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## **International Legal Mechanisms for the Protection of Human Rights on the Occupied Territories of Georgia**

*The Russian Federation has violated Georgia's territorial integrity and sovereignty at various times. It occupied a significant part of the territories of Georgia and announced the formation of two political units on them: Abkhazia and the so-called "South Ossetia". These units could not manage to obtain international recognition and the protection of the human rights of the people living there became a significant problem. This is a significant challenge for International law. International law has two principal ways to prevent violations of these rights. On the one hand, granting limited legal personalities to these units and thus imposing responsibilities for the facts of violations of fundamental human rights. Imposing the responsibilities to external states for the facts of human rights violations in these regions. In this case, of course, it must be the state, that exercises effective control over these regions. In this case, such a state is the Russian Federation.*

**Keywords:** *De Facto Regimes, Human Rights, Limited Subjects of International Law, Responsibility of the External State.*

### **1. Introduction**

The political order of the modern world implies the co-existence of many different political actors. Such an international political reality creates a diverse international system, where we can see, supranational international organizations, nations fighting for independence, sovereign states, and sui generis territorial units side by side.<sup>1</sup>

Accordingly, it is obvious, that although states are currently represented in the international system as the key subjects of International law, *"it is clear, that there are international legal entities of many different types"*<sup>2</sup>

Such cases are largely related to the struggle for power among states. Although it would be irrelevant to go into the depths of the history of their formation for the purposes of this article, it is important to note that the fruit of the above-mentioned international process is the issue of the occupied territories of Georgia – Abkhazia and the so-called "South Ossetia".

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<sup>1</sup> Comp. *Pipia S.*, The Scope of Authority of the Occupying Forces in the Administration of the Occupied Territories, Thesis Work, Ivane Javakhishvili Tbilisi State University, Tbilisi, 2016, 215 (in Georgian).

<sup>2</sup> *Dixon M., McCorquodale R., Williams S.*, Cases & Materials on International Law, 6<sup>th</sup> ed., Oxford University Press, 2016, 136.

The formation of the regions of Abkhazia and Tskhinvali,<sup>3</sup> (despite the individuality of each case,<sup>4</sup> for example, Northern Cyprus and Transnistria are similar sui generis territorial units at the international level: the self-proclaimed “Moldovan Republic of Transnistria”),<sup>5</sup> is largely the result of illegal forced methods and such units more often cannot manage to gain widespread international recognition.

De facto regimes established on the occupied territories of Georgia are a direct example of the latter, which, apart from failing to gain international recognition, failed to create a strong and independent economy and establish effective self-proclaimed state institutions.

In such an environment, the person and his/her fundamental rights are the first victims. It is impossible, that a territorial unit, which, on the one hand, is the fruit of lawlessness and on the other hand, has the status of an illegal formation in the international system, to talk about the supremacy of the law and a high standard of the protection of human rights in its territory.

In fact, such a situation has been created, according to which, on the one hand, we have the Law of Georgia “On Occupied Territories”, which (quite rightly) states: *“The Russian Federation is responsible, in accordance with the norms of international law, for the violation of the universally recognized human rights defined by the Constitution of Georgia on occupied territories.”*<sup>6</sup> On the other hand, the Russian Federation considers Abkhazia and the so-called “South Ossetia” as independent states, thus practically declining the responsibility for the facts of human rights violations committed in these areas.

On the part of the self-proclaimed regimes, it is clear from the very beginning, that it is absurd to talk about the full guarantee of such rights. Consequently, there is a legal gap, which actually represents the problem of protection of human rights, where international law should be actively involved, and although *“international humanitarian law is insufficient to fill this gap, as it is more interested in prohibiting behavior than executing positive obligations to protect individuals”*.<sup>7</sup> Still, international law remains the main and most effective means of ensuring the protection of basic human rights in these territories.

The aim of this piece of work is to study the mechanisms for preventing human rights violations on the occupied territories, within the frames of which, on the one hand, the international legal status of these units and the international legal

<sup>3</sup> Comp. Constitution of Georgia, Paragraph 1 of Article 1, Departments of the Parliament of Georgia, 31-33, 24/08/1995.

<sup>4</sup> *Okhanashvili N.*, Theoretical Analysis of the Causes of Ethnopolitical Conflicts (Case of the South Caucasus), Thesis Work, Ivane Javakhishvili Tbilisi State University, Tbilisi, 2018, 125-126 (in Georgian).

<sup>5</sup> *Shamugia V.*, Transdnestrian Conflict, Thesis Work, Ivane Javakhishvili Tbilisi State University, Tbilisi, 2019, 70-71 (in Georgian).

<sup>6</sup> Law of Georgia “on the Occupied Territories”, the article 7<sup>th</sup>, LHG, 28, 30/10/2008.

<sup>7</sup> *Tan D.*, Filling the Lacuna: De Facto Regimes and Effective Power in International Human Rights Law, International Law and Politics, 2019, 443.

personality, and on the other hand, the issue of imposing liability on another state for such violations are discussed.

## **2. Basic International Mechanisms and Alternatives**

The issue of full protection of fundamental human rights should not be the subject of debate in a civilized society. There are rights, that are inborn and continuously accompanying all human beings, it is not the rights granted by the state.

Although the state is not able to grant or deprive a person of his or her fundamental human rights, it is generally the state - as an international legal entity - that has the responsibility to ensure the protection of fundamental human rights on its territory. The issue of the international legal personality of the occupied territories of Georgia arises here since Abkhazia and the so-called "South Ossetia" does not have the usual international legal personality. This raises significant issues in the process of defining the responsibilities of these regimes for the protection of fundamental human rights at the international level.<sup>8</sup>

Therefore, in order for the protection of fundamental human rights to be effectively implemented in the territories, it is important to determine the entity responsible for their protection. Such an entity can be another state that has significant influence over a particular de facto regime.

Let's consider the possibility of imposing international legal responsibility on the international legal entity.

### **2.1. International Legal Status of de facto Regimes**

It is logical that international law cannot impose legal responsibility on an entity whose international legal personality, it does not recognize. On the other hand, it should be noted, that it is inadmissible to completely neglect those units that really exist in the international system in some form.

Therefore, in order for the people living under the rule of de facto regimes formed on the occupied territories of Georgia not to be fully deprived of the possibilities of protection of human rights, they needed some international legal status. This can be considered as a format that would be the basis for international law and the legality of the relationship among these units in a limited form. Besides, it is important to analyze, that neglecting the legal status of such units is inadmissible and unjustified.

In view of all this, as noted above, international law needs to use heterogeneous and different approaches with units of different political content. An example of this is the fact, that in the international system, Abkhazia and the Tskhinvali region have

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<sup>8</sup> See additionally, Report of the Independent International Mission Determining the Facts related to the Conflicts Occurred in Georgia, Vol. I-III 2009, 443-444, <<https://smr.gov.ge/uploads/prev/66c4e7.pdf>> [10.04.2022] (in Georgian).

limited international legal identities. Such a status, in the language of diplomacy, means that although these territories are not independent legal entities, determination of the legal status and protection of the rights of the people living there remains a task, which is provided by a limited legal personality incompletely but still provides.

It should be emphasized, that such a status in no case requires or implies the recognition of this unit as an independent territorial unit - international practice contains numerous examples of this. On the other hand, such status means imposing some responsibilities on this unit, in both international humanitarian and international criminal law.

The next stage involves comprehending the views of prominent specialists in international law. For example, Michael Schoiswohl believes that it is important that such de facto regimes have limited international legal personality in the context of protection of human rights.<sup>9</sup> Despite a number of different opinions on various issues, one of the most prominent specialists in international law, Essen, had a similar opinion, who believed that the basic principles of international humanitarian law should be applied and is applied to de facto regimes as customary law.<sup>10</sup>

The opinions and arguments of these scientists are supported by the European Court of Human Rights in its decision in the case of Ahmed against Austria,<sup>11</sup> recognizing that fundamental human rights may be violated not only by a state the international legal personality which is not in question, but also by de facto regimes.

This is an unequivocal fact, the significance of which is the largest, because it prevents the violation of fundamental human rights in these and other such regions as much as possible, emphasizing that despite the marginalized role of such a unit in the international system, it will inevitably be held responsible under international law.<sup>12</sup>

## 2.2. The Role and Responsibilities of the External State

Despite the mechanisms mentioned in the discussion above, the protection of fundamental human rights on the occupied territories of Georgia remains as the most difficult challenge. This is confirmed by the final report of 2021 of the Ministry of Foreign Affairs of Georgia on the human rights situation on the occupied territories of Georgia, where it is unambiguously stated, that prevention of human rights violation has become even more complicated in the conditions of pandemic for

<sup>9</sup> *Schoiswohl M.*, Status and (Human Rights) Obligations of Non-Recognized De Facto Regimes in International Law: The Case of "Somaliland", Martinus Nijhoff Publishers, Leiden/Boston, 2004, 82.

<sup>10</sup> *Essen J. V.*, De Facto Regimes in International Law, Utrecht Journal of International and European Law, Vol. 28, Issue 74, 2012, 34.

<sup>11</sup> *Ahmed v Austria* [1996] ECHR 63.

<sup>12</sup> *Comp. Rukhadze N.*, Relationship among the Principle of State Immunity and the Principle of Human Rights and Human Rights from the Jurisdiction of Civil Justice according to International and National Court Practice, Thesis Work, Ivane Javakhishvili State University, Tbilisi, 2012, 50-51 (in Georgian).

persons living on the territories of Abkhazia and the so-called “South Ossetia”. The need to present this more clearly at the international level is also emphasized.<sup>13</sup>

Therefore, it is a fact that limited international legal personality has not proved to be sufficient for the effective protection of the fundamental rights of the people living under the rule of de facto regimes.<sup>14</sup> This result may be conditioned by two reasons: the status of limited international legal entities of de facto regimes does not allow space and possibility of existence of effective pressure mechanisms and/or de facto regimes do not have sufficient power in the area in order to effectively protect the rights of those people living under their control. It should be noted, that both circumstances may occur jointly.

In addition to, analyzing the fact that international practice has repeatedly confirmed the weakness of de facto regimes in the process of ensuring fundamental human rights for citizens, it becomes urgent to find other ways to prevent the violation of the above-mentioned rights by imposing responsibility. Such a way is imposing the responsibility on the external state for facts of violation of fundamental human rights. *“Normally, a state that illegally annexes or occupies the territory of another state is responsible to third parties for violations of the rights of their fellow citizens as well as for human rights violations”*.<sup>15</sup>

In the case of Georgia, it is clear that the Russian Federation is meant in this context and this is quite logical, given that the situation existing in the regions of Abkhazia and the so-called “Ossetia” represents the product of military aggression and occupation of the Russian Federation.<sup>16</sup> Moreover, the Russian Federation still has a significant influence on these territories.

The Russian Federation is also responsible for executing its obligations undertaken by the International Covenant on Civil and Political Rights. The Covenant contains a list of fundamental human rights, the first part of article 2<sup>nd</sup> of which explicitly states, that the state must respect the rights of each citizen living on its territory and under jurisdiction provided for in the Covenant.<sup>17</sup> The part that deals with all persons under jurisdiction are particularly important here, for the goals of our discussion. Based on this, it may be considered that this should imply the

<sup>13</sup> Comp. *Jikia M., Gegenava D.*, Protection of Human Rights in the Occupied Territories, Collection of Articles: Protection of Human Rights, Constitutional Reform and Rule of Law in Georgia, *Korkelia K. (ed.)*, Tbilisi, 2017, 186-187 (in Georgian).

<sup>14</sup> *Mirimanova N. (ed.)*, Regulation of Trade across Disputed Borders: Examples of China-Taiwan, Serbia-Kosovo and Cyprus, *Lashki G. (trans.)*, 2015, 74 (in Georgian).

<sup>15</sup> *Orakhelashvili Al.*, Akehurst’s Modern Introduction to International Law, 8<sup>th</sup> ed., Routledge, 2019, 285-286 (in Georgian).

<sup>16</sup> Comp. Report of the Independent International Mission Determining the Facts related to the Conflicts Occurred in Georgia, Vol. I-III 2009, 441, <<https://smr.gov.ge/uploads/prev/66c4e7.pdf>> [10.04.2022] (in Georgian).

<sup>17</sup> *Devidze A., Mirianashvili G.*, Manual of EU Law, Tbilisi, 2019, 113-114 (in Georgian).

responsibility of the Russian Federation in the issues of ensuring fundamental human rights for persons living in the occupied territories of Georgia.<sup>18</sup>

This is a very important step forward in the issue of protection of fundamental human rights, because in this way an international legal subject having absolute power (in our case, the Russian Federation) emerges, which may be held responsible in case of human rights violations.<sup>19</sup>

It's worth noting that the European Court of Human Rights has also expressed support for this viewpoint. In the case of *Bankovic and others against member countries of NATO*, the European Court of Human Rights stated the following: "*States shall be held responsible for executing their obligations undertaken by the Convention only if they exercise effective control over a foreign territory or a specific situation*".<sup>20</sup>

The decision of the European Court of Human Rights in Strasbourg in the case of *Ivantoc and others against Russia and Moldova* is also very important. While considering this case, the court concluded, that "the Russian Federation shall be held responsible for violating the rights provided for in the Convention in Transnistria, as it provides ongoing political, financial and economic support and its armed forces are mobilized in the area."<sup>21</sup> In the form of the latter, it is very important to have such an example that directly imposes on the external state international legal responsibility on the facts of human rights violations committed in the area over which it exercises effective control.

For the purposes of our discussion, the decision of the European Court of Human Rights on January 21, 2021, in the case of *Georgia against Russia is even more important (II)*.<sup>22</sup> By this decision, the court established that the presence of Russian forces in the occupied territories of Georgia and the degree of subordination of the regimes governing these territories to the Russian Federation made it clear that Russia continued to exercise effective control over the occupied territories of Georgia.<sup>23</sup> Therefore, this decision has already created an important legal basis to hold the Russian Federation responsible for ensuring human rights protection in the occupied territories of Georgia, because it was proved, that such a crime committed

<sup>18</sup> Comp. *Chankvetadze N., Bursulaia G., Murusidze K.*, Teaching Peace and Conflict: Basic Manual, Tbilisi, 2020, 30 (in Georgian).

<sup>19</sup> *Dgebuadze G.*, Protection of Human Rights Guaranteed by the Constitution by using National and International Criminal Mechanisms, Collection of Articles: Security in Europe and the Modern Constitutional State (Example of Georgia), *Zarandia T., Tokhadze A. (eds.)*, Tbilisi, 2021, 205-206 (in Georgian).

<sup>20</sup> *Bankovic, Stojanovic, Stoimedovski, Joksimovic and Sukovic v. Belgium, Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Spain, Turkey and the UK.* [2001] ECHR.

<sup>21</sup> *Ivantoc and Others v Moldova and Russia* [2011] ECHR.

<sup>22</sup> *Georgia v. Russia (II)* [2021] ECHR.

<sup>23</sup> Comp. *Kharebava G., Jokhadze G., Davlianidze Kh.*, UN Involvement in Resolving the Issue of the Cyprus Problem and the Abkhazian Conflict, Comparative Analysis, Tbilisi, 2020, 46 (in Georgian).

in the occupied territories of Georgia is the responsibility of the Russian Federation and the court imposed on the latter the above-mentioned responsibility.<sup>24</sup>

### 3. Conclusion

In conclusion, it should be noted, that the protection of human rights remains a topical problem in the occupied territories of Georgia and not only there. In the general context, there will always be a problem with the effectiveness of mechanisms for the protection of fundamental human rights over other similar territorial units.

One of the causes for this is their marginalization within the international system. It is obvious, that the introduction of the institute of limited legal personality in the international arena as one of the mechanisms for the protection of human rights has proved to be an inadequately effective mechanism to achieve this goal. We must assume that these units do not have a feeling of belonging to a civilized international system, and this is quite logical. They are not full members of the great social, economic, and political relations, the disconnection from which would be detrimental to them. It is natural, that they cannot be, taking into account their history and essence, and therefore have no motivation to make efforts to protect their rights.

As well as, it is clear, that holding the external state responsible does not represent an effective mechanism that would on a large scale guarantee the protection of fundamental human rights in these regions. This was proved by practice many times. It must be said, however, that this does not necessarily indicate the weakness of international law in any sense. It is important to comprehend that, as James Brearley stated, international law is not a panacea.

It should also be noted, that international law is the only available means at present, which in some way is a guarantor for the protection of fundamental human rights for the citizens living in the occupied territories of Georgia, and although, international law may not be able to unequivocally suppress the facts of human rights violations in the region today if it works properly and functions effectively, it will definitely be able to improve the international system. This implies the formation of such an international peaceful order in the long perspective, where stronger international mechanisms will exist in order to support fundamental human rights.

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