

JANER TORRENS, Joan David, *Conflictos territoriales y Convenio Europeo de Derechos Humanos*, (Aranzadi, Pamplona, 2023, 181 pp.)

The existence of territorial disputes involving States Parties to the European Convention on Human Rights (ECHR) raises several problems regarding the protection of fundamental rights recognised in the Convention. A clear example is Russia's invasion of Ukraine, which began on 24 February 2022 and has caused the biggest challenge to the maintenance of peace and security in Europe since the end of World War II. This led to Russia's expulsion from the Council of Europe on 16 March 2022.

However, several member states of the Council of Europe are involved in territorial disputes, such as those between Cyprus and Turkey, Georgia and Russia, Armenia and Azerbaijan, and Ukraine and Russia. This has brought about a proliferation, especially in recent years, of inter-State cases before the European Court of Human Rights (ECHR).

All these conflicts have had a very negative impact on the respect for human rights in the territories involved, which in turn has led to numerous applications being lodged with the ECtHR. In addition, these conflicts have resulted in the emergence in States party to the ECHR of *de facto* regimes, whose existence is directly dependent on the military and economic support of another State that is also party to the Convention. As a consequence, the State party is unable to fully exercise sovereignty over its territory. This has prompted the development of a very complex jurisprudence of the ECtHR, whose ultimate aim is to prevent a vacuum in the protection of the fundamental rights recognised under the Convention.

This is the context of the work written by Professor Joan David Janer Torrens, a tenured professor at the University of the Balearic Islands. This monograph, released by the prestigious publishing house Aranzadi, deals with the study of the different issues relating to the protection of the rights recognised in the ECHR that are linked to the existence of a territorial dispute.

After a short general introduction, the book is divided into five chapters.

The first chapter analyses the configuration and role of the *de facto* regimes that have emerged in the territories in conflict in relation to the protection of the rights recognised in the Convention that can be carried out by the ECtHR. The ECtHR, on the occasion of the applications brought before it concerning human rights violations committed by the *de facto* authorities in various territories in dispute, has developed a body of jurisprudence on the validity of the decisions adopted, in particular by the judicial and administrative bodies set up by the *de facto* authorities.

The second chapter addresses the analysis of the different issues related to the *de jure* and *de facto* jurisdiction exercised by States involved in a territorial dispute. This is followed by a study of some aspects related to the ECtHR's definition of extraterritorial jurisdiction as a way of guaranteeing the protection of the rights of individuals in situations of territorial conflict. As well as the rules of attribution of the wrongful act

stemming from the violation of the rights recognised in the Convention, which are essentially centred on the assessment of the criterion of effective control over a territory.

The third chapter examines the scope of the positive obligations of the territorial state whose full jurisdiction over its entire territory is limited as a result of a territorial dispute as a means of protecting the rights of individuals affected by this type of conflict. The formulation of positive obligations implies an expansive interpretation of the notion of jurisdiction in cases where a state does not exercise control over its entire territory. The ECtHR has made it clear that the existence of positive obligations is necessarily linked to the existence of a certain capacity for maneuver on the part of the territorial State over the territory in conflict where the violations of the human rights in question take place, in order to guarantee a certain degree of protection of the rights at stake.

The fourth chapter deals with the analysis of those aspects relating to the significant increase in inter-State applications linked to situations of territorial conflict that have been brought before the ECtHR. As Professor Janer Torrens points out, the considerable increase in inter-State applications since 2007 responds “not only to the logic of guaranteeing European public order and the protection of the rights of individuals affected by a conflict, but also to the fact that they are also being used as a mechanism for resolving disputes” (p. 126). In addition, inter-State applications coexist with a very large number of individual applications.

The fifth and final chapter of this monograph is devoted to the problems related to the failure to enforce, in due time and manner, those judgments that resolve violations of the rights recognised in the Convention in situations of territorial conflict. As well as the problems which, in turn, derive from the fact that Russia, the main state directly involved in the territorial conflicts currently existing on the European continent, has ceased to be a party to the European Convention on Human Rights as of 16 September 2022.

In short, this book provides the reader with a general knowledge of territorial conflicts on the European continent and the jurisprudence of the ECtHR in this regard. And all of this in a context strongly affected by the armed conflict between Russia and Ukraine and the subsequent exit of Russia from the Council of Europe, a state that has played a prominent role in the current territorial conflicts. However, in this scenario full of uncertainties, Professor Janer Torrens has been able to shed light on the matter with an exhaustive and rigorous analysis of a complex jurisprudence that seeks to prevent a vacuum in the protection of fundamental rights as a consequence of the existence of territorial conflicts. To this end, the ECtHR attributes any violation of the Convention that is committed on the basis of the effective and decisive control exercised by the State that protects the different *de facto* regimes that emerge within the conflict. All in all, it is a relevant and thoughtful work that provides an undeniably useful approach to an area in need of fundamental rights-based perspectives, such as the one represented by territorial conflicts.

CAROLINA SOLER GARCÍA
Universidad de Alicante