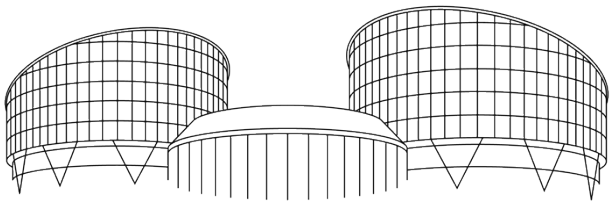

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 35622/04
CHAGOS ISLANDERS
against the United Kingdom

The European Court of Human Rights (Fourth Section), sitting on 11 December 2012 as a Chamber composed of:

David Thór Björgvinsson, *President,*
Lech Garlicki,
Nicolas Bratza,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nebojša Vučinić, *judges,*
and Lawrence Early, *Section Registrar,*

Having regard to the above application lodged on 20 September 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by interveners, Human Rights Watch and Minority Rights Group International,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are natives of, or descendants of natives of the Chagos Islands, sometimes referred to as “Ilois” or “Chagossians”. They are resident largely in Mauritius, the Seychelles and the United Kingdom. Letters of authority have been received from 1,786 applicants and are contained in the file. They were represented before the Court by Mr Gifford,

a lawyer practising in London. The United Kingdom Government ("the Government") were represented by their Agent.

The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. The Chagos Islands are in the middle of the Indian Ocean, comprising three main island groups (Diego Garcia the largest with a land area of about 30 km², Peros of about 13 km² and Salomon of about 5km²) and consisting of 65 islands in total. Since the nineteenth century they have been part of a colony of the United Kingdom. Until 8 November 1965 they were administered as part of the Colony of Mauritius, which is some 1,200 miles to the south-south-west.

4. According to materials in the file, the first visitors to the islands were Malaysians, Arabs and Portugese in 1743. There were at that time no human inhabitants. The first settlers, probably French, began coconut (copra) plantations, which were to be the basis of the islands' economy for the future. The islands passed to British rule from 1814. At the beginning of the twentieth century there was a floating population of some 426 families of African, Malagasy and Indian origin, although most regarded themselves as permanent residents. The copra production company provided living quarters but the Ilois people as they were known generally preferred to build their own thatched cottages. There was no electricity, sanitation or other infrastructure. The men and women who worked on the plantations received a monetary wage but the chief payment was barter. Copra workers also fished and most families had small kitchen gardens and reared chickens and ducks. During the decades which followed there was movement of workers between the islands and Mauritius and the Seychelles under contract to the plantation company, while there were other inhabitants who had been born on the island and whose families went back several generations. By the early 1960s the islands' population was in decline, due to low wages, monotonous work, the lack of facilities and the great distance from Mauritius and the Seychelles, while the plantations were suffering from a lack of investment. In 1962, when the Chagos Agalega Company Ltd acquired the plantations, the settlement population was a very small community of less than a thousand, settled on the three main islands. No one had lived on the outer islands for years.

5. In 1964 discussions started between the Governments of the United States of America and the United Kingdom over the establishment of American defence facilities in the region. It was envisaged from the beginning that any inhabitants would be transferred or resettled.

6. On 8 November 1965, the British Indian Ocean Territory (BIOT) Order in Council (SI 1965/120) established a new colony, which included

the Chagos Islands and other islands formerly part of the Colony of Mauritius and of the Seychelles. The order created the office of the Commissioner of BIOT and bestowed on him the power to "make laws for the peace, order and good government of the Territory". Those inhabitants of BIOT who had been citizens of the United Kingdom and Colonies by virtue of their birth or connection with the islands when they were part of Mauritius retained their citizenship.[1]

7. On 20 December 1966, the United Kingdom and United States Governments agreed that the latter should have use of the islands of BIOT for defence purposes for an indefinite period with provision for a review in 2016. The United Kingdom Government acquired the land and interests held by the plantation company that owned most of the property on the islands. Internal documents indicated that it was considered expedient to treat the islands as having no "permanent population" with a view to avoiding difficulties with the United Nations as regards, *inter alia*, obligations under the United Nations Charter to protect the population and foster independence. The company continued to run the plantations under a lease until the United States needed vacant possession. After obtaining congressional approval, the US Defence Department gave notice that Diego Garcia would be required in July 1971.

8. The evacuation of the islands was effected between 1967 and 1973. Some islanders were prevented from returning after visits elsewhere, others were transferred either to Mauritius or to the Seychelles. For a while some islanders were given alternative accommodation on outlying islands. In 1971, the US construction teams arrived on Diego Garcia. Houses were demolished. No force was used but the islanders were told that the company was closing down its activities and that unless they accepted transportation elsewhere, they would be left without supplies.

9. In the various bodies of the United Nations where the matter was discussed, the United Kingdom Government claimed that the population had consisted of migrant workers, that their position had been fully protected and that they had been consulted in the process.

10. On 16 April 1971, the BIOT Commissioner enacted the Immigration Ordinance 1971, No. 1 of 1971 which made it unlawful, and a criminal offence, for anyone to enter or remain in the territory without a permit.

11. The islanders suffered miserable conditions on being uprooted, having lost their homes and livelihoods. In 1973, the United Kingdom paid 650,000[2] pounds sterling (GBP) to the newly independent Government of Mauritius to assist with the costs of resettlement. This sum was distributed, with interest, by the Mauritius authorities in 1977 after discussions on how best to use the money. The islanders rejected a proposed resettlement plan

[1] When Mauritius became independent in 1968, they acquired Mauritian citizenship but did not lose their UK citizenship.

[2] The equivalent today of some 7 million euros.

in favour of a cash distribution to 595 families. No compensation was paid to the evacuees on the Seychelles.

12. In February 1975, Michel Ventacassen, a Chagossian, brought a case in the High Court in London concerning the expulsions ("the *Ventacassen* case"). In February 1978, the Government made an open offer to settle the claims of all the islanders. In March 1982, a settlement was reached in which the Government agreed to pay GBP 4,000,000[1] to the Mauritian Government, which in turn agreed to put in land to the value of GBP 1,000,000. A trust fund ("the Fund") was set up by the Mauritius Government and between 1982 and 1984 payment was made to 1,344 Chagossians in Mauritius of GBP 2,976 each. The Mauritius Government provided some low cost housing. Nothing was paid to the Chagossians on the Seychelles, who numbered around 500 and who apparently played no part in the negotiations.[2] The applicants later claimed that they were unaware that the settlement involved any renunciation of their rights to return to their homeland. On the receipt of the last tranche of money, all but 12 of the identified islanders or the descendants who refused, had signed or thumbprinted renunciation forms in English.

13. In August 1998, Olivier Bancoult, a Chagos Islander, brought an action in London, challenging the validity of the 1971 Immigration Ordinance which had the effect of excluding the islanders from BIOT ("*Bancoult 1* case").

14. On 3 November 2000, the Divisional Court in its judgment noted *inter alia* that none of the islanders owned any land or held any right to permanent use of the land, which was held by the Crown. It went on however to find that the Ordinance was *ultra vires* the 1965 Order, since the power to make legislation for "peace, order and good government" did not permit legislation to exclude the population from the territory. It issued a declaration that the Ordinance was invalid. There was no appeal.

15. On 3 November 2000, the Foreign Secretary announced that they were examining the feasibility of resettlement of the islanders and that they intended to issue a new immigration ordinance which would allow them to return to the outer islands while observing their treaty obligations with the United States.

16. On the same date, the Commissioner of BIOT revoked the 1971 Immigration Ordinance and made the BIOT Immigration Ordinance 2000, which largely repeated the provisions of the previous ordinance but contained a new section 4(3) which provided that restrictions on entry or

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[1] The equivalent today of some 11.5 million euros.

[2] The Divisional Court in its judgment of 3 November 1999 noted that the Seychelles workers, Ilois and Government were not involved in the discussions. The Seychelles islands within BIOT had never been evacuated and they were returned to the Seychelles on its independence in 1976. The Seychelles Government saw the Ilois not as a special group but as Seychellois.

residence should (with the exception of Diego Garcia) not apply to anyone who was a British Dependent Territories Citizens by virtue of connection with BIOT. Entry to Diego Garcia remained subject to permit.

17. Despite the lifting of the immigration bar, none of the islanders went to live in the islands. A few made visits to outer islands to tend family graves or see their former homes, such visits being funded by BIOT.

18. In April 2002, islanders (a total of 4,466 claimants) commenced group litigation against the Attorney-General, to secure compensation for past and continuing wrongs and to seek a declaration of their right to return to Diego Garcia ("the *Chagos Islanders* case").

19. On 9 October 2003, Mr Justice Ouseley struck out the action on the grounds that the claim to more compensation after the settlement in the *Ventacassen* case was an abuse of process, that the facts did not give rise to any arguable causes of action in private law and in any event all the claims were statute-barred. He rejected arguments that the Limitation Act 1980 did not apply as the applicants had been subject to a disability (for instance, impoverishment or being outside the jurisdiction) and considered that there had been no deliberate concealment of facts relevant to the individual causes of action which could affect the calculation of the time-limit. He also accepted the defendant's arguments that the islanders who had accepted money from the Fund and signed a form renouncing further claims would be in abuse if they continued the proceedings. He held that it was generally known in Mauritius at the time that the 1982 Agreement was final and did not consider that they had reasonable prospects of showing that the Government had acted in a morally culpable manner leading to an oppressive transaction from which the claimants should be relieved. The islanders had had at the time legal representation or access to legal representation. He also found that the Seychelles Chagossians knew the same relevant facts at the same time as their counterparts in Mauritius. The islanders had owned no immovable property nor owned their houses. Even if any property rights had existed, he noted that these would have been extinguished twelve years after events by operation of section 17 of the Limitation Act.

20. On 22 July 2004, the Court of Appeal refused permission to appeal. While it was accepted that there were arguments of disability and unconscionability, nonetheless from 1983 onwards those circumstances no longer applied. Nor had the applicants succeeded in showing any deliberate concealment since that time. It rejected the arguments of the islanders that the renunciation forms could not be relied on by the Government as they were unable to compromise or renounce their fundamental rights. It concluded:

> "This judgment brings to an end the quest of the displaced inhabitants of the Chagos Islands and their descendants for legal redress against the state directly responsible for expelling them from their homeland. They have not gone without compensation, but

> what they have received has done little to repair the wrecking of families and communities, to restore their self-respect or to make amends for the underhand official conduct now publicly revealed by the documentary record. Their claim in this action has been not only for damages but for declarations seeking their right to return. The causes of action, however, are geared to the recovery of damages and no separate claims to declaratory relief have been developed before us. It may not be too late to make return possible, but such an outcome is a function of economic resources and political will, not adjudication. "

21. Newspaper articles appeared in Mauritius suggesting that the Chagossians and their supporters were planning some form of direct action by landings on the island. As later described in domestic court judgments, the participants had varying aims; for one group known as LALIT it was part of an anti-American campaign to close the base at Diego Garcia. Others did not want the base closed as it might offer employment but since permanent resettlement on the islands was not practicable without substantial investment, the landings, even if they led to temporary camps, would largely be gestures in furtherance of respective political aims, designed to attract publicity and embarrass the Governments of the United Kingdom and the United States. Contacts with the United States authorities made it clear that their view was that any attempt to resettle any of the islands would severely compromise Diego Garcia's security, and have a deleterious impact on military operations. To them Diego Garcia was a vital and indispensable platform for global U.S. military operations, as demonstrated by its important role in Operations Enduring Freedom and Iraqi Freedom as well as its continuing role in the Global War on Terrorism; in particular it had unique and exceptional security from armed attack, intelligence collection, surveillance and monitoring and electronic jamming.

22. On 10 June 2004, the BIOT (Constitution) Order 2004 was issued. It declared that no person had the right of abode in the territory or the right to enter it except as authorised. The same day there passed into law the BIOT (Immigration) Order 2004, repealing the 2000 Ordinance. This prohibited anyone from entering the territory without a permit from the immigration officer (members of the armed forces, public officers and contractors working on the American base were exempt or deemed to hold a permit).

23. On 15 June 2004, the Government issued a statement announcing the abandonment of the feasibility study into resettlement. It stated that the report by independent experts had concluded that:

> "whilst it may be feasible to resettle the islands in the short-term, the costs of maintaining long-term inhabitation are likely to be prohibitive. Even in the short-term, natural events such as periodic flooding from storms and seismic activity are likely to make life difficult for a resettled population ... Human interference within the atolls, however well managed, is likely to exacerbate stress on the marine and terrestrial environment and will accelerate the effects of global warming. Thus resettlement is likely to become less feasible over time. "

24. With reference to climate change the report was quoted as stating that "the main issue facing a resettled population on the low-lying islands will be flooding events, which are likely to increase in periodicity and intensity and will not only threaten infrastructure, but also the freshwater aquifers and agricultural production. Severe events may even threaten life." It also highlighted the implications on such low-lying islands of the predicted increase in global sea levels.

25. The statement concluded that anything other than short-term resettlement on a purely subsistence basis would be highly precarious and involve expensive underwriting by the Government for an open-ended period, probably permanently. Accordingly, the Government considered that there was no further purpose in pursuing the study and it would be impossible to promote or even permit resettlement to take place. It was for this reason that the Orders in Council were issued to restore full immigration control over all the islands in BIOT, making it clear that no person had the right of abode in the territory or unrestricted access to it.

26. Much of the area had meanwhile apparently been declared an Environmental Zone, with Special Conservation Areas and Strict Nature Reserves.

27. One of the applicants, Mr Bancoult, instituted judicial review proceedings seeking to challenge the 2004 Orders barring their return to the islands as unlawful (the "*Bancoult 2* case").

28. In its judgment of 11 May 2006, the Administrative Court upheld his claims, finding that the provisions of the Orders were invalid as not being in the interests of the Chagossians. The Secretary of State for Foreign and Commonwealth Affairs appealed, claiming that legislation precluded any attack on the validity of colonial orders in council and that the orders as a sovereign act of the Crown were only challengeable on ground of incompatibility with imperial legislation.

29. On 23 May 2007, the Court of Appeal dismissed the appeal, finding that the prerogative power of colonial governance enjoyed no generic immunity from judicial review and that the permanent exclusion of an entire population from its homeland for reasons unconnected with their collective well-being could not have the character of a valid act of governance. Lord Justice Sedley considered that while resettlement would be difficult if not impossible without capital expenditure, it had not been suggested on either side that the United Kingdom was under any obligation to fund it. It was the bolting of the door to the Chagossians' home, not the failure to provide transport there or to refurbish it which was in issue. Indeed the Crown had rights as a landowner which were capable of answering any attempt to resettle there.

30. The Secretary of State obtained leave to appeal to the House of Lords. In its judgment of 22 October 2008, the House of Lords upheld the appeal by three votes to two. The majority considered that there had been no

legitimate expectation that the islanders would be allowed to resettle on the islands. The Human Rights Act had no application to BIOT, as the declaration made in respect of Mauritius lapsed when it became independent. There was no basis for holding that the prerogative power of the Crown was limited to acts in the interests of the inhabitants and there was nothing irrational about the orders. Seen in the context of the present day, rather than 1968, any right of abode of the islanders was purely symbolic. None had gone to live on the islands in the four years when the 2000 ordinance had been in force. The islanders' way of life had been irreparably destroyed and the practicalities were such that they would be unable to exercise any right to live on the outer islands without financial support which the Government were not willing to provide. Any attempt to exercise the right of abode by setting up some camp on the islands would be a symbol or gesture aimed at putting pressure on the Government. Thus, when considering the rights in issue in the case, which had to be weighed against the defence and diplomatic interests of the state, it was essentially about the right to protest in a particular way and it was not unreasonable of the Government to seek to avoid an unauthorised settlement on the islands which could be used as a means of exerting pressure to compel it to fund a resettlement. Funding had been the subtext of the case.

31. Lord Bingham, in the minority, considered that legal precedent negated the existence of a prerogative power to exile an indigenous population from its homeland. The orders were also irrational in the sense that there was no good reason for making them, the security arguments being weak and vague. The argument that the islanders were deprived of a right of little practical value provided no justification, since the right was of intangible value and the smaller its practical value the less reason to take it away. Additionally, in his view, the orders contradicted a clear representation by the Secretary of State in his statement of 3 November 2000, from which the Government could not resile without compelling reason, which had not been shown.

COMPLAINTS

32. The applicants complained under Article 3 about the decision-making process leading to the removal from the islands, the removal itself and the manner in which it was carried out, the reception conditions on their arrival in Mauritius and the Seychelles, the prohibition on their return, the refusal to facilitate return once the prohibition had been declared unlawful and the refusal to compensate them for the violations which had occurred.

33. The applicants complained under Article 8 about the above matters as disclosing violations of their right to respect for private life and home.

The original removal was not "in accordance with the law" and the subsequent interferences were either not lawful in that they failed to comply with the *Bancoult 1* judgment or to the extent that they were lawful were disproportionate in that they prohibited return. They also alleged that these acts and omissions disclosed continuing unjustifiable interferences with their right to respect for their home.

34. The applicants alleged that these matters also violated their rights under Article 1 of Protocol No. 1, by both depriving them of their possessions and/or controlling their use and that these interferences were unlawful both as a matter of English and international law.

35. The applicants complained under Article 6 that the administrative authorities' unilateral and extrajudicial annulment of the effect of the *Bancoult 1* judgment has frustrated their right to a final judgment and that the courts' refusal to grant a hearing on their civil right to damages had denied them access to court.

36. Finally, they complained under Article 13 of the Convention that they had no effective remedy because of the extra-judicial annulment of the *Bancoult 1* judgment and the United Kingdom's reliance on the limitation defence – after concealing facts relevant to the applicants' claims – to deprive them of an adjudication of their claim to compensation.

THE LAW

A. The submissions before the Court

1. The Government

a. Delay

37. The Government submitted that the applicants had lodged the application form on 14 April 2005 more than six months after the final decision in the case, stated in the form as the Court of Appeal decision of 22 July 2004.

b. Compatibility *ratione loci*

38. The Government submitted that the Convention and Protocols thereto had never been extended to BIOT. No notification had ever been made under Article 56 § 1 of the Convention or Article 4 of Protocol No. 1. None of the events relating to the removal from BIOT or their conditions in Mauritius and Seychelles took place within the United Kingdom. Also the applicants' continued exclusion from BIOT could only be regarded as an act

or omission having its effect in BIOT. Insofar as the applicants relied on the fact that many of them now lived in the United Kingdom, their physical presence within the jurisdiction was irrelevant.

39. Insofar as the applicants argued that the United Kingdom was liable for events occurring in BIOT because it exercised effective control over the territory, the Government relied on the Court's jurisprudence to the effect that the only means by which a State's responsibility under the Convention could be engaged for a territory, for whose international relations it was responsible, was by means of a notification under Article 56 (referring to *Quark Fishing Ltd v. the United Kingdom* (dec.), no. 15305/06, ECHR 2006-XIV). Any test for State responsibility which depended on the level of the autonomy of the territory (only those with a sufficient form of self-rule attracting the application of Article 56) would depend on an impossible evaluative test and run the risk of fluctuation in changing circumstances. In any event, there was no difference in that respect between the South Georgia and South Sandwich Islands ("the SGSSI"), which were in issue in *Quark*, and BIOT, both of which were administered by officials located elsewhere and a Commissioner under the direct control of the Secretary of State in London. The principle of effective control had been developed to apply to a completely different situation such as the Turkish occupation of northern Cyprus and to prevent a gap arising in the protection provided within the Convention space. The Grand Chamber judgment in *Al-Skeini and Others v. the United Kingdom* ([GC], no. 55721/07, 7 July 2011) also indicated that the test of effective control applied outside the scope of application of Article 56 and was not an alternative means of applying Convention jurisdiction to overseas territories.

40. It was for Contracting States to decide the extent to which all or some of the Convention rights were extended to overseas territories for whose international relations they were responsible. The concept of "State agent authority or control" and "effective control over an area" were not intended by the Court to supplant the declaratory system put in place by Article 56. The fact that the Contracting State was responsible for the international relations of an overseas territory and therefore might exercise a degree of control over certain of its governmental functions did not mean that all overseas territories fell within the jurisdiction of that Contracting State for the purposes of Article 1. Otherwise, the Convention would effectively be applicable to all overseas territories of a Contracting State regardless of the local requirements of the territory in question. Such construction would supplant and replace the system of declarations established under Article 56. The Court in *Al-Skeini* expressly stated that it was not doing so.

41. Insofar as the applicants contended that the Convention extended to BIOT as notification had been given by the United Kingdom in relation to Mauritius at a time when the Chagos Islands were part of that colony, the

Government rejected as wrong the purported legal analysis that the notification continued to have effect as regards the newly–created BIOT when severed from Mauritius on independence. The notification lapsed in respect of the Chagos Islands when BIOT was created in 1965 and it lapsed in its entirety when Mauritius achieved independence in 1968. No separate extension was ever notified in relation to BIOT. The applicants mistakenly based themselves on the assumption that a notification under Article 56 related to a specific physical area, which was then fixed for all time. The notification rather applied to a political entity, which a "territory" plainly was. This was common sense since a Contracting Party could not be responsible for the international relations of a geographical area except to the extent it was a political entity. Also the area of land within a political entity might change over time (for example, by acquisition, erosion or reclamation) but the notification would continue to apply within the political frontiers; if land was removed from the political entity the notification would lapse for that portion of land. Furthermore, even if this was not the case, it had to be noted that the right of individual petition under Article 56 § 4 was never extended to Mauritius; the applicants would not be entitled to bring a claim even if the Convention did apply. Also, Protocol No. 1 had never extended to Mauritius at all.

42. Lastly insofar as the applicants argued that the supervisory human rights bodies of the United Nations considered that their instruments applied to BIOT and that it would thus be anomalous if the Convention did not, the Government submitted that it was for the Court to decide. It was in any event contested whether the International Covenant on Civil and Political Rights applied to BIOT, the Government considering it did not as there was no permanent civilian population there.

c. Victim status

43. The Government argued that the applicants could not claim to be victims, pointing out that compensation had been paid out in 1972 and then in 1982, when four million pounds sterling had been paid in settlement of the *Ventacassen* case and renunciation forms had been signed by all save 12 of the relevant Chagossians. Even if no payments had been made to the Seychellois Chagossians (about 200), the Government stated that the Seychellois islands in BIOT were made part of Seychelles in 1976, the majority were contract labourers returning home and there were no findings by the courts that these had suffered any privation, being integrated into Seychellois society. The proceedings had been treated as a representative action, the Seychellois had been informed of the settlement negotiations but they had not participated. The claims by the Seychellois Chagossians had been dismissed on limitation grounds alone as they could have applied for compensation but did not. The Government also noted that some

1,000 Chagossians had applied for and been given full British citizenship, allowing full rights of settlement within the United Kingdom.

d. Exhaustion of domestic remedies

44. The Government pointed out that a number of claims raised had never been articulated before the domestic courts: namely, none had complained that their homes had been destroyed before their eyes or of the conditions of any sea voyage, none had made claims concerning conditions on arrival in the Seychelles and no particularised claim had been made about islanders having been driven to suicide. As concerned property complaints, these had been rejected by Mr Justice Ouseley as unarguable as no relevant property rights arose; the applicants had not appealed against this finding.

2. The applicants

a. Delay

45. The applicants pointed out that they had introduced the application by letter dated 9 December 2004, which was within six months of the Court of Appeal's decision on 22 July 2004.

b. Jurisdiction *ratione loci*

46. The applicants argued that their complaints under Articles 6 and 13 in the English courts clearly fell within the jurisdiction of the United Kingdom, irrespective of extraterritorial aspects (citing *Markovic and Others v. Italy* [GC], no. 1398/03, § 54, ECHR 2006-XIV). The key issue was whether the applicants came under the actual authority and responsibility of the State. The United Kingdom Government exercised complete authority and responsibility for BIOT, as shown by the acceptance of jurisdiction by the domestic courts.

47. The applicants considered that BIOT remained the same territory for whose foreign policy the United Kingdom was responsible and to which the notification under Article 56 continued to apply; the United Kingdom had never denounced the Convention under Article 56 § 4 in respect of the islands; nor had the islands achieved independence and become a separate subject of international law. It would be absurd if a Contracting Party could evade its responsibilities by simply renaming a territory and placing it under its own direct rule. The Convention therefore applied to the Chagos Islands.

48. As regards the right of individual petition, the applicants submitted that this was distinct from Article 56. Under Article 34 the Contracting Party accepted competence to examine complaints relating to the acts of its own officials acting under its direct authority; the applicants' complaints concerned just that (*Loizidou v. Turkey* (preliminary objections), 23 March

1995, § 88, Series A no. 310). The fact that some acts may have been committed by an official in the guise of "BIOT Commissioner" was nothing more than a legal fiction, as noted by the domestic courts. They argued that the Government relied mistakenly on *Quark* (cited above), asserting that even if a territory did not come within the legal space of the Convention, it was still open to applicants to demonstrate the existence of special circumstances bringing the territory within a Contracting State's jurisdiction under Article 1 (citing *Issa and Others v. Turkey*, no. 31821/96, § 75, 16 November 2004). Such circumstances arose attracting responsibility here, where the State had effected hostile occupation of a territory and assumed overall, effective and exclusive control of it, such that their responsibility derived from their own Convention obligations as opposed to the mere voluntary assumption of vicarious responsibility for a local public authority as envisaged by Article 56. *Quark* concerned vastly different facts, without special circumstances; alternatively, they argued that *Quark* was decided without consideration of all the relevant case-law and raised a serious question of interpretation and application of the Convention that should be reconsidered. They argued further that BIOT was unlawfully excised from Mauritius, which did not recognise United Kingdom sovereignty and had lodged protests with the United Nations; thus, Article 56 was not applicable as it was part of Mauritius under international law. In the further alternative, BIOT formed part of the metropolitan territory of the United Kingdom and Article 1 jurisdiction applied, in particular as the islands had been completely constitutionally integrated into the United Kingdom, and as they had never been included in the list of non-self-governing territories with the United Nations.

49. In the submission of the applicants, the existence of effective control was a question of fact. The United Kingdom authorities exercised and continued to exercise total domination over the Chagos Islands, those authorities having depopulated the islands, occupied them with its military forces and those of its United States allies and installed a subordinate local administration consisting of United Kingdom civil servants. Further, the United Kingdom authorities achieved their direct domination over the area through the excision of the Chagos Islands from the former colonies of Mauritius and the Seychelles. The historical facts of the case clearly amounted to "exceptional circumstances" requiring a finding of extraterritorial jurisdiction under the Court's case-law namely, the United Kingdom's exercise of direct and physical authority over them as persons when securing their removal from the Chagos Islands and the subsequent exercise of total domination over the area of the Chagos Islands.

50. In *Al-Skeini* the Court made clear that the existence of the Article 56 (ex Article 63) mechanism could not limit the scope of the term "jurisdiction" in Article 1. The legislative purpose of the Article 56 mechanism was to take account of the fact that it might be inappropriate in

the light of local requirements to impose the obligations required by the full application of the Convention on the public authorities of certain colonial territories (*Tyrer*); it was not designed to enable Contracting States to evade responsibility for the acts of their own officials acting under their direct authority when that would otherwise amount to an exercise of jurisdiction under Article 1. Any other interpretation would give rise to the perverse result that the United Kingdom could be held responsible for the conduct of its own authorities anywhere in the world in the exceptional circumstances described in the Court's case-law, even in territories which had historically, geographically and culturally never been included in the European family of nations, whereas victims of the same breaches in the same circumstances committed by the same authorities in land that had been part of the United Kingdom's sovereign territory for over 200 years would be without protection under the Convention.

51. The applicants' situation differed from that of the applicants in *Bui Van Thanh and Others v. the United Kingdom* (no. 16137/90, Commission decision of 12 March 1990), in which the Commission held that the mere fact that the acts of the Hong Kong authorities under Hong Kong immigration law had been based on United Kingdom policy was insufficient to amount to an exercise of the latter's Article 1 "jurisdiction" and in *Yonghong v. Portugal* (no. 50887/99, Commission decision of 25 November 1999), where the final decision to allow the applicant's extradition to proceed lay with the Macanese authorities and not the Portuguese courts. The case differed also from that of *Quark Fishing Limited* (cited above) in which, in contrast to the approach of the domestic courts in *Bancoult (1)* and *Bancoult (2),* the House of Lords held that the Secretary of State had acted "in right of" the Government of the South Georgia and South Sandwich Islands and not of the United Kingdom. Further, all three cases concerned the acts of public authorities in respect of a territory for whose international relations the Contracting State was responsible rather than, as in the present case, the acts of the Contracting State's own officials acting under its direct authority.

52. The applicants further argued that, absent a duly notified denunciation of the Convention, the effect of the excision of the Chagos Islands from the territory to which the Convention had been extended and their placement under the direct rule of the United Kingdom had to be to transfer responsibility for securing Convention rights in the territory from the colonial government directly to the United Kingdom in its own right, such that the "jurisdiction" exercised there no longer arose by virtue of the extension of Article 56 but due to the acts of its own officials acting under its direct authority.

c. Victim status

53. The applicants had not lost victim status as there had been no explicit or substantial recognition of the violations, no adequate redress for the violations, *inter alia* since only 471 of the applicants had received compensation payments and that of an inadequate amount, and since the Seychellois had received nothing whatsoever and had not played any role in the *Ventacassen* litigation and settlement. Nor had there been any valid or unequivocal renunciation of remedies. Many of the present applicants had not thumb-printed any renunciation forms, and those forms in any event did not cover any new violations following the judgment in *Bancoult 1*. Those who did had been largely illiterate, Creole-speaking and vulnerable and did not appreciate what they were signing, as well as there being a lack of evidence that the islanders as a group knew or accepted the Government's intention to impose finality.

d. Exhaustion of domestic remedies

54. The applicants claimed that they had raised the complaints that they had witnessed the destruction of their homes, about the conditions of the sea voyage in domestic proceedings, about suicides and the plight of those taken to the Seychelles, evidence being heard on most of these points. Since English law did not apply the Convention approach to property, there had been no point in appealing against the striking out of their property claims.

3. The interveners

55. Human Rights Watch and Minority Rights Group International submitted that the purpose of Article 56 was to cater for overseas dependencies with some form of domestic autonomy. The drafters of the Convention had never intended that States should not be responsible for their extraterritorial actions. It would be unconscionable to permit States to commit acts overseas which they could not perpetrate on their home territory, whether within or outside the regional space of the Council of Europe. Article 1 should be interpreted in line with jurisdiction provisions of other international human rights instruments. Article 2 of the ICCPR had been interpreted to mean that State parties had to ensure rights to all persons in their territory and to anyone "within the power or effective control of that State Party even if not situated within the territory of the State Party". In the Inter-American system, the notion of jurisdiction had been broadly interpreted to include responsibility for acts and omissions of a State's agents which produced effects or were undertaken outside that State's own territory. At the least where there was a direct and immediate link between the extraterritorial conduct and the alleged violation of individual rights, the individual should be treated as falling within the State's control, authority or

power and therefore jurisdiction. The Human Rights Committee considered that the ICCPR applied to BIOT despite the United Kingdom's view.

56. They also submitted that it was well-established in international human rights instruments that peoples had collective rights. The United Nations Permanent Forum on Indigenous issues had developed a modern understanding of the term indigenous peoples, based on self-identification as indigenous peoples at the individual level and acceptance by the community, historical continuity with pre-colonial and/or pre-settler societies, strong links to territories and surrounding natural resources, distinct social economic or political systems, distinct language, culture and beliefs, non-dominant grouping of society and resolve to maintain and reproduce their ancestral environments and systems as distinctive peoples and communities. The 2007 UN Declaration on the Rights of Indigenous Peoples included such rights as the right not to be subjected to forced assimilation or destruction of culture, the right not to be forcibly removed from lands or territories, the right to redress for lands, territories and resources that have been taken. Property could be acquired through traditional occupation of land rather than requiring indigenous or other peoples to have held the property in accordance with conventional domestic legal systems.

57. Further, forced evictions disclosed serious human rights violations. For example, the UN Committee on Economic, Social and Cultural Rights had stated in General Comment No. 7 on Forced Evictions that forced evictions may breach a number of civil and political rights including the rights to life, security of person and property; that states should explore all alternatives in consultation with the affected groups beforehand and that adequate compensation should be paid. Forced evictions had also been recognised as crimes against humanity, and may disclose inhuman and degrading treatment or punishment.

B. The Court's assessment

1. Delay

58. The Court observes that the applicants submitted the substance of their complaints by way of introductory letter dated 9 December 2004. While it is true, as the Government alleged, that the application form was received on 15 April 2005, this is not decisive for the calculation of the six month time-limit imposed by Article 35 § 1 of the Convention. Rule 47 § 5 of the Rules of Court provides that the date of introduction of an application is generally considered to be the date of the first communication setting out, even summarily, the subject-matter of the application, provided that a duly completed application form is submitted within due time. There is no discernible reason in this case not to take the date of the introductory letter

which arrived within six months of the final relevant domestic decision identified in the application form as that of the Court of Appeal of 22 July 2004.

59. The Government's objection is accordingly rejected.

2. Compatibility ratione loci

60. The Government objected also on this ground. The Court notes that the applicants asserted on various grounds that the matters of which they complained fell within the Court's Convention jurisdiction. Firstly, they considered that the Convention had extended to BIOT when it was part of the Colony of Mauritius and its application had never been denounced; secondly, it was argued that in any event they were at all times within the jurisdiction of the United Kingdom in relation to all the acts and omissions of the United Kingdom alleged to violate the Convention, either because the United Kingdom had had effective control of BIOT throughout and/or because the acts originated from within the jurisdiction of the United Kingdom, the administration of BIOT being effected in London, and the policies and measures of the relevant ministers of Government being taken and implemented there.

i. Question of acceptance of the right of individual petition in the territory concerned

Article 56 provides as relevant:

> "1. Any state may at the time of its ratification or at any time thereafter declare by notification addressed to the Secretary General of the Council of Europe that the ... Convention shall, subject to paragraph 4 of this Article, extend to all or any of the territories for whose international relations it is responsible.
>
> ...
>
> 4. Any state which has made a declaration in accordance with paragraph 1 of this Article may at any time thereafter declare on behalf of one or more of the territories to which the declaration relates that it accepts the competence of the Court to receive applications from individuals, non-governmental organisations or groups of individuals as provided by Article 34 of the Convention."

61. The Court notes that until 8 November 1965, the Chagos Archipelago was part of the Colony of Mauritius in respect of which the United Kingdom had made a declaration under former Article 63 of the Convention (now Article 56) acknowledging the Colony as territory for whose international relations the United Kingdom was responsible and to which the Convention was to apply. On that date the islands became part of the British Indian Ocean Territory (BIOT) and ceased to be part of Mauritius. Subsequently, on 14 January 1966, the United Kingdom ratified for the first time the right of individual petition, which ratification (extending briefly to the Colony of Mauritius) was prospective only. BIOT

was not subject at that time or since to a declaration by the United Kingdom Government under former Article 63 of the Convention or under the present Article 56 concerning the extension of the Convention to territories for which the United Kingdom is responsible.

62. It is therefore incontrovertible that at no time was the right of individual petition extended to BIOT. Even if the applicants' argument that an express denunciation of the Convention was required after BIOT was severed from the Colony of Mauritius was to be accepted, the applicants' claim for jurisdiction on this basis fails as they can still derive no individual right to petition the Court concerning the territory of BIOT.

ii. Applicants' residence in the United Kingdom and status of BIOT

63. Concerning the applicants' other arguments as to jurisdiction, the Court cannot accept the argument that the fact that many of the applicants now live within the United Kingdom brings their complaints within the Court's competence. The applicants' place of residence has no incidence on the point, acts or measures otherwise outside the Court's competence cannot become justiciable in Strasbourg merely because an applicant moved address. It is the subject-matter of the applicants' complaints alone that is relevant in this regard.

64. Similarly, the applicants' contention that BIOT must be regarded as part of metropolitan United Kingdom due to the Government's total control of BIOT cannot be accepted. The constitutional status of BIOT is set out in the domestic courts' judgments; it is an overseas Crown territory and not part of the United Kingdom itself, the Crown's legislative and constituent powers being exercised by Order in Council, Letters Patent and Proclamation.

iii. Arguments alleging that the impugned measures were acts taking place within the United Kingdom

65. The Court has next considered the applicants' argument that in fact the acts complained of all took place within the territorial jurisdiction of the United Kingdom itself, to which, plainly, the Convention applies in full force. This would mean founding jurisdiction on the fact that the decisions, *inter alia*, to close down the plantation and to arrange for the transfer of the inhabitants of the islands to Mauritius and Seychelles and subsequent administrative acts governing immigration controls were all taken in London, under the auspices of the United Kingdom Government and by their agents. The Court is not however persuaded by the argument. It may be noted that in *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, ECHR 2001-XII the fact that decisions might have been taken and actions planned within Contracting States which had led to the most serious consequences for applicants in Belgrade (then outside Convention space) did not lead to the NATO bombing being brought within the Court's

competence. Similarly unsuccessful was the applicant's argument in *Quark Fishing Ltd v. the United Kingdom* (cited above) that it was irrelevant that Protocol No. 1 had not been extended to South Georgia and the Sandwich Islands since in any event the officials in the Falklands who took and implemented the decisions on fishing licences were either directly controlled or could be overruled by the authorities in the United Kingdom. In the present application, the decisions and measures of which the applicants complained related mostly to acts or regulations implemented by the legislative and administrative authority for BIOT and taking effect purely in BIOT. The ultimate decision-making authority of politicians or officials within the United Kingdom is not a sufficient ground on which to base competence under the Convention for an area otherwise outside the Convention space.

66. Insofar as the applicants complained of the decisions of the United Kingdom domestic courts under Article 6, the Court would consider that the applicants' claims to enjoy a right to a fair trial in the determination of any of their civil rights and obligations do fall within its competence; the Court's examination would however be limited to the procedural rights guaranteed under that provision; this would not open up to the Court the competence to re-decide the merits of the issues examined by the domestic courts. It will deal with this aspect further below.

iv. Jurisdiction under Article 1 of the Convention

67. There remain the arguments founded on the interpretation of the relationship between Article 1 and Article 56 of the Convention. In essence, it is argued that, even if the Government have never extended the Convention and right of individual petition to BIOT, this does not preclude jurisdiction arising under different grounds.

68. The Court recalls that very similar arguments were raised by the applicants in the *Quark* case (cited above). There, where Protocol No. 1 to the Convention had not been extended to the overseas Crown territory of the South Georgia and the South Sandwich Islands, the Court found that the fact that the United Kingdom had effective control of the territory could not provide a basis of jurisdiction that replaced the system of declarations which the Contracting States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. It referred to constant case-law to the effect that no jurisdiction arose where a Contracting State had not, through a declaration under Article 56 (former Article 63), extended the Convention or any of its Protocols to an overseas territory for whose international relations it was responsible (see *Gillow v. the United Kingdom*, 24 November 1986, § 62, Series A no. 109; *Bui Van Thanh and Others v. the United Kingdom*, no. 16137/90, Commission decision of 12 March 1990, Decisions and Reports 65, p. 330; and *Yonghong v. Portugal* (dec.), no. 50887/99, ECHR 1999-IX).

69. The applicants have sought to distinguish this decision, arguing that this Court did not find that Article 1 and Article 56 were mutually exclusive but this decision only stood for the more limited proposition that the doctrine of extraterritorial responsibility had not rendered the declarations system superfluous or outdated; that in any event the facts were different from those of *Quark* and disclosed "exceptional circumstances" which brought the applicants' complaints under the United Kingdom's jurisdiction; and alternatively, that the decision was wrongly decided.

70. The Court must now have regard to the most recent and authoritative statement of principles as regards jurisdiction under Article 1 pronounced by the Grand Chamber in *Al-Skeini and Others* (cited above, §§ 130-141). These may be summarised as follows for the purposes of this case:

i. A State's jurisdictional competence under Article 1 is primarily territorial;

ii. Only exceptional circumstances give rise to exercise of jurisdiction by a State outside its own territorial boundaries;

iii. Whether there is an exercise of jurisdiction is a question of fact;

iv. There are two principal exceptions to territoriality: circumstances of "State agent authority and control" and "effective control over an area";

v. The "State agent authority and control" exception applies to the acts of diplomatic and consular agents present on foreign territory; to circumstances where a Contracting State, through custom, treaty or agreement, exercises executive public powers or carries out judicial or executive functions on the territory of another State; and circumstances where the State through its agents exercises control and authority over an individual outside its territory, such as using force to take a person into custody or exerting full physical control over a person through apprehension or detention.

vi. The "effective control over an area" exception applies where through military action, lawful or unlawful, the State exerts effective control of an area outside its national territory.

vii. In the exceptional circumstances of the cases before the Grand Chamber, where the United Kingdom had assumed authority and responsibility for the maintenance of security in South East Iraq, the United Kingdom, through its soldiers engaged in security operations in Basrah during the period in question, had exercised authority and control over individuals killed in the course of such security operations, so as to establish a jurisdictional link between the deceased and the United Kingdom for the purposes of Article 1 of the Convention.

71. The Court would first note that extraterritorial jurisdiction still remains exceptional after *Al-Skeini*.

72. Next, as regards the applicants' arguments that Article 1 jurisdiction may apply even in respect of overseas territories for which a Contracting

State has not accepted the Convention, the Court observes that the Grand Chamber stated:

> "140. The "effective control" principle of jurisdiction set out above does not replace the system of declarations under Article 56 of the Convention (formerly Article 63) which the States decided, when drafting the Convention, to apply to territories overseas for whose international relations they were responsible. Article 56 § 1 provides a mechanism whereby any State may decide to extend the application of the Convention, "with due regard ... to local requirements," to all or any of the territories for whose international relations it is responsible. The existence of this mechanism, which was included in the Convention for historical reasons, cannot be interpreted in present conditions as limiting the scope of the term "jurisdiction" in Article 1. The situations covered by the "effective control" principle are clearly separate and distinct from circumstances where a Contracting State has not, through a declaration under Article 56, extended the Convention or any of its Protocols to an overseas territory for whose international relations it is responsible (see *Loizidou* (preliminary objections), cited above, §§ 86-89 and *Quark Fishing Ltd v. the United Kingdom* (dec.), no. 15305/06, ECHR 2006-...)."

73. It is true that the Court was in that passage answering the Government's argument, based on Article 56, that finding jurisdiction covered the actions of their armed forces in Iraq would have the strange result that a State was free to choose whether or not to extend the Convention and its Protocols to a territory outside the Convention "*espace juridique*" over which it might in fact have exercised control for decades, but was not free to choose whether to extend the Convention to territories outside that space over which it exercised temporary control as a result of military action: this is in effect the obverse of the argument being advanced by the applicants in the present case. However, the Court's judgment on the point was cast in general terms: the Grand Chamber not only cited the *Quark* decision as an authority but in fact adopted the reasoning in that decision that the situations covered by the "effective control" principle were clearly separate and distinct from circumstances falling within the ambit of Article 56. The Court is not therefore persuaded that *Quark* can be regarded as wrongly decided or as having wrongly held that the South Sandwich and South Georgia islands were outside the jurisdiction of the Convention due to the absence of an Article 56 declaration.

74. Nor can the Court agree with the applicants' contention that any possible basis of jurisdiction under Article 1 such as set in the *Al-Skeini* judgment (cited above) must take precedence over Article 56 on the ground that it should be set aside as an objectionable colonial relic and to prevent a vacuum in protection offered by the Convention. Anachronistic as colonial remnants may be, the meaning of Article 56 is plain on its face and it cannot be ignored merely because of a perceived need to right an injustice. Article 56 remains a provision of the Convention which is in force and cannot be abrogated at will by the Court in order to reach a purportedly desirable result.

75. The question remains as to whether the passage from *Al-Skeini* cited above indicates that there must now be considered to be alternative bases of jurisdiction which may apply even where a Contracting State has not extended application of the Convention to the overseas territory in issue, namely, that the United Kingdom can be held responsible for its acts and omissions in relation to the Chagos Islands, despite its exercise of its choice not to make a declaration under Article 56, if it nonetheless exercised "State agent authority and control" or "effective control" in the sense covered by the Grand Chamber judgment. This interpretation is strongly rejected by the respondent Government and would indeed render Article 56 largely purposeless and devoid of content since Contracting States generally did, and do, exercise authority and control over their overseas territories.

76. However, even accepting the above interpretation, the Court finds it unnecessary to rule on this particular argument since, in any event, the applicants' complaints fail for the reasons set out below.

3. Victim status

77. The Government have submitted that the applicants can no longer claim to be victims due to the settlement reached in the *Ventacassen* litigation.

78. The Court recalls (as set out above at paragraph 12) that proceedings were brought in 1975 concerning the expulsion and the damage that this inflicted on the lives of the Chagos Islanders (the *Ventacassen* case, paragraph 12 above). These proceedings were settled in 1982 on payment of 4 million pounds by the United Kingdom and provision of land worth one million pounds by Mauritius. In so settling, the islanders agreed to give up their claims. In the later *Chagos Islanders* case, the High Court found that an attempt to claim further compensation and make further claims arising out of the expulsion and exclusion from the islands was an abuse since the claims had been renounced by the islanders.

79. The Court notes that the applicants have argued that not all of them had signed the waiver forms in the settlement or that those that did had not understood or properly consented to what was involved. However, these issues were argued in the domestic proceedings in the *Chagos Islanders* case and the arguments that the applicants had been subject to oppression or did not realise the settlement was final were rejected by the High Court judge in a detailed judgment after hearing extensive evidence. Of particular relevance is the fact that the Chagos Islanders were represented by lawyers in the litigation which settled.

80. Insofar as the applicants have asserted that only 471 of them were involved in the settlement, the Court would refer to the finding of the domestic courts that the existence of the proceedings was widely known at the time. Any other islanders affected by the impugned conduct of the United Kingdom could have also made claims at that time and thus taken

advantage of the settlement offer put forward or, if they preferred, pursued their claims in the domestic court proceedings.

81. The Court would reiterate that the possibility of obtaining compensation in civil proceedings for the claims of breaches of the rights invoked in the present case will generally, and in normal circumstances, constitute an adequate and sufficient remedy Where applicants accept a sum of compensation in settlement of civil claims and renounce further use of local remedies therefore, they will generally no longer be able to claim to be a victim in respect of those matters (see application nos. 5577-5583/72, *Donnelly and Others v. the United Kingdom*, dec. 15.12.75, DR 4 p. 4 at pp. 86-87, *Caraher v. the United Kingdom*, (dec.), no. 24520/94, ECHR 2000-I; *Hay v. the United Kingdom*, (dec.) no. 41894/98, ECHR 2000-XI). It would run counter to the object and purpose of the Convention, as set out in Article 1 - that rights and freedoms should be secured by the Contracting State within its jurisdiction - and thus interfere with the primarily subsidiary nature of the Court's role, if applicants were able to invoke the Court's jurisdiction by dispensing with the available and effective domestic mechanism of redress. In the present case, the applicants could have pursued their claims and obtained the domestic courts' findings as to the alleged unlawful actions and breaches of their rights and compensation for damage flowing from the expulsion and exclusion from their homes. They chose, however, to settle their claims without obtaining such a determination. It is not for the Court, in that event, to undertake the role of a first-instance tribunal of fact and law. In these circumstances, the Court finds that in settling their claims in the *Ventacassen* litigation and in accepting and receiving compensation, those applicants have effectively renounced further use of these remedies. They may no longer, in these circumstances, claim to be victims of a violation of the Convention, within the meaning of Article 34 of the Convention. Those applicants who were not party to the proceedings but who could at the relevant time have brought their claims before the domestic courts have, for their part, failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention.

82. It is true that there are applicants who were not born at the time of the settlement. It is also true that the applicants' claim under Article 8 of the Convention relates not merely to their original removal from the islands but to the prohibition on their return to the islands imposed by the 2004 Ordinance which is said to have amounted to a continuing unjustified interference with their right to respect for their home. As to the former point, the Court would note, first of all, that those applicants who were not born on the islands and never had a home on the islands, can have no claim to victim status arising out of those events and their immediate aftermath (see, *mutatis mutandis*, *Demopoulos and Others v. Turkey* [GC] no. 46113/99 *et al,* decision of 1 March 2010, ECHR 2010-...; § 136 and the cases cited therein, *Papayianni and Others v. Turkey*, no. 479/07 *et al*,

decision of 6 July 2010; and the cases cited therein). As to the second point, it is evident that until the judgments in the *Bancoult 2* case, the domestic courts considered that the *Ventacassen* litigation had already resolved all the issues relating to the applicants' claim to infringement of their rights. The Court of Appeal noted on 22 July 2004 that the islanders had no further possibility of legal recourse and that any remaining issues were of a political nature. In the most recent House of Lords judgment, Lord Hoffman stated that it had been clear since 2003 (when the High Court struck out the islanders' claims due to the previous settlement), that that there was no legal obligation on the Government to pay any additional compensation or to fund resettlement. The most recent proceedings involved an unsuccessful challenge by the applicants by way of judicial review to legislative measures imposing immigration control on the islands which barred entry without leave under those rules. The Court notes that, in rejecting the claim, the House of Lords held that in the context of the present day, rather than 1968, any right of abode on the outer islands was purely symbolic, none of the islanders having gone to live on the islands in the four year period when this had been permitted under the ordinance then in force. While it remained open to the applicants to apply for permits as in the past for transient visits, there was no prospect of their being able to live on the islands in the foreseeable future without funding which the Government were not willing to provide and which was not likely to be forthcoming from any other source. In these circumstances, the Court finds that the 2004 ordinance cannot be said to have amounted to an interference with the applicants' right to respect for their homes. Indeed, it is apparent from the judgments given that whatever the outcome of those proceedings that the applicants continued to have no legal, or practical, prospect of being able to enter or settle on the islands.

83. The Court is therefore not persuaded that recent events disclose any developments relevant to the applicants' victim status. The heart of the applicants' claims under the Convention is the callous and shameful treatment which they or their antecedents suffered from 1967 to 1973, when being expelled from, or barred from return to, their homes on the islands and the hardships which immediately flowed from that. These claims were raised in the domestic courts and settled, definitively. The applicants' attempts to pursue matters further in more recent years must be regarded, as held by the House of Lords, to be part of an overall campaign to bring pressure to bear on Government policy rather than disclosing any new situation giving rise to fresh claims under the Convention. Having regard to the facts submitted by the parties and the complaints raised by the applicants, the Court finds that that no separate issues concerning the applicants' substantive rights under the Convention have been shown to arise nor any arguable claims of breaches of such rights engaging Article 13 of the Convention.

4. Access to court and fair trial issues (Article 6)

84. As concerns any remaining issues that might arise under Article 6 due to the procedures before the courts over recent years (see paragraph 66 above), the Court considers that there are two principal strands of argument advanced by the applicants: firstly, that the 2004 orders constituted an act of the executive which deprived the unappealed judgment in *Bancoult (1)* of its intended effect (with reference, *inter alia*, to *Brumărescu v. Romania* [GC], no. 28342/95, ECHR 1999-VII; *Hornsby v. Greece*, 19 March 1997, *Reports of Judgments and Decisions* 1997-II); and secondly that the refusal to grant a substantive hearing of their claim to civil damages constituted an unjustified impediment to their access to court in particular due to the application of domestic rules of limitation.

85. As to the first strand of argument, the Court has found no trace of such complaint being raised in the subsequent domestic proceedings, in the most recent of which Convention arguments could have been directly ventilated. In any event, the situation in this case is not comparable to that in the *Brumărescu* line of cases, where a Government officer had a final decision re-opened and re-decided. In the present application, there was no re-opening or re-deciding of the validity of the 1971 immigration ordinance; that remained invalid. Nor does the *Hornsby* case lend assistance to the applicants' argument, since the decision in *Bancoult 1* which declared the 1971 ordinance invalid contained no operative elements which required action or enforcement by the Government. While in the immediate aftermath of the decision the authorities explored the feasibility of resettlement, the House of Lords had found that they had been under no legal obligation to take any action, and that they had not given the islanders any legitimate expectation that their return would be facilitated. The situation evolved meanwhile, with various studies and reports highlighting the prohibitive cost of providing infrastructure and a means of livelihood for any new settlement and with the changing dimensions of the strategic role of the islands. Thus, when the new orders barring immigration were litigated in light of these new circumstances, they were upheld. Against this background, the Court perceives no appearance of depriving the applicants of the benefit of a final, enforceable decision.

86. Turning to the second strand of argument which asserts an unjustified failure by the courts to address the merits of the applicants' claims for compensation (the *Chagos Islanders' case*), the Court notes that the High Court, upheld on appeal, thoroughly examined the applicants' claims in a lengthy judgment, addressing their arguments and giving clear and detailed reasons for not accepting them, including reasons founded on abuse of process based on the past settlement and waivers of future claims, on prescription or on the lack of a cause of action. Further, the prescription period applied was not of such duration as to have been practically impossible to comply with; after hearing both parties and assessing the

documentary evidence, the domestic court also reached the conclusion that the applicants' allegations that they had been prevented from making their claims earlier as the Government had concealed relevant information had not been made out. There is no indication of any arbitrariness or unfairness in these proceedings which could be construed as a denial of access to court.

87. It follows that these complaints are manifestly ill-founded and to be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

5. Conclusion

Having regard to the above, this application must therefore be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Lawrence Early
Registrar

David Thór Björgvinsson
President