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Defining the Edge of Protection:

The State Agent Authority Exception in Article 1 of the European Convention on Human Rights

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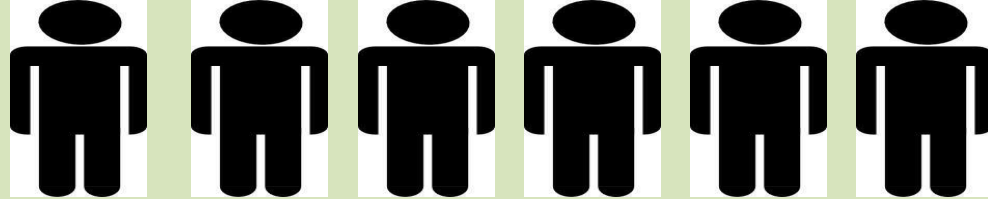
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‘[t]he High Contracting Parties shall secure to everyone **within their jurisdiction** the rights and freedoms defined in Section I of [the] Convention.’

Article 1: European Convention on Human Rights, 1950.



Al-Skeini and Others v the United Kingdom
(2011) 53 E.H.R.R. 18



General principles relevant to jurisdiction under article 1 of the Convention

Jurisdiction is primarily/essentially territorial with two exceptions. When:

1. A State exercises Effective Control of an Area outside of their territory.
2. State Agents Exercise Authority and Control.

State Agents Exercise Authority and Control

Al-Skeini and Others v United Kingdom. (2011) 53 E.H.R.R. 18

1. Where the acts of **diplomatic and consular agents**, who are present on foreign territory in accordance with provisions of international law, exert authority and control over others
2. When, through the consent, invitation or acquiescence of the Government of that territory, a State **exercises all or some of the public powers normally to be exercised by that Government**
3. **The use of force by a State's agents operating outside its territory may bring the individual thereby brought under the control of the State's authorities into the State's Article 1 jurisdiction.** This principle has been applied where an individual is taken into the custody of State agents abroad

1. Where the acts of **diplomatic and consular agents**, who are present on foreign territory in accordance with provisions of international law, exert authority and control over others



W.M v Denmark (1993) 15 EHRR CD 28

Sandiford v Sec of State for Foreign and Commonwealth Affairs [2013] EWCA Civ 581

2. When, through the consent, invitation or acquiescence of the Government of that territory, a State **exercises all or some of the public powers normally to be exercised by that Government**

Al-Skeini and Others v United Kingdom
(2011) 53 EHRR 18

Drozd and Janousek v. France and Spain,
Application Number (1992) 14 EHRR 745

X. and Y. v Switzerland (1977) 9 DR 57-94



3. '[T]he use of force by a state's agents operating outside its territory may bring the individual thereby brought under the control of the state's authorities into the state's art.1 jurisdiction. This principle has been applied where an individual is taken into the custody of State agents abroad.'

Al-Skeini and Others v the United Kingdom



Öcalan v. Turkey
(2005) 41 EHRR
45

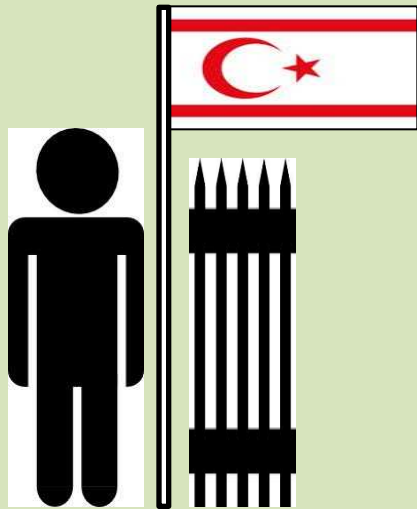
*Al-Saadoon and
Mufdhi v. the
United Kingdom*
(2009) 49
EHRR SE11

*Issa and Others
v. Turkey* (2004) 41
EHRR 27

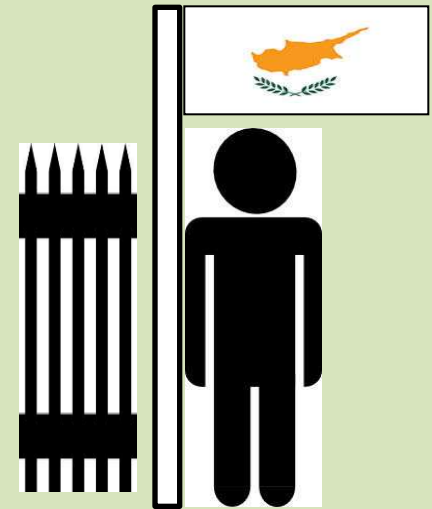
*Medvedyev and
Others v. France*
(2010) 51 EHRR
39

Non-custody examples of jurisdiction through force: Cyprus

*Solomou
and Others v
Turkey*
App. No.
36832/97
24 June
2008



*Georgia
Andreou v
Turkey*
App. No.
45653/99
3 June 2008



←TRNC -----Buffer Zone -----Southern Cyprus →

Non-custody characteristics

- Control can exist through the actions of state agents:
(Gunfire brought the individual) under the authority/and or effective control of the respondent state through its agents (*Solomou*)
- Control can be brought about when the actions of state agents is the 'direct and immediate cause' of injuries (*Andreou*)

