

[101] In the case of Ukrainian citizens, there were several thousand individual complaints. *Cf.* N. Cwicinskaja, 'Crimea and Liability of Russia and Ukraine under the European Convention on the Protection of Human Rights', *Adam Mickiewicz University Law Review*, no. 9 (2019), p. 86.

[102] Judgement of the ECtHR in the case of Georgia v. Russia (II) on 21 January 2021, application no. 38263/08, HUDOC.

[103] Decision in the case of Slovenia v. Croatia on 18 November 2020, application no. 54155/16, HUDOC.

[104] Application no. 35738/20, HUDOC.

[105] Judgement of the ECtHR in the case of Prince Hans-Adam II of Liechtenstein v. Germany on 12 November 2001, application no. 42527/98, HUDOC.

deprived of their property by the Czech authorities, who refuse to award damages, the complaint appears to have been made to protect the specific interest of the Liechtenstein family, which cannot be equated with the public interest.[106]

V. Conclusions

As the analysis shows, after many years of the incidental use of inter-state applications, these are a non-diplomatic measure currently used in practice by state parties to the ECHR. The increased number of inter-state cases may prove the effectiveness of the Court's reforms implemented from 1994 to 1998 and from 2004 to 2010. Another reason why inter-state cases have gained in popularity is the developed, clear jurisprudence of the ECtHR, as well as the clear path of proceedings in interstate cases, as confirmed by recent decisions and judgements of the ECtHR. Moreover, since AP No. 11 entered into force, it should be recognised that many individual complaints should be treated as "disguised" inter-state applications, which are more carefully filtered at the admissibility stage.

A study of the applicants' arguments contained in inter-state applications allows the conclusion to be drawn that, to a large extent, these complaints were an extension of the ongoing jurisdictional dispute between states.[107] Perhaps this peculiar return of the CoE member states to the classic Strasbourg mechanism results from the widespread acceptance of Article 55 of the ECHR. This prohibits contracting parties to the ECHR from instituting parallel proceedings before other international courts, including arbitration courts, based on the recommendations adopted in Resolution 70(17).[108] However, more frequent use of interstate cases can by no means replace the diplomatic route, nor will the ECtHR be treated as a kind of substitute for the constitutional tribunals of states or an appeal body against them, as confirmed by the decision in the case of Slovenia v. Croatia.[109]

Despite the growing number of complaints, Poland has not yet been involved in any interstate cases. From the Polish perspective, however, it should be noted that virtually all complaints filed in recent years may be considered politically motivated and, therefore, it cannot be completely ruled out that such an inter-state application will

[106] The decisive factor in determining a violation of the ECHR will be whether the legal provisions have been drafted by the Czech authorities with sufficient clarity and precision, and therefore whether or not the possible violation is obvious.

[107] In particular, this concerns several hundred complaints filed by Ukrainian citizens against Russia, as well as the complaints of Georgian citizens against Russia or the former complaints of Greek and Cypriot citizens against Turkey, as well as current Armenian complaints against Turkey.

[108] Meyer-Ladewig, Kulick, 'Artikel 33', no. 7; Resolution no. (70)17 adopted by the Ministers' Deputies on 15 May 1970, UN Covenant on Civil and Political Rights and the European Convention on Human Rights: Procedure for dealing with inter-state complaints. At present, the state parties to the ECHR, which are also signatories to the International Covenant on Civil and Political Rights, should give priority to an interstate complaint if it concerns another state party to the ECHR.

[109] Villiger, 'The European Court', p. 175.

appear in the future.[110] Though, this fact does not justify the conclusion that, in any event, the nature of an inter-state application may make it similar to an *actio popularis*, enabling state parties to "claim the human rights status of another state party".[111] This is because the dominant particularism of the argumentation contained in inter-state applications makes it possible to recognise that the majority of authorities want to protect the individual interests of their citizens by submitting these complaints. The analysed cases show that although an inter-state application is not a classic form of diplomatic protection, the practice of proceedings in inter-state cases is partially similar to diplomatic protection, in which states demand that its citizens be treated by another state in accordance with international law.[112] However, an inter-state application is more effective than diplomatic protection.

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[111] T. Lachowski, 'Prawo międzynarodowe praw człowieka jako instrument przeciwdziałania skutkom poważnego naruszenia prawa międzynarodowego publicznego – analiza wybranych aspektów przypadku agresji Federacji Rosyjskiej wobec Ukrainy (w latach 2014–2018)', *Wschodni Rocznik Humanistyczny*, no. 4 (2018), p. 41; Kondak, *op. cit*., pp. 112–113.

[112] Balcerzak, 'Zagadnienie precedensu', p. 153; Meyer-Ladewig, Kulick, 'Artikel 33', no. 4.

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