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**HUMAN RIGHT VIOLATIONS IN GEORGIAN OCCUPIED
TERRITORIES AND RESPONSE MECHANISMS FROM
INTERNATIONAL ACTORS**

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

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ABSTRACT

Russia has committed a series of human rights violations since its war with Georgia in August 2008. Most importantly, Russia keeps being an aggressor and has never stopped breaking international law since the war. Russian soldiers have been illegally moving the borders into occupied regions and detaining civilians living nearby. The current situation that we have nowadays lead to one point only, that the conflict is still not over and that the response from the international actors did not turn out to be effective. This paper will explain committed human right violations in Georgia with relevant cases and illustrate what could have been dealt better in the context of protecting human rights. This research will offer the analysis of the Strasbourg Court decision over Georgia v. Russia (II) ¹case . The case is interesting in terms of the court's approach to humanitarian law. As the judgement came out, many questions were followed, such as: "Did the court consider that the victims fell under the jurisdiction of Russia even though the alleged violations occurred outside its territory?" or "Did the court find Russia responsible of human rights violations even if they occurred in the middle of active facilities where International Humanitarian Law is usually considered as the *lex specialis*?" Apart from discussing these questions and the court's decision, this paper will offer the comparison of the similar cases submitted to ECHR. The aim to be achieved with the research is to analyze who is responsible for human right breaches in the Georgian occupied territories, what were the response mechanisms from the international actors, and how efficient was Strasbourg Court's judgement on Georgia v. Russia (II) case.

Keywords: Human Rights, International law, Russo-Georgia war, occupied territories, Georgia v. Russia (II)

¹ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

INTRODUCTION

Human rights violation is a major problem globally, protection of human rights is directly linked to the wellbeing and development of any country. Violation of human rights is the greatest challenge, especially in the conflict regions, where the authorities are not able to provide protection of human rights of its citizens. Georgian occupied territories are very clear example for this. Since Russia occupied Georgian regions – Abkhazia and South Ossetia, Georgian state authorities have been expelled, and the control over the territories is exercised by the Russian Federation, with the help of Russian-backed separatist forces. The issue of which party has the responsibility over human right breaches in the occupied territories has always been under question. This research will give arguments to show who should be in charge of ongoing situation in the occupied regions by law and who is responsible for the human right violations in the case of Abkhazia and South Ossetia.

In August 2008, Georgia filed an interstate complaint against Russia to the European Court of Human Rights regarding violations of the European Convention on Human Rights in Abkhazia and the Tskhinvali region / South Ossetia by Russian forces and separatist forces under Russia's control. As international armed conflict is generally a matter for international humanitarian law, in the case of *Georgia v. Russia (II)* ² the court must consider Convention in relations with International Humanitarian Law. In this regard, I will try to demonstrate with my research, that the case of *Georgia v. Russia (II)* is both a challenge and an opportunity for the Court in the context of its approach to humanitarian law. On the one hand, the court will have to step out of its comfort zone and consider the relationship between the provisions of the Convention and the rules of humanitarian law. On the other hand, *Georgia v. Russia (II)* is a case, which gives the court a full opportunity to develop a practical methodology of using humanitarian law.

In this regard, this paper will offer the discussion of the Strasbourg Court decision over *Georgia v. Russia (II)* case, along with other similar cases, and analysis on the efficiency of the court in this case.

² *Ibid*

The situation in the conflict regions became more intense in August 2008, during the five-day war, which is also known as the first European war of the 21st century. As Ronald D. Asmus called it, the war “really shook the world.”³

In this thesis, the readers will find the details of the August war as well as the views regarding the conflict from different authors and organizations. The research will demonstrate the human rights not only during the war, but throughout the period of Russian occupation. The research will also offer the international reaction and response mechanisms from the international actors and what are the reasons behind their responses. For the research, qualitative research methods have been used, the materials have been collected and the data have been analyzed – books, articles, cases, legislations etc.

The aim to be achieved with the research is to analyze who has the responsibility for human right breaches in the Georgian occupied territories, what were the response mechanisms from the international actors, and how efficient was Strasbourg Court’s judgement on Georgia v. Russia case.

In order to respond the aim of the paper, the cases have been analyzed that are similar to conflict situation between Russia and Georgia. The sources have been collected to demonstrate how the international actors dealt with the human right violations in the conflict zones. A considerable amount of literature has been published on the human right violations in conflict zones of Georgia however, this research will offer more regarding the response mechanisms and responsibility over human right violations in the occupied territories. Furthermore, the issue is still ongoing and even getting more intense. Russian intervention is not problematic only in Georgian conflict zones, but in other neighboring countries in the region as well. Having the most recent war in mind – Armenia-Azerbaijan conflict over Nagorno-Karabakh. If the situation in Caucasus does not get better, Russia’s influence may keep growing, which might lead to Russia conquering the region. Lech Kaczynski, an aide to the Polish President reacted on the August war – “Russia is now a threat to his country as well”.⁴ Mediators from international society are very significant in resolving those conflicts. Extensive research has shown that the EU, as well as the USA expressed

³ Asmus, R. (2010). *A little war that shook the world: Georgia, Russia and the Future of The West*. New York, USA: Palgrave Macmillan.

⁴ Bowker, M. (2011). The war in Georgia and the Western response. *Central Asian Survey*, 30(2), 197–211.

huge support towards Georgia and Georgian integrity. However, the support from USA was seen as a provocation according to some countries' views.⁵

The judgement by ECHR over Georgia v. Russia (II) case came out on January 21, 2021. In this case, among other issues, one of the main issues is the relationship between the European Convention on Human Rights and international humanitarian law. The purpose of this paper is to show that this case is both a challenge and an opportunity for the Court in the context of its approach to international humanitarian law. The challenge is that Georgia v. Russia (II) is a precedent case, as it deals with active combat in international armed conflict. Consequently, the question of the relationship between the Convention and humanitarian law stands directly before the Court.

⁵ Bowker, M. (2011). The war in Georgia and the Western response. *Central Asian Survey*, 197–211.

1. MILITARY AGGRESSION

1.1. The August War

The August war, as Ronald D. Asmus mentions – ‘A little war that shook the world’⁶, was a war between Georgia, Russia and the Russian-backed self-proclaimed republics of South Ossetia and Abkhazia. The war that took place in August 2008, was regarded as the first European war of the 21st century.⁷ The roots of the conflict itself come from much earlier past. When the Soviet Union began to fall apart, the republic of Georgia declared its independence. In early 1991, a conflict between Georgia and separatists left parts of the former South Ossetian Autonomous Oblast under de facto control of Russian-backed separatists, that were not recognized internationally. In the beginning of August 2008, South Ossetian separatists started shelling Georgian villages.⁸ This move resulted in pro-Russian separatists using artillery attacks and breaking The Sochi Agreement⁹ - 1992 ceasefire agreement, which was signed in Sochi to mark the end of both the Georgian-Ossetian and Georgian-Abkhazian conflicts. As a response, Georgian Army was sent to the South Ossetian conflict zone on 7th August and soon enough Georgians took control of most of Tskhinvali. Before Georgia's military response, Russian forces had illegally crossed the Russo-Georgian state border and moved into the South Ossetian conflict zone on August 7. Russia tried to accuse Georgia of "aggression against South Ossetia", and decided to launch a large-scale land, air, and sea invasion of Georgia on 8 August. Russia’s failure to prevent deaths and human right

⁶ Asmus, R. (2010). A little war that shook the world: Georgia, Russia and the Future of The West. New York, USA: Palgrave Macmillan.

⁷ Emerson, M. (2008). Post-Mortem on Europe's First War of the 21st Century. Centre for European Policy Studies, 167, 1-8.

⁸ Asmus, R. (2010). A little war that shook the world: Georgia, Russia and the Future of The West. New York, USA: Palgrave Macmillan.

⁹ Agreement on Principles of Settlement of the Georgian - Ossetian Conflict. 24.06.1992

violations are underlined in the article by R. Allison¹⁰. “Russian forces systematically failed to maintain order in certain parts of the conflict zone and their occupied territories.”¹¹ Russia tried to justify this behavior with the pretext of "peace enforcement" operation. The conflict epicenter was in South Ossetia, where Russian and South Ossetian forces were fighting Georgians for several days, until the Georgian forces retreated. The fight was not over yet, when Russian and Abkhaz forces opened a second front by attacking the Kodori Gorge and Russian naval forces blockaded part of the Georgian coast. As a result, Russian forces had occupied part of Western Georgia, including the cities of Zugdidi, Senaki, Poti and Gori. The South Ossetians annihilated most ethnic Georgian towns in South Ossetia and were responsible for an ethnic cleansing of Georgians. Georgia has accused Russia of occupying Abkhazia and South Ossetia in violation of the ceasefire agreement of August 2008.¹²

1.2. Motives

Many analyses argue that Russia did not involve in the Abkhaz-Georgian conflict to contribute to the settlement of the conflict and peace in the region but there were intentions to accomplish Russia's own interests by deepening the crisis and escalating the situation in the region.

For example, Gachechiladze shares the same thought in his article and argues that “there was much speculation to what extent the outcome of these war may be attributed to the military aid given to separatists from Russia's armed forces”¹³. In his article he mentions: “As for Russia's involvement it seems as the different branches of power and even different ministries of Russia carried out different policies in the Caucasus; Russia had no single and clear policy in these conflicts and actually supported all the belligerent. But in the end, of each conflict in Georgia, Russia appeared to be the only peace-keeper”.¹⁴

As Dr. Ariel Cohen claims: “Moscow formulated far-reaching goals when it carefully prepared—over a period of at least 21/2 years, and possibly longer—for a land invasion of Georgia.”¹⁵ With

¹⁰ Allison, R. (2009). The Russian case for military intervention in Georgia: international law, norms and political calculation. *European Security*, 18, 173-200

¹¹ Mullins, W. C. (2011). War Crimes In The 2008 Georgia–Russia Conflict. *The British Journal of Criminology*, 51, 918–936

¹² Gachechiladze, R. (1997). National idea, state-building and boundaries in the post-Soviet space (the case of Georgia). *GeoJournal*, 43, 51–60.

¹³ *Ibid*

¹⁴ *Ibid*

¹⁵ Cohen, A., Hamilton, R. E. (2011). *The Russian Military and The Georgia War: Lessons and Implications*. USA: Strategic Studies Institute.

the goals, Russia intended to Expell Georgian troops and terminate Georgian sovereignty in South Ossetian and Abkhazian regions. As Vicken Cheteryan mentions in his article, “The Russian military was evidently ready for an eventual war with the Georgian armed forces.”¹⁶

From what we can see based on how the August war ended, Russian intervention did not contribute to the settlement of the conflict but it did everything to maintain the separatists against Georgians and moreover, Russian troops remained in the occupied territories for ‘peace keeping’.

1.3. Results

All the actions, that Russian Federation took for supporting the separatist forces, resulted in military aggression – the August War, which was the main target of the northern neighbor of Georgia. As it is defined by the UN General Assembly (A/RES/3314), “Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations, as set out in this Definition.”¹⁷ “The actions of Russia on Georgian territory exceeded peacekeeping needs, which is why it constituted an act of aggression against Georgia.”¹⁸ The fact of the aggression, that Russia intended to blame Georgia for, threatened Georgian sovereignty and caused its collapse. Despite the fact that Russia justifies its behavior with playing a role of a mediator by placing peacekeepers in the conflict regions, it was very clear from military attacks that Russia was one of the warriors in the war and it did not arbitrate the conflict between two parties. Inevitable clash between two countries established as a result of deteriorated relationship intentions by Russia adding to the already described events. The final result of the five day war was very close to invading Georgia by Russian army. “The war of August 2008 took about 750 lives, and wounded thousands others.”¹⁹ It must be noted that Abkhazia, as well as, South Ossetia are still occupied by Russia.

¹⁶ Cheteryan, V. (2009). The August 2008 war in Georgia: from ethnic conflict to border wars. *Central Asian Survey*, 28, 155–170

¹⁷ UN General Assembly, Definition of Aggression, 14 December 1974, A/RES/3314

¹⁸ Land, K. (2008). Legal aspects of the conflict in Georgia and post-conflict developments. Retrieved from <https://vm.ee/en/yearbook-20082009> , 3 May 2021.

¹⁹ Christoph, H., StefesJulie, A. (2010). *The Battles after the Battle: International Law and the Russia–Georgia Conflict*. London: Palgrave Macmillan.

1.4. Borderization

Even though military actions ended in August 2008, the war is still not over. Thirteen years later, Abkhazia and South Ossetia are still occupied by Russian troops in violation of the Six-Point Ceasefire Agreement.²⁰ According to the Maya Panjikidze, foreign minister of Georgia at that time, around 35km of the total length of the Georgia-South Ossetia boundary, was fenced as a result of the “intense illegal actions”²¹ of Russian forces. Since 2013, Russia has been moving the border on Georgian territory illegally. Joseph Larsen suggests the four main objectives that borderization serves from the Russian perspective.²² Obviously, all of them threaten Georgia’s sovereignty and territorial integrity. The main objectives provided by Larsen are as follows:

- “Moving the ABLs (Administrative Border Lines) moves the Russian Armed Forces deeper into Georgian territory;
- Borderization demoralizes Georgia’s society and undermines its government;
- It impedes integration to NATO;
- Borderization disrupts the process of reconciliation and peaceful reintegration”.²³

Along with shifting the borders, Russian "border guards" still carry on with detaining people with charges of "illegal" crossing with the perimeter of the Enguri. However, I am going to talk more about this issue in the next chapter.

Georgia's aspiration to join North Atlantic Treaty Organization (NATO), which became more distinct in the early 2000s, became one more issue that has negatively affected Georgian-Russian relations. Russia is so hostile to the idea of NATO expanding itself to the east, that in order to delay the process of its membership of Georgia, Russia attempted to invade Georgia in 2008,²⁴ and occupied its 20% (Abkhazia and South Ossetia).

²⁰ six-point ceasefire agreement. 12.08.2008

²¹ Boyle, E. (2016). Borderization in Georgia: Sovereignty Materialized. *Eurasia Border Review*, 1-18.

²² Larsen, J. (2017). Deterring Russia’s Borderization of Georgia. *Georgian Institute of Politics*.

²³ *Ibid*

²⁴ Kakachia, K., Kakhishvili, L., Larsen, J., Grigalashili, M. (2017). Mitigating Russia’ Borderization of Georgia: A Strategy to Contain and Engage. *Tbilisi Strategic Discussions*.

As a result, by 2008, the two main issues of resistance between Georgia and Russia - sovereignty and territorial integrity and Georgia's membership in NATO - were linked to each other, as Russia occupied the territories (Abkhazia and South Ossetia) and proclaimed them as independent states. By doing so, Russia has violated Georgia's territorial integrity from a legal point of view and effectively halted the prospect of Georgia joining NATO by deploying its own military bases in the occupied territories. With Russia's threat to Georgian territorial integrity, Russia violated Article 2 (4) of the Charter of the United Nations – “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations.”²⁵

Therefore, the policy of borderization is explained by the desire of Russia, among other goals, to hinder Georgia's path to Western integration²⁶. The most troubling escalation of this policy was in 2019, when the security situation in the area of Chorchana-Tsnelisi near the administrative dividing line deteriorated, which was followed by the EUMM (European Union Monitoring Mission) increasing mediation efforts. Although a military confrontation was averted, the incident made it clear that without the cautious action from the parties during the conflict and without credible mediation from the EU the environment may deteriorate at any time.

²⁵ Charter of the United Nations, 1945, article 2 (4), San Francisco

²⁶ Kakachia, K., Kakhishvili, L., Larsen, J., Grigalashili, M. (2017). Mitigating Russia' Borderization of Georgia: A Strategy to Contain and Engage. *Tbilisi Strategic Discussions*.

2. HUMAN RIGHT VIOLATIONS

2.1. Human Right Violations near occupation lines

In addition to fencing the borders and installing barbed wire fences illegally, there is a list of human rights that are violated in the occupied territories of Georgia. As it is mentioned in the previous chapter of this article, Russian military soldiers keep detaining people near the borders, with the blame of crossing the “artificial border”, which in reality does not exist. With kidnapping and detaining people, Russian soldiers are violating the Article 5 of the European Convention of Human Rights– “Right to Liberty and Security”, also known as “Right to personal freedom” and Protocol No 4, article 2 – “Freedom of Movement” (Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.) Human rights violation by Russia is not new concept for the European Court of Human Rights, as Professor Kahn emphasis in his article: “The European Court is flooded with Russian applications that could overwhelm the Strasbourg Court.”²⁷

“On April 15, 2014, three crew members of a Tbilisi-based television station were detained by Russian forces close to the village of Adzvi bordering South Ossetia. TV3 announced that its reporter Bela Zakaidze, cameraman Vakhtang Lekiasvili and broadcast technician Mikheil Mikhoev had been detained while working on a report about the shifting of the boundary between South Ossetia and Georgia deeper into Georgian-controlled territory.”²⁸ The reason for detaining, as Russian soldiers say, was violating the state border. The border, however, does not exist and the line is just made of barbed wired fences built by Russian border guards illegally. According to the 2017 report, as Georgian government had reported, there have been further cases of fencing

²⁷ Kahn, J. D. (2006), Russia’s ‘Dictatorship of Law’ and the European Court of Human Rights. *Review of Central East and European Law*, 1, 1-14.

²⁸ Boyle, E. (2016). Borderization in Georgia: Sovereignty Materialized. *Eurasia Border Review*, 1-18.

the borders illegally and the length of illegal “ghost border line” near Tskhinvali region is nearly 51 km in total.²⁹ In the years of 2009 and 2015, in total 840 civilians have been detained .³⁰

“Responsibility of the Occupying Power for Human Rights Violations”³¹– this is how the report by Ministry of Foreign Affairs evaluates borderization and detaining civilians living near the artificial border set by Russian soldiers. It should be noted that the issue as a human right violation has been addressed to the Human Rights Council.³² The concern addressed expresses the human rights and humanitarian situation in these regions [of Abkhazia, Georgia and the Tskhinvali region/South Ossetia, Georgia] of Georgia”. It includes reported kidnappings, arbitrary detention, interference with property rights, restrictions on access to education in one’s native language, free movement and residence, as well as continued discrimination on the ground of ethnic origin in both regions.”³³ Also, Georgian houses in the South Ossetian region were destroyed during and after the aggression by Russian troops, Russians were aware that they must have followed the military legislation, however, they did not prevent it. “Such acts are not permitted in any circumstances, even in a situation where certain violence is allowed for self-defence.”³⁴– as it is mentioned in the article “The August 2008 Russian-Georgian war: issues of International Law.”

Public Defender of Georgia on the Rights of Women and Children in Conflict-Affected Regions published a special report (review of 2014-2016³⁵) according to which, population living in the occupied territories (Gali, Ochamchire, Tkvarcheli), do not have access to documents that do not let them have their rights to movement, private property, access to education, health *inter alia*. Ministry of Foreign Affairs of Georgia described on the report on the human rights situation in the occupied regions of Georgia that Russian Federal Security Service officers and representatives of the Sokhumi and Tskhinvali occupation regimes regularly perform torture and ill-treatment. According to the European Union Monitoring Mission, civilians who were detained in the occupied territories – South Ossetia and Abkhazia after returning reported cases of ill-treatment, abuse and other signs of torture while being detained by occupants.

²⁹ First Quarterly Report on the Human Rights Situation in the Occupied Regions of Georgia. (01-03, 2017). Ministry of Foreign Affairs of Georgia

³⁰ Boyle, E. (2016). Borderization in Georgia: Sovereignty Materialized. *Eurasia Border Review*, 1-18.

³¹ First Quarterly Report on the Human Rights Situation in the Occupied Regions of Georgia. (01-03, 2017). Ministry of Foreign Affairs of Georgia

³² Shalva Tsiskarashvili, Ministry of Foreign Affairs of Georgi, letter 6-23 June 2017.

³³ *Ibid*

³⁴ Kerikmäe, T., Nyman-Metcalf, K., Pöder, M. L. (2010). The August 2008 Russian-Georgian War: Issues of International Law. *Baltic yearbook of International Law Online*, 10 (1), 1-7

³⁵ Special Report of the Public Defender of Georgia On the Rights of Women and Children in Conflict-Affected Regions 2014-2016, Public Defender (Ombudsman) of Georgia.

2.2. Human Right violations in the occupied territories

Before getting to the point of the human right violations, it should be noted that the human rights will be discussed based on European Convention of Human Rights. The fact that Georgia ratified ECHR in 1999 enables the country to discuss the human right violations according to this convention and submit the application to the Strasbourg Court. Therefore, considering the rights recognized by the European Convention of the Human Rights, we can find quite a few rights that are reportedly violated in the conflict regions of Georgia by Russia.

Right to life (Article 2 of the ECHR) - A very fundamental right has been violated regularly, however the cases of murders remain without further investigation. Prohibition of torture (Article 3 of the ECHR) - Civilians living in the conflict zones are the victims of torture and ill-treatment in everyday life. Also, ethnic discrimination violates their dignity. Conditions in Abkhazian and South Ossetian prison were reported to be severely inadequate.³⁶ Prohibition of slavery and forced Labour (Article 4 of the ECHR) – This right is violated in the conflict zones as civilians are forced to do work under pressure and do not get any remuneration. Right to liberty and security (Article 5 of the ECHR)– it is mentioned about violation of liberty in the conflict zones in the previous chapter of this article. Civilians are detained when crossing the artificial non-existent border. Right to a fair trial (Article 6)– Citizens in the occupied territories do not have access to documents generally, also, they are deprived to have access to impartial courts as well. Protection of property (Protocol 1, Article 1 of the ECHR) – This right is violated for almost every citizen living in the occupied territories, as they are not able to return to their homes or to have their belongings. Right to Education (Protocol 1, Article 2 of the ECHR) - This social right is violated in Abkhazia as the population are not able to teach or learn Georgian language. Russian language is forced to be used instead. It is underlined in the judgement of the Georgia v. Russia (II) case, paragraph 34 and 35.³⁷

The OSCE Budapest Resolution of 6 December 1994³⁸ mentions the situation in Abkhazia. OSCE member states have, more than once, expressed their concerns regarding “ethnic cleansing” of Georgian population. There are many cases that describe casualties among Georgian civilians.

³⁶ Human Rights Report for 2016, U.S. Embassy Tbilisi, 2017.

³⁷ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

³⁸ Budapest Summit Declaration, CSCE, 1994.

"Legal remedies for human rights violations in the North Caucasus," are characterised to be the most alarming in the Council of Europe³⁹, as Bill Bowring mentions in his article.

2.3 Practice of Human Rights Law in the occupied territories

One might come up with a question regarding who is in charge when it comes to the human rights protection in the occupied territories. This topic is questioned often, and a lot of research have been done on it. Generally, the case can be submitted to the European Court if the rights from the convention and its protocols are violated on the territory that belongs to the contracting state. According to the statement, we might conclude that the rights violated to be on the territory that belongs to the state which has ratified the European Court of Human Rights. However, there are some cases, submitted to the Strasbourg court, that indicate that the concept of state jurisdiction is much broader than the territory only. Responsibility of the state jurisdiction includes the territories under state's de facto control as well. Therefore, the responsibility for the protection of human rights in such cases, belongs to the state that has a control over it. Some cases that reflect the issue can be brought. For example, case of *Loizidou v. Turkey*⁴⁰ - where the responsible state for the human right violations was Turkey, as it was the state that had control over the territory, according to the court. Also, the case of *Ilascu and others v Moldova and Russia*⁴¹- where the court decided that the responsible state for human right violation was Russia. When Russian soldiers entered South Ossetia and Abkhazia, de jure regions of Georgia, Russia did it without any agreement from Georgia, therefore Russia was considered as an occupier as international humanitarian law applied and Russia took control over the regions.⁴²

According to the International Court of Justice textbook, the occupier state is liable for the protection of the human rights on the occupied territories. This chapter will draw your attention to the point that part of the rights enshrined in the Human Right conventions can be limited during the war and emergency times, however, this does not apply to all the rights. For example,

³⁹ Bowring, B. (2009). Russia and Human Rights: Incompatible opposites?. *Göttingen Journal of International Law*, 2, 257-278

⁴⁰ *Loizidou v. Turkey*, no. 15318/89, ECHR, 1996.

⁴¹ *Ilascu and others v. Moldova and Russia*, no. 48787/99, ECHR, 2004.

⁴² Buchanan, J. (2009). *Up In Flames: Humanitarian Law Violations and Civilian Victims in the conflicts over South Ossetia*. New York, United States Of America: Human Rights Watch.

prohibition of torture, inhuman or other degrading behaviour cannot be limited even during war or emergency times and there is no limitation for this.

According to the International Covenant on Civil and Political Rights⁴³, article 2, each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.

The interpretation of this article can be understood in two ways: 1) States are responsible for protecting the rights of persons present in the territory of that State and, at the same time, for the jurisdiction of that State; 2) States are obliged to ensure the protection of rights of those persons who are outside its territory but under the jurisdiction of that State. An example of this is the occupied territories. In addition to all of the above, it is noteworthy that often international human rights law and humanitarian law works at the same time, but sometimes these two fields are able to deal with the same issue in different ways. In case there is a conflict between them, the norms of humanitarian law shall prevail, in accordance with the *Lex specialis* principle.

⁴³ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966

3. INTERNATIONAL REACTION AND RESPONSE MECHANISMS

3.1. Relationship between the ECHR and Russian Federation

The implementation of the international law by the state is significant not only for this state, but internationally, to other states as well. Many post soviet countries „rejected the traditional Soviet dualist approach to implementation of international law in domestic legal systems”⁴⁴ and amended the approach to international law to be the part of their domestic law. As Danilenko states, “The former Soviet Union never considered international law, especially international law of human rights, as something that might be invoked before, and enforced by, its domestic courts.”⁴⁵

Russia is seen as a constant violator of the international law globally. One of the most recent examples of this are military occupation of Crimea by the Russian Federation, which resulted in violations of public international law,⁴⁶ or occupying Abkhazia and South Ossetia, where Russia committed systemic human right violations.⁴⁷ The way Russia has implemented International Law, affects the human rights system and generally, it influences Russian approach to the Jurisdiction in an international level. “The Soviet Union developed its own approach to international law, which emphasised the primacy of the state over the individual – and which continues to influence the Russian government’s justifications for its actions today.”⁴⁸ As Pomeranz states, “Russia has

⁴⁴ Danilenko, G. (1999). Implementation of international law in CIS states. *European Journal of International Law*, 10 (1), 51-69.

⁴⁵ *Ibid*

⁴⁶ Tsybulenko E., Kelichavyi B. (2018) International Legal Dimensions of the Russian Occupation of Crimea. In: Sayapin S., Tsybulenko E. (eds) *The Use of Force against Ukraine and International Law*. The Hague: T.M.C. Asser Press.

⁴⁷ Dzehtsiarou, K. (2021). Georgia v. Russia (II). *American Journal of International Law*, 115(2), 288-294.

⁴⁸ Hetherington, P., Noble, Ben. (2018). *Russia doesn't just violate international law – it follows and shapes it too*. Retrieved from <https://theconversation.com/russia-doesnt-just-violate-international-law-it-follows-and-shapes-it-too-92700>, 5 May 2021.

experienced a turbulent relationship with the European Court of Human Rights”⁴⁹ since joining the Council of Europe in 1996. According to the ECHR press, the Court dealt with in total 10,163 applications that concern Russia in 2020 and 9,593 cases were declared as inadmissible. The court delivered 186 judgments, 173 of which found at least one violation of the ECHR.⁵⁰ According to the latest data from the ECHR press, the number of total applications pending before the court on 01/01/2021 is 15191.⁵¹ These numbers show how important it is for the ECHR to deal with the cases concerning Russia and how careful the court should be. Meaning that the court can either be strict towards the violator or it can ignore the statistics, which will result in the number of similar cases concerning Russia increasing. The dealing mechanisms by the court can have a significant impact globally. For example, it is expected that the judgment on Georgia v. Russia (II) will affect many pending applications. In the Georgia v. Russia (II) case, the Court found that Russia did not have jurisdiction over the active war zone, “effectively absolving it from some human rights obligations between August 8–12, 2008.”⁵² This part of the finding by the Court was a significant victory for Russia. This judgement will affect the pending cases that question jurisdiction at the time of military hostilities. Lauri Malksoo expresses his thoughts as not optimistic regarding the development of the relationship between the ECHR and Russia⁵³. Malksoo also states that “both the ECHR and the Russian Federation have managed to influence each other in a tense, complex and uneasy relationship.”⁵⁴

⁴⁹ Pomeranz, E. W. (2012). Uneasy Partners: Russia and the European Court of Human Rights. *Human Rights Brief*, 19 (3), 17-21.

⁵⁰European Court of Human Rights (2021). Press Country Profile [E-database]. Retrieved from https://www.echr.coe.int/documents/cp_russia_eng.pdf, 6 May 2021.

⁵¹ *Ibid*

⁵² Dzehtsiarou, K. (2021). Georgia v. Russia (II). *American Journal of International Law*, 115(2), 288-294.

⁵³ Mälksoo, L., Benedek, W. (Eds.). (2017). *Russia and the European Court of Human Rights: The Strasbourg Effect*. Cambridge: Cambridge University Press.

⁵⁴ *Ibid*

3.2 Interplay between International Humanitarian Law and Human Rights Law

The interplay between International Humanitarian Law and International Human Rights Law turned out to be rather significant for the human rights situation in Georgian occupied territories, as it has impacted on the Court's decision on the Georgia v. Russia II Case.

International Humanitarian Law and Human Rights Law (HRL) are two different bodies of law. IHL deals with armed conflicts, while Human Rights Law protects the individuals from abusive power.⁵⁵ There has been debates within the international law field on inter-relation of two bodies of law – International Humanitarian Law and Human Rights Law. As known, during the armed conflicts, whether it is international conflict or non-international conflict, International Humanitarian Law is *Lex Specialis* – applies all the time. As for the connection between IHL and HRL, the authors suggest that “Human rights law clearly had a beginning in humanitarian law that is strongly associated with international law governing the justification of wars (*jus ad bellum*) and the conduct of war (*jus in bello*).”⁵⁶ The authors argue that these two bodies of law are now disconnected. The interplay of these two branches of law becomes especially arguable as it comes to the Right to Life during armed conflict. The right to life is one of the most fundamental human rights. Accordingly, in the European Convention on Human Rights the right to life is one of the core rights and the convention includes right to life in the list of articles that cannot be derogated as stated in the article 15(2) of the ECHR – “No derogation from Article 2, except in respect of deaths resulting from lawful acts of war.” The interplay between IHL and HRL is often the topic of debates in the cases submitted to European Court of Human Rights concerning armed conflicts. In the Georgia v. Russia II case, the court had a perfect opportunity to develop relationship with IHL, however, the court chose to simplify the case and avoided going into further details. Therefore, the court avoided dealing with the violations in the active armed conflict and split its judgment into two phases.⁵⁷ As Dzehtsiarou argues, this decision led to the failure of the court to protect the individuals – “the ECHR failed to establish jurisdiction in relation to people living on

⁵⁵ Droege, C. (2007). The interplay between international humanitarian law and international human rights law in situations of armed conflict. *Israel Law Review*, 40(2), 310-355.

⁵⁶ Martin, F., Schnably, S., Wilson, R., Simon, J., Tushnet, M. (2006). *International Human Rights and Humanitarian Law: Treaties, Cases, and Analysis*. Cambridge: Cambridge University Press.

⁵⁷ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

a territory who would otherwise be protected by the Convention.”⁵⁸ Georgia v Russia II case shows a clear reason for how significant the harmonious relationship between International Humanitarian Law and Human Rights Law is.

3.3 International response to the Russo-Georgian conflict

In February 2021, the group of independent United Nations human rights experts issued a joint statement on human rights responsibilities of armed non-State actors. Non-state armed groups, according to the UN is defined as “groups that have the potential to employ arms in the use of force to achieve political, ideological or economic objectives; are not within the formal military structures of States, State-alliances or intergovernmental organizations; and are not under the control of the State(s) in which they operate.”⁵⁹ The aim to be achieved with the joint statement was to highlight the far-reaching negative human rights impacts of armed non-State actors on right holders and human rights defenders. The statement says that armed non-State actors that exercise either government-like functions or have de facto control over the territory must respect and protect the human rights of individuals.⁶⁰ The joint statement recommends that armed non-state actors should “expressly commit and signify their willingness to respect, protect and fulfil human rights and implement their human rights responsibilities in their codes of conduct or other internal documents.”⁶¹

⁵⁸ Dzehtsiarou, K. (2021). Georgia v. Russia (II). *American Journal of International Law*, 115(2), 288-294.

⁵⁹ Joint Statement by independent United Nations human rights experts on human rights responsibilities of armed non-State actors.

⁶⁰ *Ibid*

⁶¹ *Ibid*

The international reaction to the five-day August war includes main actors from many nations, non-governmental organisations, and unions. The little war had a significant humanitarian effect and had an impact on Russia's and Georgia's economical markets. Of course, there was a diversity in the opinions. Even though most of the countries supported Georgia and its territorial integrity, however there were some countries that justified Russian intervention. Mostly, “governments have criticized Russia for excessive use of force and peremptorily recognizing the independence of Abkhazia and South Ossetia in violation of the principle of Georgia’s territorial integrity.”⁶²

The response from the western world was prompt, as soon as the news came out about the August war, the states started criticising Russia. It must be noted that US Secretary of State, Condoleezza Rice, and NATO General, Jaap de Hoop Scheffer, swiftly expressed their support to Mikheil Saakashvili – the president of Georgia. One of the most interesting reaction expressed that I found was from Miss Condoleezza - “Condoleezza Rice likened the Russian military intervention to the Soviet Union’s suppression of the Prague Spring 40 years earlier”.⁶³ Similarly, to Condoleezza’s thought, many of the high-ranking political figures likened Russian intervention to the ‘the darkest chapters of Europe’s history’. The situation was obviously quite tense for the east European countries, especially for Ukraine and for Poland, as Russian intervention to Georgia created expected threat to these countries as well. Therefore, reaction from Poland was not surprising for me – Lech Kaczynski, an aide to the Polish President, openly expressed his position that he considered that Russia was now a threat to his country as well”.⁶⁴

In order to create a view and express their opinion, the council of Europe introduced a special commission that would report the conclusion regarding the issue. As it was decided by the EU ministers, Heidi Tagliavini – a Swiss diplomat was appointed to be the head of Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG⁶⁵). The report by the commission was objective and critical of both sides, however, it still agreed with Georgia's view that Moscow provoked it in a variety of ways in the run-up to the battle. As Michael Bowker mentions in his article, one of the main examples for the commission to accept the Georgian claim was the policy that Moscow developed by distributing Russian passports to the citizens of

⁶² Nichol, J. (2009). Russia-Georgia conflict In August 2008, context and implications for U.S. interests. *Library of Congress. Congressional Research Service*, 1-49.

⁶³ Bowker, M. (2011). The war in Georgia and the Western response. *Central Asian Survey*, 197–211.

⁶⁴ *Ibid*

⁶⁵ Independent International Fact-Finding Mission on the Conflict in Georgia. Council of EU, 2014.

Abkhazia and South Ossetia collectively from 2002.⁶⁶ This behaviour made it clear that Russia was never happy about Georgia's independence and hence why it was always supporting these regions. Asmus and Holbrooke also arise this point regarding "Collective Passpotisation" policy and likened it to "a tactic reminiscent of one used by Nazi Germany at the start of World War I".⁶⁷ Russia implemented the similar policy in Crimea, as after Russian intervention in the peninsula, "Crimean citizens were beginning to be automatically recognized as citizens of the Russian Federation."⁶⁸ Tagliavini commission also condemned Russian side for recognition of Abkhazia and South Ossetia after the Russo-Georgia 2008 war. "The independence of South Ossetia was recognized by Russia almost immediately after the "Five-days-war" between Russia and Georgia."⁶⁹ Russian government's action to hand out Russian passports to people who did not qualify for them was illegal as the authors claim in "The guns of 2008 – Russia's war in Georgia".⁷⁰

Russia-Georgia war was not a threat to neighbouring countries only, but for the whole Europe as well. The response from EU member states to the war should be strategic, to remain the peace and security on the continent. The report by EU Institute for Security Studies - The EU and conflict resolution in Georgia⁷¹ describes the geopolitical importance of this neighbouring region and how big potential the EU has to have a positive impact in the conflict region. The EU has been assisting Georgia and had a cooperation with the country in the framework of the European Neighbourhood Policy. The importance of this conflict for the EU for emphasized in the article by Simbal Khan: "Geography makes Russia an unavoidable partner for the Europe."⁷² ECFR Policy Brief - "Can the EU win the peace in Georgia⁷³" suggests that the format of the peacekeeping negotiations to settle the conflict created uncertainty since the Russia as a negotiator was in fact an impartial mediator. Because as it has already been mentioned in the paper, Russia was not a mediator, but one of the parties in the conflict and later in the war. ECFR also suggested that as the event showed, "Russia's involvement is anything but neutral".

⁶⁶ Bowker, M. (2011). The war in Georgia and the Western response. *Central Asian Survey*, 197–211.

⁶⁷ Asmus, R., Holbrooke, R. (2008). Black Sea Watershed. *The Washington Post*.

⁶⁸ Tsybulenko E., Kelichavyi B. (2018) International Legal Dimensions of the Russian Occupation of Crimea. In: Sayapin S., Tsybulenko E. (eds) *The Use of Force against Ukraine and International Law*. The Hague: T.M.C. Asser Press.

⁶⁹ Nuberger, A. (2009). The War Between Russia and Georgia: Consequences and Unresolved Questions. *Göttingen Journal of International Law*, 2, 341- 264.

⁷⁰ Cornell, S. E., Starr, F. (2009). *The Guns of August 2008: Russia's War in Georgia*. New York, USA: Routledge

⁷¹ Fischer, S. (2007). The EU and conflict resolution in Georgia. *EU Intitule for Security Studies*.

⁷² Khan, S. (2009). Russia Georgia War and NATO: Implications for European Security. *Strategic Studies*, 28, 1-14.

⁷³ Wilson, A., Popescu, N., Leonard, M. (2008). ECFR Policy Brief - "Can the EU win the peace in Georgia?". *European Council on Foreign Relations*.

ECFR Policy Brief concluded the lessons that were learnt from the August war and Balkan wars, as it is cited in the report – “the best way to keep the peace is to get involved rather than stand on the side-lines.”⁷⁴

The EU was trying to be the mediator in the conflict resolution⁷⁵, however, this position was not easy for the European Union. It is not possible to discontinue the communication with Russia, however, it cannot let it be an occupier and invade neighbouring countries. If the EU will be soft, the same will keep happening. As an example, we can make parallel with Armenia-Azerbaijan 2020 conflict, where Russia played a big role as a provoker.

ECFR Georgia policy brief concluded the consequences what could have been done to avoid the military attack from both sides. According to the report opinion, an international peacekeeping presence in the conflict regions could have helped to deescalate the conflict on time, which would have avoided the military strikes. The peacekeeping mechanisms that EU used in the past, did not turn out to be effective, hence why the brief report suggests promoting new peacekeeping formats. The report offers contributing soldiers in the buffer zones and gives parallel of Cyprus situation, where UN has contributed hundreds of soldiers. Also, it is considered that peacekeeping operations should be based on OSCE and UN mandates. The plan to assist the situation better includes the EU setting up a mission group that would have a role of mediator of communications between the ministers. Of course, the report included NATO membership action plan in the list, which is an essential part for Georgia, especially right now, in the fear of expected attacks.

Georgia, along with other 5 states in the eastern Europe that are not the members of the European Union have a special relationship with the EU as they are members of the EaP – Eastern Partnership countries, which was launched at Joint Declaration of the Prague Eastern Partnership Summit ⁷⁶in Prague, in May 2009. Therefore, conflicts in these regions, including Georgia, are rather crucial to the EU and its member states.

“Violent or Frozen conflict”, as EU Security Strategy of 2003 (EUSS)⁷⁷ mentions in its report, are considered as a threat to the European Union, according to the conflict locations, since they are close to the EU borders.

⁷⁴ Fischer, S. (2007). The EU and conflict resolution in Georgia. *EU Intitule for Security Studies*.

⁷⁵ Tocci, N. (2007). *The EU and Conflict Resolution: Promoting Peace in the Backyard*. New York, USA: Routledge.

⁷⁶ Joint Declaration of the Prague Eastern Partnership Summit. Council of the European Union. Brussels, (2009).

⁷⁷ European Security Strategy – A Secure Europe in a Better World. Council of European Union.

The report by Whitman and Wolff - “The EU as a conflict manager? The case of Georgia and its implications: International Affairs”⁷⁸ analyses the effectiveness of the EU in the conflict management, based on the Georgia case. The article mentions that the EU played a big role as a conflict manager, however it had lack of effectiveness and was not sufficient enough. One of the reasons for this is considered to be the lack of an integrated EU foreign policy structure and service that is limiting the effectiveness of EU conflict management. The article suggests that since the Treaty of Lisbon has been come in force (in 2009), a permanent European Union External Action Service (EAS) has become more effective that will create better ways in the EU coordination for the conflict management tools. Two days after Strasbourg Court announced its decision regarding Georgia v. Russia Case (38263/08),⁷⁹ the spokesperson on the judgement of the European Court of Human Rights published its statement:

“The European Union is fully committed to supporting conflict resolution, which also requires efforts to address the legacy of past conflicts, including through its engagement as co-chair in the Geneva International Discussions, the efforts of the EU Special Representative for the South Caucasus and the crisis in Georgia, and the crucial role played on the ground by the EU Monitoring Mission.”⁸⁰

When discussing the response from the USA over the Georgia-Russia August war, it is inevitable not to begin with the reaction from Condoleezza Rice – the US Secretary of State. Condoleezza Rice “likened the Russian military intervention to the Soviet Union’s suppression of the Prague Spring 40 years earlier.”⁸¹ The president of the USA during the Georgia-Russia war was George Bush. The reaction from the president administration publicly outspoke its condemnation of Russia in the 2008 war. The Bush administration suggested to restore the military in Georgia in order to increase the campaign for Georgia to join the membership of the NATO. The opposite side, however, was not pleased with the support provide by USA to Georgia. It was not the first time that the USA condemned Russia’s behaviour in terms of human rights violations. As Cornel, S. E. mentions in his publication, the USA criticized Russia for not fulfilling “all of its

⁷⁸ Whitman, R. G., Wolff, S. (2010). The EU as a conflict manager? The case of Georgia and its implications. *International Affairs*, 87–107.

⁷⁹ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

⁸⁰ Statement by the Spokesperson on the judgement of the European Court of Human Rights. Brussels, 2021

⁸¹ Bowker, M. (2011). The war in Georgia and the Western response. *Central Asian Survey*, 197–211.

commitments under the OSCE and the Helsinki final Act⁸² ⁸³ in regards with the human right violations in Chechnya.

In the USA view chapter of the report ‘The war in Georgia and the Western response. Central Asian Survey’, it’s very well described how Russian government reacted on American support - Vladimir Putin, the prime minister of Russia at that time, suggested that USA had a blame in Georgia mobilising the military during the war. ⁸⁴ The US kept the same road – supporting Georgia even after Bush. Soon after Obama’s victory in elections, vice president – Joe Biden paid a visit to Georgia to assure their support. American reaction was also demonstrated by the speech of former Vice President Dick Cheney stating that Russia has violated the sovereignty of republic of Georgia.⁸⁵ Us Secretary – Rice suggested that Russia was provoking Georgia and it was preparing the ground for the conflict by distributing the Russian passports to the Georgian separatists and training the military.⁸⁶ However, “the US and the EU failed to elaborate a realistic strategy to counter Moscow’s ambitions and ensuing military aggression”, ⁸⁷as Professor Nona Mikhelidze mentions in her article. The EU, as well as the USA allowed Russians to take control over the territory they accepted “Peacekeeping Monopoly” ⁸⁸in the regions, which did not prevent the escalation of the conflict. Allowing peacekeepers to prevent the escalation of the conflict was already known as not effective remedy, which is emphasized in the article “Enemies Through the Gates, Russian Violations of the International Law in the Georgia/Abkhazia conflicts.”⁸⁹

⁸² Final act of the 1st CSCE Summit of Heads of State or Government.

⁸³ Cornell, S. (1999), International Reactions to Massive Human Rights Violations: The Case of Chechnya. *Europe-Asia Studies*, 51, 85-100.

⁸⁴ *Ibid*

⁸⁵ Remarks by Vice President Cheney and President Saakashvili of Georgia After Meeting, 2008. Presidential Administration, Tbilisi.

⁸⁶ Russia-Georgia Conflict in August 2008: Context and Implications for U.S. Interests, report. Congressional Research Service. 3 March 2009.

⁸⁷ Mikhelidze, N. (2009). After the 2008 Russia-Georgia War: Implications for the wider Caucasus and Prospects for Western involvement in conflict resolution. *The International Spectator*, 44(3), 27–42.

⁸⁸ *Ibid*

⁸⁹ Noelle, M., Cutts, S. (2006). Enemies Through the Gates, Russian Violations of the International Law in the Georgia/Abkhazia conflicts. *Case Western Reserve Journal of International Law*, 40(1).

4. GEORGIA V. RUSSIA (II)

4.1 Georgia v. Russia (II) No. 38263/08

Soon after August War, on 11 August 2008, Georgia submitted an application to the European Court of Human Rights against Russian Federation. The application was accepted only in 2011 by the Strasbourg Court and the Grand Chamber public hearing took place in May 2018.

In the application submitted to the European Court of Human Rights, Georgia claimed that Russia during the war and subsequent occupation violated the following articles of the European Convention for the Protection of Human Rights and Fundamental Freedoms⁹⁰: Right to life (Article 2); Freedom from torture and inhuman or degrading treatment (Article 3); Right to liberty and security (Article 5); Respect for your private and family right (Article 8); Right to an effective remedy (Article 13); Protection of property (Protocol No.1, Article 1); Right to education (Protocol No. 1, article 2); Freedom of movement (Protocol No. 4, article 2);

This case was a precedent for the European Court itself, because it was the first time it had seen such a large-scale case dealing with active combat operations during international armed conflict and in this context, interrelationship between International Humanitarian law and Human Rights law. Which, obviously, had a great impact on the decision of the court on January 21, 2021. In particular, the European Court did not rule on the 2008 conflict effective control of the Russian Federation in the active phase (August 8-12), and accordingly, its extraterritorial jurisdiction (Extraterritorial jurisdiction (ETJ)) exercising on the territory of Georgia. Therefore, European Court did not discuss human rights violations committed by the Russian Federation during the active phase of the conflict and left it beyond the evaluation. Finally, the European Court of Human Rights, in the case, mostly satisfied the complaint of "Georgia against the Russian Federation" and

⁹⁰ Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms

in the aftermath of the active phase of the conflict, Russia has been found guilty of violating articles of the Convention.

The decision made on this interstate dispute is also important because it is the first legal assessment of the Russia-Georgia war in 2008 by the International Court of Justice, which also established the responsibility of the Russian Federation to the occupied territories.

4.2. Strasbourg Decision

The verdict took quite a long time, however, eventually on January 21, 2021, in the Georgia v Russia case, the Grand Chamber of the European court found Russia in violation of a number of articles of the European Convention of Human Rights in connection to the war. The court announced that Russia was responsible for the violation of six articles of the European Convention of Human Rights, as well as for failure to conduct an effective investigation into the alleged breach of the right to life, in the aftermath of the Russo-Georgian War of August 2008. The violated articles included the right to life, right to liberty and security, the prohibition of torture, freedom of movement, and the obligation to cooperate with the Court. The major point in this judgment lies in importance of assessing the situation of human rights, especially Right to Life during armed conflict. At first, the court decided to establish the jurisdiction over the territory where the violations took place and whether the responsible state executed its jurisdiction and if it had violated the convention. The court split the consideration of the case into two phases, phase of active hostilities and period after that, the subsequent events. The court also noted that there was a military operation ongoing and that there was a difficulty in establishing authority over individuals. The court substantiated this conclusion in paragraph 141 of the case: “However, having regard in particular to the large number of alleged victims and contested incidents, the magnitude of the evidence produced, the difficulty in establishing the relevant circumstances and the fact that such situations are predominantly regulated by legal norms other than those of the Convention.”⁹¹ With this statement, the court showed that it found it difficult to establish facts and gather evidence for the case during active phase of hostilities. In conclusion, the court announced the most significant finding of this case and decided that Russia has no jurisdiction over the territory during the five days of active hostilities. The court clarified this decision in the paragraph 126: “during an international armed conflict one cannot generally speak of “effective control” over

⁹¹ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

an area.”⁹² However, even though the court ruled that Russia did not have jurisdiction over the territory during the active hostilities, the court still confirmed Russia’s obligation to investigate the deaths, even if they occurred during the hostilities, which is clarified in the paragraph 331 of the case. With this finding, the court tried to clearly distinct the human rights law from the international humanitarian law.

In conclusion, the outcome of this case is a victory for Georgia, as the court has announced that Russia committed system violations of the European Convention of Human Rights and it established Russia’s jurisdiction over the territory, except for the phase of active hostilities. Therefore, the court ruled that Russia is responsible to the human right violations in the Georgian occupied territories.

⁹² *Ibid*

CONCLUSION

Human rights protection is the greatest challenge from the legal point of view that requires very careful approach, especially when it concerns human right violations during military hostilities. Human right breaches are major problem in the occupied territories, where the jurisdiction over the territory can be under question. This topic seems to be quite challenging for the European Court of Human Rights, as well as for the states involved. The research aimed to explore who was responsible for human right violations in the Georgian occupied territories, how efficiently ECHR dealt with Georgia v. Russia (II) case in terms of human rights and what were the response mechanisms from the international actors. The judgment of the Georgia v. Russia (II) case showed that the court is still not in a harmony with the International Humanitarian law, as the court split its finding into two different phases: five days of active hostilities and the period after that.⁹³ With this long-awaited decision, the court once again demonstrated its sharp distinction between the International Humanitarian Law and International Human Rights Law. The outcome of the approach by the ECHR creates a challenging issue that concerns the people, mostly civilians, whose rights were violated during the active phase of war. As the court split the phases and decided that Russia did not have an effective control over the territory during the active war phase, it created a legal vacuum and left the part of the judgment blurry. On the other hand, the court established that Russia had jurisdiction over the occupied territory and had responsibility for the violation of the articles of the European Convention of Human Rights, as well as for failure to conduct an effective investigation into the alleged breach of the right to life, in the aftermath of the Russo-Georgian War of August 2008. The violated articles included the right to life, right to liberty and security, the prohibition of torture, freedom of movement, and the obligation to cooperate with the Court.⁹⁴ The judgment of Georgia v. Russia (II) case is important not only for the involved states, but on an international level, as this judgement will have significant impact on the pending cases that concern Russia. Therefore, the effectiveness of the court can decide the

⁹³ Dzehtsiarou, K. (2021). Georgia v. Russia (II). *American Journal of International Law*, 115(2), 288-294.

⁹⁴ Georgia v Russia (II) [GC] - 38263/08, European Court of Human Rights

future of the Human Rights Law. The international actors should encourage the European Court of Human Rights to find a way to be more harmonious with International Humanitarian Law when necessary. International response was supportive to Georgia during the August war and condemning towards Russia's behavior. The EU played a big role as a conflict manager, however, in order to uproot the problem, more effectiveness is required. International actors should call to ECHR to be focused on the individuals over the states. The judgement of Georgia v. Russia case confuses the law more than clarifying it. In this complex matter of jurisdiction, the court must be encouraged to develop a system to find a way to protect the human rights of the individuals in the occupied territories.

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