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(англійською мовою)

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on the topic:

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Specialty: 081 Law

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Декларація академічної доброчесності

Я, **Якімова Валерія Андріївна**, студентка **2 року навчання магістерської програми** за спеціальністю «Право» факультету правничих наук НаУКМА, адреса електронної пошти – valeriia.yakimova@ukma.edu.ua:

- Підтверджую, що написана мною магістерська робота на тему «Порушення прав людини на територіях *де-факто* держав (невизнаних територіях)», відповідає вимогам академічної доброчесності здобувачів НАУКМА від 07.03.2018 року, зі змістом якого ознайомлена;
- Підтверджую, що надана мною електронна версія роботи є остаточною та готовою до перевірки;
- Згодна на перевірку моєї роботи на відповідність критеріям академічної доброчесності, у будь-який спосіб, у тому числі порівняння змісту роботи та формування звіту подібності за допомогою електронної системи Unicheck;
- Даю згоду на архівування моєї роботи в репозитаріях та базах даних університету для порівняння цієї та майбутніх робіт.

16.06.2022 року

Якімова В.А.

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INTRODUCTION

Relevance of the study. The current geopolitical map of the world includes a number of entities that emerged within the territories of recognized states trying to become an integral part of the modern world. However, the problem is that these entities emerged as a result of the breach of international law, consequently there are no reasons to consider the entities as states. Moreover, in some cases the illegal state-like entities are created by other state-aggressors to expand the system of satellites that would be used as proxies on the territories of other peaceful states. The practice shows that such illegal entities become a platform for flagrant human rights violations. For instance, there are a huge number of cases before the ECtHR concerning the violation of human rights on the territories of South Ossetia and Abkhazia, illegal entities created with the massive support of Russia. The relevance of this study gained new meaning on the 24th of February 2022, the day of an open invasion of the Russian troops of Ukraine. Russia used its proxies, namely D/LNR to illegally cross the Ukrainian border, start an open armed conflict and as a consequence, to put on a new level violation of the human rights of the Ukrainian people.

The status of research works regarding the study's topic. Considering that the respective thesis discovers the question of the international law sphere, the author mostly relied on the foreign research works. There are sufficient number of works devoted to the status and (non)-recognition of *de-facto* states. In the meantime, the author noted the lack of research works that analyzed the role of parent and patron states in fulfilment of human rights obligation within the territory of *de-facto* states.

The purpose of the study is to study the status of *de-facto* states in the international community, to research the scope of application of human rights obligation, to study the human rights situation within the territories of *de-facto* states in the post-Soviet era, to dwell upon human rights violations within the so-called *de-facto* states, to analyze the issue of state responsibility for violation of human rights committed within the territories of *de-facto* states.

The main aims of the study:

1) to dwell upon the issue of the status of *de-facto* states in international law;

2) to outline the history of the emergence of *de-facto* states in the post-Soviet era and comparison of the Russian Federation's impact on the process of emergence of these entities;

3) to study the extraterritorial application of the human rights regime within the territories of *de-facto* states;

4) to analyze the issue of responsibility for human rights violations in accordance with case-law of international courts;

5) to study and evaluate the cases of human rights violations within the territories of *de-facto* states.

The objects of the study are national and international legal rules that regulate the legal status of the *de-facto* states, international conventions concerning human rights protection, international case law concerning human rights violations within the territories of *de-facto* states, reports of the non-governmental organizations and international organizations, statements of the state officials etc.

The subject of research includes cases of human rights violations within the territories of *de-facto* states.

Research methodology. The author used such general scientific methods as the method of analysis, comparison, and generalization. *The method of analysis* was used to study the status of the *de-facto* states, the issue of the extraterritorial application of the human rights regime and study the human rights violations committed within the territories of *de-facto* states. *The method of comparison* was used in the context of a comparison of the status of recognition of selected *de-facto* states for this study and a comparison of human rights violations within selected for this study *de-facto* states. *The method of generalization* was used to highlight common and distinctive features of the extraterritorial application of the human rights regime on the particular *de-facto* states.

The author used such specific scientific methods as the historical-legal method, the comparative-legal method, the formal-legal method, and the method of interpretation. *The historical-legal method* was used to analyze the history of the emergence of selected *de-facto* states. *The comparative law method* was used to compare international case-law on

violations of human rights within the territories of *de-facto* states. Using *the formal-legal method*, the author studied conventions regulating the human rights regime and case-law that supports the issue of extraterritorial application of human rights regime beyond the territories of recognized states. *The method of interpretation* was used to determine the scope of responsibility for human rights violations within the territories of *de-facto* states in accordance with current case law.

LIST OF ABBREVIATIONS

Full name	Abbreviation
United Nations	UN
European Court of Human Rights	ECtHR
International Court of Justice	ICJ
Pridnestrovian Moldavian Republic	PMR
Donetsk Peoples Republic and Lugansk Peoples Republic	D/LNR
International Covenant on Civil and Political Rights	ICCPR
Articles on Responsibility of States for Internationally Wrongful Acts	ARSIWA
UN Interim Administration Mission in Kosovo	UNMIK
The UN High Commissioner for Human Rights	OHCHR
UN Human Rights Monitoring Mission in Ukraine	HRMMU
Ukrainian Armed Forces	UAF

I. *DE-FACTO* STATES (NON-RECOGNIZED ENTITIES) AND THEIR STATUS UNDER INTERNATIONAL LAW

1. *Definition of de-facto states (non-recognized entities)*

It is a well-known fact that the United Nations organization ("UN") consists of 193 member states.[1] Those states are sovereign and independent, with their population, territory, government, capacity to enter into external relations and recognized by the international community of states as subjects of international law.[2] In the meantime, the geopolitical map of the world includes a number of entities that did not fall within the orbit of the UN. Those entities are known as so-called *de-facto* states or non-recognized entities.

It should be noted that at the present moment the topic of *de-facto* states (non-recognized entities) has been profoundly researched by scholars of various nations for years. The rationale behind the level of the scientific study of this issue is a number of existing *de-facto* states (non-recognized entities) or states with limited recognition. It is reported that at least 18 (eighteen) *de-facto* states (non-recognized entities) are currently seeking full recognition and admission to the international community of states. Considering this practice, scholars have defined the key elements and characteristics of the *de-facto* states (non-recognized entities).

The practice shows that there is no unified view on the common definition or term for entities pretending to be a state. Thus, the list of such terms also includes the following naming as unrecognized states,[3] quasi-states[4] and *de-facto* regimes.[5] Additionally, the European Court of Human Rights ("ECtHR") uses its own terminology such as *self-*

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[1] The United Nations, *List of member states*, URL: https://www.un.org/en/about-us/member-states.

[2] *Convention on the rights and duties of states*, 1993, UN No. 3802, Art. 1; J. Crawford, *The Criteria for Statehood in International Law*, 1977, 48, BYIL, p. 93.

[3] N. Caspersen, *Democracy, Nationalism and (Lack Of) Sovereignty: The Complex Dynamics of Democratisation in Unrecognised States*, 2011, 17 Nations and Nationalism, p. 337.

[4] M. Weller, *Settling Self-determination Conflicts: Recent Developments*, 2009, 20 European Journal of International Law 111 p. 125.

[5] S. Pegg, *International Society and the De Facto State*, Aldershot: Ashgate, 1998.

proclaimed authority. For instance, the term *self-proclaimed authority* was firstly pronounced with regard to the Moldavian Republic of Transnistria in *Ilascu and Others v Moldova and Russia* case.[6] The mentioned definition was further used by the ECtHR in its case practice.[7] For the purpose of this study, the author will use the terms *de-facto* states (non-recognized entities) cumulatively.

It is a generally accepted view that the definition of *de-facto* states (non-recognized entities) concerns entities that are capable to exercise effective authority over a particular territory and control the respective territory.[8] The hallmark of *de-facto* states (non-recognized entities) is the fact that even though such regime of *de-facto* state (non-recognized entity) achieved the level of independence from the territorial (so-called parent state), such entity cannot be accepted as a state and a full-fledged subject of international law due to policy of non-recognition of illegal entities.[9] The international law doctrine stipulates that entities that have emerged as a result of international law violations cannot be recognized as states as a matter of fact. Particularly, the International Court of Justice ("ICJ") in its advisory opinion on *Accordance with international law of the unilateral declaration of independence in respect of Kosovo* mentioned that entities pretending to be a state that emerged due to unlawful use of force or other violations of international law[10] will be considered as illegal.[11]

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[6] *Ilaşcu And Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, para 318.

[7] The ECtHR applied the term self-proclaimed authority with relation to the Turkish Republic of Northern Cyprus, see *Solomou and Others v Turkey*, Merits, 2008, ECtHR, Application No 36832/97, para 46; The ECtHR named the Republic of Somaliland as a self-proclaimed authority, see *Salah Sheekh v The Netherlands*, Merits and Just Satisfaction, 2007, ECtHR, Application No 1948/04, para 91; The Applicants referred to the so-called Chechen Republic of Ichkeria as a self-proclaimed authority, see *Sayd-Akhmed Zubayrayev v Russia*, Merits, 2008, ECtHR, Application No 67797/01, para 8.

[8] M. Schoiswohl, *De facto regimes and human rights obligations – the twilight zone of international law*, Austrian Review of International and European Law, 2001, p. 50.

[9] A. Cullen and S. Wheatley, *The Human Rights of Individuals in De-facto Regimes under the European Convention on Human Rights*, Human Rights Law Review 13:4, the Author, 2013, OUP, p. 694.

[10] For instance, in case of violation of *jus cogens*, namely peremptory norms of international law.

[11] *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010, ICJ Rep 403, para 81.

In general, the main features of a *de-facto* state (non-recognized entity) can be defined as:

- Control over the territory
- Non-recognition of *de-facto* state (non-recognized entity) by international community
- Also, as a non-binding element scholars outlined that the *de-facto* state (non-recognized entity) should remain in the state of non-recognition at least for two years.[12]

Considering the aforementioned elements of the *de-facto* state (non-recognized entity), Mr Frowein suggested that *de-facto* state (non-recognized entity) can be characterized as a (1) political entity that claims to be a state, (2) controls approximately defined territories and (3) is not recognized by the international community as subject of international law.[13] This definition and the main elements of the *de-facto* state (non-recognized entity) concept are applicable to such non-recognized regimes in South Ossetia, Abkhazia, Transnistria, Northern Cyprus etc.

2. *Rights and obligations of de-facto states (non-recognized entities)*

As it was analyzed in the previous work of the author on the theory of recognition of subjects of international law, although *de-facto* states (non-recognized entities) do not meet the whole criteria of statehood, such *de-facto* states (non-recognized entities) still bear obligations and possess a number of rights.

The ICJ stressed that the subjects of law of different nature are still dependent on the needs of the international community.[14] Such position indicates that some obligations can be extended to *de-facto* states (non-recognized entities), such as the obligations under

[12] P. Kostlo, *The sustainability and future of unrecognized quasi-states*, Journal of peace and research, Vol. 43, No. 6, p. 725-726.

[13] J. Frowein, *De Facto Regime*, in Wolfrum (ed.), Max Planck Encyclopedia of Public International Law (OUP, 2008), online edition, para 1.

[14] *Reparation for injuries suffered in the service of United Nations*, Advisory opinion, 1949, ICJ Rep 174, p. 178.

international humanitarian law and international criminal law. Since *de-facto* states (non-recognized entities), in most cases, originate as a result of the use of force or during either non-international or internationalized non-international (as in case of the D/LNR entities) armed conflicts, both international humanitarian law and international criminal law apply to *de-facto* states (non-recognized entities) as parties to the non-international armed conflicts.[15] The rationale behind the respective conclusion is the customary nature of rules on the conduct of hostilities, i.e. *jus in bello* that are applicable to all the parties of the conflict notwithstanding the fact that some of the parties are not obliged by treaty rules of international humanitarian law. Given that *de-facto* states (non-recognized entities) are obliged to comply with the customary principle of distinction between military objects and civilian objects and other binding rules.[16] That means that in case of violation of the aforementioned rules, the respective *de-facto* states (non-recognized entities) may be brought to the justice for the violations of international humanitarian law.

On a separate note, it should be indicated that some obligations under the UN Charter are also obligatory for *de-facto* states (non-recognized entities). In particular, article 2(4) of the UN Charter provides that "*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*".[17] As it was established by the International Court of Justice in *Nicaragua* case, the rule on the prohibition of the threat or use of force is a customary rule that is supported by respective state practice and *opinio juris*.[18] This conclusion of the ICJ was reaffirmed in subsequent

[15] J. van Essen, *De facto regimes in international law*, Utrecht Journal of International and European Law, 0927-460XX, Vol. 28, 2012, p. 35.

[16] ICRC, IHL Database, Customary IHL, URL: https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul.

[17] UN, *The Charter of the United Nations*, 26 June 1945, URL: https://treaties.un.org/doc/publication/ctc/uncharter.pdf.

[18] *Case concerning Military and Paramilitary activities in and against Nicaragua*, Nicaragua v United States of America, Merits, Judgment, 1986 ICJ Rep 14, para 191.

practice of the ICJ,[19] as well as supported by the way of its incorporation in international treaties.[20]

Nevertheless, alongside the obligations described above, *de-facto* states (non-recognized entities) are also entitled to a number of rights under international law. Particularly, the rule on the prohibition of the threat or use of force is not an only obligation for *de-facto* states (non-recognized entities), but also their right. Given that, *de-facto* states (non-recognized entities) are entitled to be protected from the threat or use of force.[21] For instance, the Taliban, as a non-recognized regime and entity enjoyed the right not to be the target of the use of force.[22] However, the right to be protected from the threat or use of force is apparently the only right that *de-facto* states (non-recognized entities) are entitled to. Such a lack of rights under international law might be explained by the illegal emergence of *de-facto* states (non-recognized entities) in violation of international law.

3. *Recognition and status quo of de-facto states (non-recognized entities) in the post-Soviet area*

It is reported that nowadays there are approximately 18 *de-facto* states (non-recognized territories) that can be divided into the following categories:

- UN member states that are not recognized by at least one UN member state;
- UN observer states that are not recognized by at least one UN member state;
- States that are neither UN members nor UN observers.

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[19] *Legality on threat or use of nuclear weapons*, Advisory Opinion, 1996, ICJ Rep 226; *Oil Platforms*, Islamic Republic of Iran v. United States of America, Judgment, 2003, ICJ Rep 161; *Armed Activities on the territory of Congo*, Democratic Republic of Congo v Uganda, 2005, ICJ Rep 168.

[20] UN, *United Nations Friendly Relations Declarations*, UN Doc. A/RES/2625, 1970; J. van Essen, *De facto regimes in international law*, Utrecht Journal of International and European Law, 0927-460XX, Vol. 28, 2012, p. 37.

[21] J. van Essen, *De facto regimes in international law*, Utrecht Journal of International and European Law, 0927-460XX, Vol. 28, 2012, p. 37.

[22] R. Wolfrum, *The status of the Taliban: their obligations and rights under international law*, Max Planck Yearbook of United Nations Law, 2002, p. 596.

For the purpose of this study, the author decided to research the status of the last categories of *de-facto* states (non-recognized territories). To further narrow the research objects, the author decided to study the status of the *de-facto* states (non-recognized territories) that emerged within the territories of post-Soviet states. In particular, the territories of Moldova, Georgia, Ukraine and emerged within those states so-called *de-facto* states (non-recognized territories) Pridnestrovian Moldavian Republic (Transnistria), Republic of South Ossetia, Republic of Abkhazia, Donetsk People's Republic, and Luhansk People's Republic.

1.1. *Transnistria*

The term Transnistria is used as a non-official name for the Pridnestrovian Moldavian Republic ("PMR"), a *de-facto* state (non-recognized territory) that emerged within the internationally recognized borders of Moldova. PMR is neither a UN member, nor a UN observer that was not recognized by any legally recognized state, except by other three *de-facto* states (non-recognized territories), namely Artsakh, Abkhazia and South Ossetia.[23] The official government of Moldova defined the territory of PMR as *Administrative-Territorial Unit of the left bank of the Dniester* that is occupied by the Russian Federation troops.[24] The international community of states also do not recognize the emergence of illegal entity of the territory of Moldova. For instance, on 15 March 2022 the Parliamentary Assembly of the Council of Europe adopted the resolution recognizing, *inter alia*, occupation of the territory of Moldova, namely the territory of PMR by the Russian Federation. This was the first case of official recognition of the fact of occupation of the territory of Moldova by the Russian Federation that was triggered for the most part by the full-scale invasion of Ukraine by Russian troops on 24 February 2022.[25]

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[23] G. Nikolaenko, *The Legitimacy of (Non)Recognition: The case of Transnistria*, Central European University, Department of International relations, 2016, p. 1.

[24] G. Herd, J. Moroney, *Security Dynamics in the Former Soviet Bloc*, 2003, Routledge. ISBN 0-415-29732-X.

[25] European Pravda, *The PACE in Strasbourg to Officially Recognize Transnistria as a Zone of Russian Occupation*, 15 March 2022, URL: https://www.eurointegration.com.ua/eng/news/2022/03/15/7136000/.

The historical roots of PMR's independence go to the proclamation of the Moldavian Autonomic Soviet Socialists Republic that encompassed the territory of modern Transnistria.[26] The history shows that although the territory of PMR was an autonomous entity, it still was constantly controlled by "bigger" powers. Particularly, following the start of the Second World War, the modern territory of PMR was occupied by the Romanian militaries who tried to implement the policy of Romanization in the region.[27] Later, in 1944 the Soviet Union reintegrated the territory of PMR and the other part of Moldova into another republic of the Soviet Union known as Moldavian Soviet Socialists Republic.[28] This process of reintegration of the PMR under the umbrella of the Russian impact facilitated the emergence of tensions between the PMR and the official Moldavian authorities.

The tension has escalated on 31 August 1989 once the Supreme Soviet of the Moldavian Soviet Socialists Republic declared the Moldavian language as the only official language in lieu of the Russian language, thus maintaining the Russian language as a secondary language.[29] This decision has triggered an overall majority of the population of Transnistria who defined the Russian language as their native language and who afraid of harassment on the basis of language from the government of Moldova. As a result, the population of Transnistria started indefinite labor strikes in the region, namely forming the Union of Joint Labor Collectives.

On 2 September 1990 the Second Congress of the Peoples' Representatives of Transnistria proclaimed the Priednistrovian Moldavian Soviet Socialist Republic as an independent republic from the Moldavian Soviet Republic. Notably, following the *coup* in the Soviet Union in 1991, the Priednistrovian Moldavian Soviet Socialist Republic declared

[26] Britannica, *History of Moldova*, URL: https://www.britannica.com/place/Moldova/History.

[27] A. Dallin, *Romanization. Odessa, 1941–1944: A Case Study of Soviet Territory Under Foreign Rule*, Center for Romanian Studies, 1957, pp. 87–90, ISBN 978-9739839112.

[28] Britannica, *History of Moldova*, URL: https://www.britannica.com/place/Moldova/History.

[29] K. Harrington, *Word Games: Russian language disputes could again fracture Moldova*, BalkanInsight, 11 February 2021, URL: https://balkaninsight.com/2021/02/11/word-games-russian-language-disputes-could-again-fracture-moldova/.

its independence from the Soviet Union as such and announced the new name of the state as Pridnestrovian Moldavian Republic.[30]

The Moldavian authorities unhesitatingly reacted to this act of self-proclamation of PMR, starting the military operation within the territory of PMR, namely by entering the city of Dubăsari in 1990.[31] This state of conflict intensified in 1992 from the start of full-fledged armed conflict between the army of the Republic of Moldova and military units of PMR in three areas along the Dniester River. Considering that the rationale behind this conflict is the status of the Russian language in Moldova, it was reported that there were more than two parties in this conflict. In particular, the vice-president of the Russian Federation on behalf of the Russian Federation expressly supported separatists' units of PMR considering the well-known Russian policy of the "protection" of the Russian-speaking population. Moreover, there were a number of evidence that Russian army directly supported the PMR's separatists during the fighting in Bender/Tighina area.[32]

Since 23 March 1992 the state representatives of Moldova, Russia, Romania and Ukraine launched several initiatives to agree upon a cease-fire regime and demilitarized zone between the parties of the conflict. As a result, Moldovan, Russian and PMR delegations established a tripartite Joint Control Commission to secure the cease-fire regime and deploy peacekeeping troops consisting of Russian, Moldovan and Transnistrian battalions.[33] Notably, this *status quo* with the deployment of Russian peacekeeping troops within Moldova remained unchanged for almost 30 years. However, the Moldavian government has switched its rhetoric on the opposite one later. In particular, on the background of Russia's invasion of Ukraine, on 18 May 2022 the current president of Moldova Ms Sandu called for the withdrawal of Russia's military troops from the territory

[30] "*Postanovlenie verkhovnogo soveta Pridnestrovskoi Moldavskoi Respubliki ob izmenenii nazvaniia respubliki*," Dnestrovskaia Pravda, 6 November 1991.

[31] V. Grecu, *O viziune din focarul conflictlui de la Dubăsari*, Prut International 2005, ISBN 9975-69-741-0, p. 30-34.

[32] *The Transdniestrian Conflict in Moldova: Origins and Main Issues*, Vienna, 10 June 1994, CSCE Conflict Prevention Centre.

[33] *The Transdniestrian Conflict in Moldova: Origins and Main Issues*, Vienna, 10 June 1994, CSCE Conflict Prevention Centre.

of PMR.[34] The rationale behind this statement is registered cases of alleged terroristic attacks to shatter the tensed situation in the region.

As it was mentioned, neither state has recognized PMR as a state and actor of the international community. Particularly, the EU member-states expressly stated that they stand for peaceful resolution of the conflict based on "*respect to the sovereignty and territorial integrity of Moldova with a special status for Transnistria*".[35]

1.2. *Abkhazia and South Ossetia*

Abkhazia and South Ossetia are *de-facto* states (non-recognized entities) that emerged within the recognized borders of Georgia. Contrary to the beforementioned case of PMR, both Abkhazia and South Ossetia were recognized by 5 UN member-states such as Russia, Venezuela, Nicaragua, Nauru, and Syria.[36] The position of the government of Georgia is straightforward – Georgia considers these regions as being under military occupation by the Russian Federation.[37]

The central government of Georgia believes that the roots of the separatist spirit of its regions go to the imperialistic appetite of the Russian Federation. However, the issue of the self-determination of Abkhazia and South Ossetia was always on the table. According to Mr

[34] TSN news, *The President of Moldova called Putin to withdraw Russian troops from Prydnistrovia*, 18 May 2022, URL: https://tsn.ua/ru/svit/prezident-moldovy-prizvala-putina-vyvesti-iz-pridnestrovya-rossiyskie-voyska-2065363.html.

[35] Council of the European Union, *Joint press release following the first Association Council meeting between the European Union and the Republic of Moldova*, Press release, 136/15, 16 March 2015, URL: http://www.consilium.europa.eu/en/press/press-releases/2015/03/16-first-association-council-meeting-between-european-union-republic- moldova/.

[36] C. Hille, *The Recognition of South Ossetia and Abkhazia: a new era in international law*, Exploring the Caucasus in the 21st Century Essays on Culture, History and Politics in a Dynamic Context, Amsterdam University Press, 2010, p. 196.

[37] G. Buzaladze, *The Spectrum of Georgia's policy options towards Abkhazia and South Ossetia,* E-international relations, 2020, p. 4, URL: https://www.e-ir.info/2020/03/02/the-spectrum-of-georgias-policy-options-towards-abkhazia-and-south-ossetia/.

Darchiashvili, the rationale behind the separatist moves of Abkhazians and Ossetians is their "awakening" and increased desire to disassociate themselves from Georgian identity.[38]

The break-up of the Soviet Union resulted for Georgia not only in establishing of an independent state, but also has provoked several ethnic conflicts. A year before the Georgian government declared its independence, in August 1990 the Abkhaz Autonomic Republic was the first that issued its declaration of state sovereignty. The reaction was not long in coming – the Supreme Council of Georgia annulled the respective declaration. At the same time, the conflict in South Ossetia broke out in January 1991 as a response to the decision of the Georgian government to outlaw South Ossetia's declaration regarding independence from the Georgian government.[39] Consequently, the tensions between the Georgia's government and Abkhazia and South Ossetia's rebels redoubled in 1992. Particularly, following the announcement of the declaration of independence of Georgia, the Abkhaz government enacted its Constitution of 1925. This behavior of the Abkhaz government provoked the launch of a military confrontation of Georgia against Abkhazia that resulted in Georgia's defeat. This military confrontation resulted in a ceasefire agreement signed in 1994 under the Russian auspices.[40]

In the meantime, in 1992 the vast majority of South Ossetia residents voted in a referendum in favor of joining the Russian Federation. Such results also caused military confrontation between South Ossetia and Georgia that resulted in a cease-fire agreement between Georgian leader Mr Shevarnadze and Russian president Mr Yeltsin, namely the Sochi Agreement that established a ceasefire regime and a joint Russian-Georgian-South Ossetian peacekeeping force.[41]

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[38] D. Darchiashvili, *Georgian security problems and policies*, in Dov Lynch (ed.), "The South Caucasus: a challenge for the EU," Chaillot Papers No 65, December 2003 (Paris: Institute for Security Studies, 2003), p.115.

[39] Center for American Progress, *The Georgia conflicts: what you need to know*, A more proactive US approach to the Georgia conflicts, p. 6, URL: https://cdn.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/georgia_conflicts.pdf.

[40] Center for American Progress, *The Georgia conflicts: what you need to know*, A more proactive US approach to the Georgia conflicts, p. 6, URL: https://cdn.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/georgia_conflicts.pdf.

[41] Similarly to that established by Russian Federation within the territory of PMR. R. Petrov, G. Gabrichidze, P. Kalinichenko, *Constitutional Orders of Non-Recognized Entities in Georgia and Ukraine. Can façade Constitutions Ensure Adequate Protection of Human Rights?*, Koninklijke Brill NV, Leiden, 2020, p. 96.

Notwithstanding peaceful attempts to de-escalate and resolve the conflicts in South Ossetia and Abkhazia, the situation only aggravated over the years. These disagreements between the Georgian government from one side, so-called representatives of Abkhazia and South Ossetia from the other side and the involvement of the Russian Federation lead to the invasion of Georgia in 2008. Russia's government played within the territory of South Ossetia the same scenario as it did within the territory of PMR – Russia tried to "protect" Russian-speaking citizens of South Ossetia.[42] On the night of 7 to 8 August 2008, the Russian military corps and troops of South Ossetia started a large-scale military activity against Georgia, meanwhile Russian troops also crossed the territory of Georgia from Abkhazia region, thus occupying other parts of Georgia. Those military activities ended with signing a ceasefire agreement between Georgia and Russia on 12 August 2008.[43]

At the time of this writing, Abkhazia and South Ossetia are still non-recognized entities that managed to arrange cooperation with the Russian Federation only.[44] Both *de-facto* states (non-recognized entities) are still in some part dependent on the Russian Federation, in particular, the government of South Ossetia announced the date of the second in history referendum on the accession of South Ossetia to the Russian Federation on 17 July 2022.[45] At the same time, the International Fact-Finding mission on the Conflict in Georgia concluded that Abkhazia possesses the features of an independent state under international law, unlike South Ossetia where the Russian government still maintain

[42] T. German, *Abkhazia and South Ossetia: Collusion of Georgian and Russian interests*, Russie.Nei.Visions.No.11, June 2006, p. 10, URL: https://www.ifri.org/sites/default/files/atoms/files/germananglais.pdf.

[43] R. Petrov, G. Gabrichidze, P. Kalinichenko, *Constitutional Orders of Non-Recognized Entities in Georgia and Ukraine. Can façade Constitutions Ensure Adequate Protection of Human Rights?*, Koninklijke Brill NV, Leiden, 2020, p. 95.

[44] *Treaty between the Russian Federation and the Republic of South Ossetia on Friendship, Cooperation and Mutual Assistance*, *Collection of Legislation of the Russian Federation*, 9 February 2009, N 6, 685; *Treaty between the Russian Federation and the Republic of Abkhazia on Friendship, Cooperation and Mutual Assistance, Collection of Legislation of the Russian Federation*, 9 February 2009, N. 6, 686.

[45] President of the Republic of South Ossetia, *Anatoly Bibilov signed the Decree on calling a referendum of the Republic of South Ossetia*, 13 May 2022, URL: https://presidentruo.org/anatolij-bibilov-podpisal-ukaz-o-naznachenii-referenduma-respubliki-yuzhnaya-osetiya/.

influence on internal policy of the *de-facto* state (non-recognized entity).[46] However, considering the illegal emergence of both *de-facto* states (non-recognized entities), the author does not see any prospect that one day those would be recognized as complete subjects of international law.

1.3. *DNR and LNR*

The Donetsk Peoples Republic and Lugansk Peoples Republic ("D/LNR") are *de-facto* states (non-recognized entities) that illegally emerged in the east of Ukraine similarly to the aforementioned scenarios – with the help and interference of the Russian Federation. Ukraine considers D/LNR as terroristic organizations and the territories of so-called "republics" as temporally occupied.[47] Till the 21st of February 2021 neither state recognized D/LNR as subjects of international law, even their progenitor – the Russian Federation simply claimed that the emergence of D/LNR is the internal conflict of Ukraine.[48]

However, the Russian Federation has amended its rhetoric and on 21 February 2022 recognized D/LNR within the territories of Donets and Luhansk regions of Ukraine,[49] implicitly proclaiming the war against Ukraine in Vladimir Putin's speech.[50] Three days later 24 February 2022 the Russian Federation started the full-scale invasion of the territory of Ukraine from, among others the territories controlled by D/LNR's rebels. As of 21 May 2022, D/LNR has been recognized by Russian Federation and such Russia's satellites as

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[46] The Council of the European Union, *Independent International Fact-Finding Mission on the Conflict in Georgia*, September 2009, URL: https://www.echr.coe.int/Documents/HUDOC_38263_08_Annexes_ENG.pdf.

[47] Law of Ukraine "*On amendments to certain laws of Ukraine concerning the regulation of legal regime in temporally occupied territory of Ukraine*", document – 2217-IX dated 07.05.2022.

[48] I. Olberg, *The long war in Donbas: causes and consequences*, UIReport, 2020, p. 15.

[49] HRW, *Russia, Ukraine & International Law: On Occupation, Armed Conflict and Human Rights*, Questions and Answers, 23 February 2022, URL: https://www.hrw.org/news/2022/02/23/russia-ukraine-international-law-occupation-armed-conflict-and-human-rights.

[50] The Guardian, *Putin signs decree recognizing Ukraine's two breakaway territories – video*, 21 February 2022, URL: https://www.theguardian.com/world/video/2022/feb/21/putin-signs-decree-recognising-ukraines-two-breakaway-regions-video.

Abkhazia and South Ossetia. Notably, there are several states such as Belarus that support recognition of D/LNR as independent states, meanwhile does not recognize them formally.[51]

At the same time the status of D/LNR remains unclear considering that those entities do not possess enough independence from the Russian Federation in contrast to Abkhazia. Given that, on 27 March 2022 the so-called head of LNR Mr Pasechnik proposed to hold a referendum regarding accession of LNR to the Russian Federation in the nearest future. Notably, the representative of the Russian government surprisingly rejected this proposition at the relevant period of time.[52]

It should be stressed that in contrast to the history of the emergence of the aforementioned *de-facto* states (non-recognized entities), the case of D/LNR does not involve any historical disagreements of the people of Donetsk and Luhansk region and the government of Ukraine or the other regions of Ukraine as such. The emergence of D/LNR was triggered by the annexation of Crimea by the "little green man" that belonged to the Russian army, announcement of the so-called "Crimean spring" and as a consequence by the spread of pro-Russian groups heavily supported by Russia on the territory of Donbas.[53] In the spring of 2014 those pro-Russian rebels started the seizure of government buildings in Donetsk and Luhansk and called for the independence of D/LNR. Shortly after the seizure of government buildings, the so-called government of D/LNR enacted the Declaration of Independence and Act of Statehood of both republics in April 2014.[54] In May 2014 those D/LNR has gone even further, announcing referendum for the independence of both republics from Ukraine. The results showed overwhelming support for the separatist

[51] The list of states-Russia's satellites includes Belarus, Central African Republic, Nicaragua, Sudan, Syria, Venezuela (Maduro government).

[52] Ukrainska Pravda, *The head of LNR rebels announced a referendum of accession to the Russian Federation*, 27 March 2022, URL: https://www.pravda.com.ua/rus/news/2022/03/27/7334956/.

[53] I. Olberg, *The long war in Donbas: causes and consequences*, UIReport, 2020, p. 8.

[54] Petrov, G. Gabrichidze, P. Kalinichenko, *Constitutional Orders of Non-Recognized Entities in Georgia and Ukraine. Can façade Constitutions Ensure Adequate Protection of Human Rights?*, Koninklijke Brill NV, Leiden, 2020, p. 111; N. Kasianenko, *Internal legitimacy and governance in the absence of recognition: The cases of Donetsk and Luhansk "Peoples Republics"*, Ideology and Politics, No. 1(12), 2019, p. 117.

direction of D/LNR rebels.[55] Neither the Ukrainian government, nor the international community accepted the very fact of holding the referendums and the respective results considering their illegal nature.

As a response to the outbreak of illegal separatist moves in the east of Ukraine, the Ukrainian government enacted a number of legislative acts to restore the integrity of the territory, for instance the Law of Ukraine "On temporary measures for the period of carrying out the anti-terroristic operation".[56] Given that, the Ukrainian government started a military operation to combat illegal movements within the state and restore full control over the Donetsk and Luhansk regions. This anti-terroristic operation which in 2018 was reorganized into joint forces operation in order to enhance the military defense of Ukraine, involved two attempts to resolve the dispute amicably. In particular, two ceasefire agreements known as Minsk I and Minsk II were agreed upon the aim to end the war in the Donbas region of Ukraine.

However, those ceasefire agreements failed miserably in an attempt to set a peaceful regime within the region. In particular, following the recognition of D/LNR by Vladimir Putin, the so-called government of D/LNR called the Russian Federation to deploy "peacekeeping" forces within the territories controlled by D/LNR rebels. On 22 February 2022 the Russian Federation's parliament approved the request of D/LNR rebels to deploy the Russian military troops within the territory of the east of Ukraine. As Vladimir Putin explained that decision, stating that "the Minsk agreements no longer exist and it is only Ukraine's fault, that is why the Russian Federation has no other choice".[57] Russia's authority claimed that it launched the special military operation to allegedly save the peoples of

[55] It is reported that 89.07% of citizens supported the independence of DNR and 96.2% of citizens supported the independence of LNR.

[56] Law of Ukraine "*On temporary measures for the period of carrying out the anti-terroristic operation*", Document – 1669-VII, redaction dated 21.03.2022, URL: https://zakon.rada.gov.ua/laws/show/1669-18#Text.

[57] BBC news, "*Ukraine conflict: Biden sanctions Russia over 'beginning of invasion*", 23 February 2022, URL: https://www.bbc.com/news/world-europe-60488037.

Donbas and to liberate the whole territory of Donetsk and Luhansk region.[58] However, in fact on 24 February 2022 at 4 am Russia's troops started the invasion of the whole territory of Ukraine from, among others the territory controlled by D/LNR rebels.

As a result, as of 21 May 2022 the full-scale war against Ukraine continues with the Kherson and part of Kharkiv and Zaporizhia regions being occupied, many cities in Kyiv, Chernihiv, Sumy, Mykolaiv, Luhansk, Donetsk regions such as Mariupol being destroyed almost at 90%, approximately over 15 000 of civilians, including 177 children killed, and the total amount of damages to Ukrainian economy evaluated at USD 1 trillion.[59]

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The international case law and research works of highly qualified scholars believe that the definition of *de-facto* states (non-recognized entities) could be explained as political entities that pretending to be a state, control the part of territories of the particular state and are not recognized by the international community as subjects of international law. The rationale behind such non-recognition of these *de-facto* states (non-recognized entities) is their emergence in violation of international law and international order. In the meantime, these illegal *de-facto* states (non-recognized entities) are entitled to a limited scope of rights, as well as limited scope of obligations that are prescribed by the customary international law.

The clear examples of illegal nature of the so-called *de-facto* states are examples of *de-facto* states (non-recognized entities) that emerged within the territories of the post-Soviet states. These examples of *de-facto* states (non-recognized entities) have the same history – they emerged as a result, among other, the flagrant violation of international law by the Russian Federation. Consequently, the international community of states do not recognize those illegal entities as full subjects of international law.

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[58] UN SC meeting coverage, *Russian Federation Announces 'Special Military Operation' in Ukraine as Security Council Meets in Eleventh-Hour Effort to Avoid Full-Scale Conflict*, 23 February 2022, URL: https://www.un.org/press/en/2022/sc14803.doc.htm.

[59] Economicha Pravda, *Schmigal estimates total war losses at $ 1 trillion and GDP loss at 35%*, 29 March 2022, URL: https://www.epravda.com.ua/news/2022/03/29/684865/.

II. Scope of human rights obligations: violation of human rights obligations within the territories of *de-facto* states (non-recognized entities)

1. *Territorial and extraterritorial application of human rights obligations*

The core international documents in the field of human rights protection provide the territorial application of the human rights regime. In particular, the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that "*The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention*".[60] The International Covenant on Civil and Political Rights ("ICCPR") also reflects the territorial application concept, namely "*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, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status*".[61]

The literal meaning of the aforementioned clauses may be interpreted as such that the state is obliged to respect and ensure human rights only within a specific territory, namely within the state borders controlled by the government. However, the subsequent practice of human rights institutions and international courts shows that human rights obligations may apply extraterritorially. This extraterritorial application may be triggered by a number of situations including by military presence of any state on the territory of another state or in case of political or military influence.[62] The ECtHR in one of its landmark judgments *Loizidou v. Turkey* stated that

> "*[t]he concept of "jurisdiction" under that provision was not restricted to the national territory of the Contracting States. In particular, State's*

[60] Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, Council of Europe Treaty Series 005, 1950, Article 1.

[61] UN, *International Covenant on Civil and Political Rights*, Treaty Series, vol. 999, p. 171, 1966, Article 2.

[62] M. J. Dennis, *Application of human rights treaties extraterritorially to detention of combatants and security internees: fuzzy thinking all around*?, ILSA Journal of International & Comparative Law Vol. 12:459, 2005, p. 465.

> *responsibility might also arise when as a consequence of military action – whether lawful or unlawful – it exercised effective control over an area outside its national territory. States' obligation to secure in such areas the Convention rights and freedoms derived from the fact that they exercised effective control there, whether that was done directly, through the State's armed forces, or through a subordinate local administration*".[63]

The same reasoning was in some part reaffirmed by the Human Rights Committee in General Comment No. 31 clarifying the extraterritorial application of the ICCPR:

> "*[t]he enjoyment of Covenant rights is not limited to citizens of States Parties but must also be available to all individuals...who may find themselves in the territory or subject to the jurisdiction of the State Party. This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained…*".[64]

Thus, the international practice provides that the human rights obligations apply extraterritorially in case of establishment of effective control over the territory. The threshold for the establishment of effective control is quite demanding. Thus, one should prove such events as a military presence on the territory of another state, provision of political, economic, financial or military support to the specific territory, presence of a decisive influence of one state over the territory of another state.[65]

At the same time, the requirement of effective control is also controversial. One may note that effective control may be established in a case of a bullet shot on the territory of another state or in the case of a long military presence of one state on the territory of another. For instance, the ICJ in the *Wall* Advisory Opinion concluded that due to the long presence

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[63] *Loizidou v. Turkey*, Judgment, Preliminary Objections, 1995, ECtHR, Application No. 15318/89, para. 62; See also *Cyprus v. Turkey*, Judgment, Merits, 2001, ECtHR, Application No. 25781/94, para. 80.

[64] *General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 10, U.N. Doc. CCPR/C/21/Rev.I/Add.13, 26 May 2004.

[65] *Ilaşcu And Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, paras. 379-393.

of Israel troops on the occupied territories of the West Bank and Gaza, Israel exercised effective jurisdiction therein and, therefore, would be responsible for human rights violations committed on that territory.[66] Meanwhile, the ECtHR raised the bar of proving the existence of effective control over the territory and, respectively the extraterritorial application of the Convention. In the *Banković case*, the Applicants argued that NATO states extended their jurisdiction to the territory of the Federal Republic of Yugoslavia as a result of massive airstrikes on the Serbian Radio-Television headquarters in Belgrade. The ECtHR noted that even though states may exercise their jurisdiction extraterritorially, the notion of jurisdiction is still restricted by the sovereign territorial rights of the State.[67]

Furthermore, the ECtHR concluded that the other than military presence cases for the extraterritorial application of jurisdiction are exceptional and require special justification on a case-by-case basis.[68] The rationale for such conclusion may be the non-ratification of the Convention by the Federal Republic of Yugoslavia before the Belgrad has been subjected to air shelling. Given that the ECtHR concluded that the jurisdiction of other State Members cannot extend extraterritorially to the situation of legal vacuum.[69] On a separate note, the ECtHR draws attention to the special notion, namely that the government of the occupied state bears the same positive obligations toward human rights as well as the occupying state.[70]

That all lead to the conclusion that the effective control test should be indeed evaluated on a case-by-case basis, considering the specific facts of the case and scope of control of one state over the territory of another state.

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[66] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* Advisory Opinion, 2004, ICJ Rep 136, para. 110.

[67] *Bankovic and Others v. Belgium and 16 Other States*, Decision on the admissibility, 2001, ECtHR, Application No. 52207/99, para. 54.

[68] *Bankovic* and *Others v. Belgium and 16 Other States*, Decision on the admissibility, 2001, ECtHR, Application No. 52207/99, para. 36.

[69] *Bankovic* and *Others v. Belgium and 16 Other States*, Decision on the admissibility, 2001, ECtHR, Application No. 52207/99, para. 80.

[70] *Bankovic* and *Others v. Belgium and 16 Other States*, Decision on the admissibility, 2001, ECtHR, Application No. 52207/99, para. 75.

2. *Role of parent and patron states in fulfilment of human rights obligations within the territories of de-facto states (non-recognized entities)*

As it was described in Chapter I of this thesis, *de-facto* states (non-recognized entities) are not considered as subjects of international law. Even though they bear some obligations under customary international law, they still cannot accede as a party to the international treaties, consequently, they do not bear conventional obligations. Given that, the question of the determination of subjects responsible for the fulfillment of human rights obligations within *de-facto* states (non-recognized entities) is on the table.

According to Mr Cullen and Mr Wheatley, there are two windows for this situation: the responsibility of either the parent state or the patron state.

The term parent (or territorial) state stands for the territory within which a *de-facto* state (non-recognized entity) has emerged. The ECtHR outlines that the State Members shall guarantee human rights within their jurisdiction, namely within their territory.[71] In this context the ECtHR noted that the State Member is obliged to guarantee obligations under Convention within the whole territory even though some part of this territory is allegedly autonomous.[72] However, there still some exceptions to this rule, for instance in a case the state does not effectively control the part of its territory.[73] At the same time the ECtHR developed its practice and in *Ilascu and Others v Moldova and Russia* stated that the state bears positive obligations under the Convention within the territory where it exercise its jurisdiction, albeit that part of the territory may be beyond its control.[74] As judge Loucaides stated, "*jurisdiction means actual authority, that is to say the possibility of imposing the will of the State*".[75] The ECtHR believes that even in case of separatist moves within specific

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[71] A. Cullen, S. Wheatley, *The human rights of individuals in de-facto regimes under the European Convention on Human Rights*, Human Rights Law Review 13:4, OUP, 25 October 2013, p. 702.

[72] *Assanidze v. Georgia*, Judgment, Merits, 2004, ECtHR, Application No. 71503/01, para. 146.

[73] *Cyprus v. Turkey*, Judgment, Merits, 2001, ECtHR, Application No. 25781/94, paras. 77-78.

[74] *Ilaşcu And* Others *v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, para. 312.

[75] *Ilaşcu And* Others *v. Moldova and Russia*, Partly Dissenting Opinion of Judge Loucaidses, 2004, ECtHR, Application No. 48787/99, para. 5.

part of the territory, the central government still should take legal and/or diplomatic measures within such territory.[76] Given that, the parent state is obliged to undertake diplomatic or legal means of negotiations with the so-called representatives of *de-facto* state (non-recognized entity) or the patron state to guarantee human rights within the territory of *de-facto* state (non-recognized entity).

Considering this position of the ECtHR, Georgia's government enacted a legislative act defining that both South Ossetia and Abkhazia are beyond the control of Georgia's central government. Thus, the Georgia's Law on Occupied territories defined that the territories of South Ossetia and Abkhazia are occupied and where Georgia does not exercise either its jurisdiction, or effective control. At the same time, the relevant legislative act also outlines that Georgia's central government will notify international organizations regarding human rights violations committed within the territories of *de-facto* states (non-recognized entities). Thus, by adopting this act, Georgia has waived its obligation of human rights' fulfillment within the territories of *de-facto* states (non-recognized entities) and therefore complied with the case law of the ECtHR.[77]

Ukraine's government adopted a similar legislative act providing that the East of Ukraine is occupied by the Russian Federation's troops. Meanwhile Ukraine undertook the obligation to monitor human rights violations within the territories of *de-facto* states (non-recognized entities).[78] At the same time Ukraine has derogated from its obligations under both the European Convention on Human Rights and ICCPR by submitting the notices of the respective derogations.[79] Notably, Ukraine in its derogation notices does not clearly specify that it is derogating as a result of armed conflict caused by Russian Federation within the territory of Ukraine. The notices mentioned that the Russian Federation occupied the

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[76] *Ilaşcu And* Others *v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, para. 333.

[77] R. Petrov, G. Gabrichidze, P. Kalinichenko, *Constitutional Orders of Non-Recognized Entities in Georgia and Ukraine. Can façade Constitutions Ensure* Adequate *Protection of Human Rights?*, Koninklijke Brill NV, Leiden, 2020, p. 109.

[78] Law of Ukraine "*On ensuring the rights and freedoms of citizens and the legal regime in the temporarily occupied territory of Ukraine*", Document – 1207-VII, redaction dated 07.05.2022, URL: https://zakon.rada.gov.ua/laws/show/1207-18#Text.

[79] UN, *Ukraine: Notification under article 4(3)*, No. C.N.416.2015.TREATIES-IV.4, 5 June 2015, URL: https://treaties.un.org/doc/Publication/CN/2015/CN.416.2015-Eng.pdf.

East of Ukraine and Crimea, but in the meantime, the notices referred persistently to the conducted "anti-terroristic operation" against emerged *de-facto* states (non-recognized entities).

The case-law of the ECtHR also clearly delineated the role of the patron state in the fulfillment of human rights obligations within a *de-facto* state (non-recognized entity). To start with, general international law imposes responsibility on the state for the conduct of a group that is controlled by this state. In particular, Articles on Responsibility of States for Internationally Wrongful Acts ("ARSIWA") that incorporated customary international law rules provide that:

> "*The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct*".[80]

That means that if the state controls and provides significant military, economic or political support to a specific group of people, such a state would be responsible for the actions of this group that is acting outside the territory of the controlling state. This position was also reaffirmed in the case law of the ICJ, namely in the *Bosnian Genocide* and *Nicaragua* cases.[81] The ICJ believes that in order to establish the responsibility of a state for the conduct of a specific group, the complete dependence of the group on the state and control of the state over this group should be present (the so-called "*effective control test*"). The ECtHR, in most cases, does not stand alongside this position. The ECtHR believes that the establishment of so-called overall control, for instance presence of military troops of one state within the territory of another state would be sufficient for the imposition of responsibility on the first state. For instance, in *Loizidou v Turkey*, the ECtHR stated that Turkey exercised effective control in Northern Cyprus via a large number of military troops

[80] UN, *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission, 2001, vol. II (Part Two), 12 December 2001, Article 8.

[81] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (Bosnia and Herzegovina v Serbia and Montenegro), Judgment, 2007, ICJ Rep 43, para. 391; *Military and Paramilitary Activities in and against Nicaragua* (Nicaragua v United States of America) Merits, 1986, ICJ Rep 14, para. 109.

that were present in this specific territory. Thus, Turkey was held responsible for the actions of the Turkish Republic of Northern Cyprus.

At the same time the ECtHR takes into consideration the existence of dependance relations between the de-facto state (non-recognized entity) and the controlling (patron) state. Thus, in *Ilascu and Others v Moldova and Russia* noted the presence of Russian military troops within the Pridnestrovian region, that as the practice shows would be sufficient for the ECtHR to establish effective control. However, the ECtHR also pointed out that the Russian Federation provided sufficient military and political support to PMR that contributed to the establishment and enhancement of separatist moves within Moldova.[82] Consequently, the ECtHR concluded that the Russian Federation exercised its extraterritorial jurisdiction within PMR and therefore is responsible for the conduct of PMR's representatives. The ECtHR has reaffirmed the position regarding the responsibility of the Russian Federation for the human rights violations committed within the territory of PMR in its subsequent practice.[83]

The ECtHR also considered the control of the Russian Federation over the *de-facto* states (non-recognized entities) within the territories of Georgia. *Georgia v. Russia (II)* case is the landmark case that would have impact even on the Ukrainian application against Russia. In the Georgia's case, the ECtHR adjudged, from the author's point of view, a controversial decision in the part of the establishment of effective control. In *Georgia v. Russia (II)* case, the ECtHR combined its position regarding the establishment of effective control declared in *Loizidou v Turkey* and *Ilascu and Others v Moldova and Russia* stating that both military presence and political/military/economic support should be present to prove the effective control over the territory.[84] In that case, the ECtHR decided to assess the existence of jurisdiction during two separate phases: (1) active hostilities (dated 8-12 August

[82] *Ilaşcu And* Others *v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, para. 382.

[83] *Ivantoc and Others v Moldova and Russia*, Merits and Just Satisfaction, 2011, ECtHR, Application No. 23687/05, paras. 118-119; *Catan and Others v Moldova and Russia*, Merits and Just Satisfaction, 2012, ECtHR, Application Nos. 43370/04, 8252/05 and 18454/06, para. 149.

[84] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 116.

2008) and (2) occupation phase.[85] The most controversial part of this decision is the ECtHR's refusal to acknowledge the jurisdiction of the Russian Federation at the phase of active hostilities. The ECtHR decided that in case of excessive bomb attacks, shelling and armed attacks overall (the so-called "*a context of chaos*") it is almost impossible to establish who effectively controlled a specific area.[86] The rationale behind such conclusion is the idea of fighting during the phase of active hostilities for the possibility to control effectively the specific territory. Given that, the ECtHR believes that during active hostilities, each of belligerent somehow controls the territory of hostilities.[87]

In the meantime, the ECtHR found the jurisdiction during the phase of occupation after the cessation of the hostilities. Remarkably, the ECtHR indicated that there is no need to show the control of the Russian Federation over each action of the Georgian rebels to prove the existence of effective control.[88] Nonetheless, the ECtHR analyzed the substantive bunch of materials supporting the existence of the Russian Federation's effective control over the territories in South Ossetia and Abkhazia and concluded that it is indeed the case. In particular, the Court established that a substantial amount of Russian troops were present within the territory of Georgia after the cessation of active hostilities. Additionally, the ECtHR found the existence of sufficient military, economic and political support of the so-called representative of South Ossetia and Abkhazia by the Russian Government. Those factors cumulatively have established the existence of effective control of the Russian Federation over the part of Georgia's territory.[89]

With regard to the establishment of effective control of the Russian Federation over D/LNR, Ukraine has submitted 5 (five, including *Ukraine and the Netherland v. Russia*) inter-state applications to the ECtHR against the Russian Federation regarding occupation

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[85] A. Nekrasova, A. Mochulska, V. Yakimova, *Georgia wins Russia in the ECtHR*, Dead Lawyers Society, 26 January 2021, URL: https://www.deadlawyers.org/georgia-wins-in-echr/.

[86] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 126.

[87] A. Nekrasova, A. Mochulska, V. Yakimova, *Georgia wins Russia in the ECtHR*, Dead Lawyers Society, 26 January 2021, URL: https://www.deadlawyers.org/georgia-wins-in-echr/.

[88] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 248.

[89] *Georgia v.* Russia *(II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, paras. 165-175.

and human rights violations within D/LNR. At the time of this thesis preparation, 4 out of 5 applications are still at the stage of admissibility, while in *Ukraine and the Netherland v. Russia* the parties have presented their oral arguments before the ECtHR regarding admissibility of the applications on 26 January 2022 and are currently waiting for the decision.[90] Also, the ECtHR has adjudicated the individual cases concerning protection of residents of D/LNR submitted against Ukraine only. Notably, the ECtHR indicated that Ukraine has complied with *Ilascu* requirements, namely had done everything possible to ensure human rights protection within territories outside its control.[91] The examples of the respective cases would be analyzed further.

3. *Enforcement of human rights obligations on the territories of de-facto states*

As it was analyzed earlier in the text of this thesis, both the parent and patron states of the *de-facto* states (non-recognized entities) are obliged to fulfill their human rights obligations within the respective territories. That means that alongside the obligation of fulfilment, those states are obliged to comply with other core human rights obligations, namely to guarantee and protect human rights.[92] At the same time, there might be a situation when the *de-facto* state (non-recognized entity) possess some level of autonomy from both parent and patron states. Thus, in this section the author would like to discover the possibility of enforcement of human rights obligations by the *de-facto* states (non-recognized entities).

There is still no precise answer to the question of whether the so-called authorities of *de-facto* states (non-recognized entities) may be brought to the responsibility for the violation of human rights obligations. In the meantime, both international organizations and international courts prepared the initial position regarding the responsibility of *de-facto* states (non-recognized entities) for human rights violations.

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[90] *Law confrontation with Russian Federation*, URL: https://lawfare.gov.ua.

[91] *Khlebik v. Ukraine*, Judgment, Merits, 2017, ECtHR, Application No. 2945/16, para. 80.

[92] G. M. Ekelove-Slydal , A. Pashalishvili, I. Sangadzhiyeva, *Human rights behind unsettled borders*, The Foreign Policy Center, 26 September 2019, URL: https://fpc.org.uk/human-rights-behind-unsettled-borders/.

The Parliamentary Assembly of the Council of Europe believes that *de-facto* states (non-recognized entities) should bear the obligation to respect human rights within the controlled territories. The Parliamentary Assembly of the Council of Europe stressed that:

> *"…the exercise of de facto authority brings with it a duty to respect the rights of all inhabitants of the territory in question, as those rights would otherwise be respected by the authorities of the State of which the territory is a part; even illegitimate assumption of the powers of the State must be accompanied by assumption of the corresponding responsibilities of the State towards its inhabitants. This includes a duty to co-operate with international human rights monitoring mechanisms. The Assembly also calls on States which exercise effective control over territories where local de facto authorities operate to exercise their influence so as to enable effective monitoring by international human rights bodies*".[93]

As it follows from the aforementioned extract, the Parliamentary Assembly distributes human rights obligations between the patron state, parent state and the so-called authorities of *de-facto* states (non-recognized entities). Consequently, the Parliamentary Assembly presumes that the so-called authorities of *de-facto* states (non-recognized entities) would also be held responsible for human rights violations.

With regard to the international courts, in general the ECtHR omits evaluation of the role of *de-facto* states (non-recognized entities) governments in the enforcement of human rights obligations. The ECtHR assessed the evidence confirming the existence of effective control over the specific territory and on the basis of that decided on the responsibility of the patron state. At the same time, one may note that the ECtHR agrees with the view of the Parliamentary Assembly. Thus, in *Cyprus v. Turkey* the ECtHR took into consideration the fate of inhabitant of *de-facto* states (non-recognized entities) and concluded:

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[93] PACE, *Unlimited access to member States, including "grey zones", by Council of Europe and United Nations human rights monitoring bodies*, Resolution No. 2240, 2018, URL: https://fpc.org.uk/human-rights-behind-unsettled-borders/#_ftn13.

> "…*Life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected by the de facto authorities, including their courts; and, in the very interest of the inhabitants, the acts of these authorities related thereto cannot be simply ignored by third States or by international institutions, especially courts, including this one…*".[94]

This reasoning also confirmed the idea that the *de-facto* states (non-recognized entities) should respect and to the most possible level protect human rights within the controlled territory. From the author's point of view, such the conclusion is explained by the fact that it is the so-called representatives of the *de-facto* state (non-recognized entity) who possesses information on the ground and is able to react to the human rights violations effectively. For instance, the so-called government of Abkhazian established the position of the Ombudsperson for human rights in Abkhazia.[95] Even though the effectiveness of this organ needs improvement, the very fact of its establishment may indicate that *de-facto* states (non-recognized entities) are willing to enforce human rights obligations. In the meantime, the national courts of the United States do not believe that *de-facto* states (non-recognized entities) bear the same responsibility for human rights violations as the state do.[96]

Alternatively, international organizations may also serve as a powerful tool in the enforcement of human rights within the territory of *de-facto* states (non-recognized entities). Furthermore, the international organizations may become the intermediate between the *de-facto* state (non-recognized entity) and parent and/or patron state to enhance the enforcement of human rights obligation.[97] The involvement of international organizations may help to build the system of human rights protection within the territories of *de-facto* states (non-recognized entities). At the same time, as the international practice shows, it is a very low

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[94] *Cyprus v. Turkey*, Judgment, Merits, 2001, ECtHR, Application No. 25781/94, para. 96.

[95] Freedom House, *Freedom in the world 2019: Abkhazia*, URL: https://freedomhouse.org/report/freedom-world/2019/abkhazia.

[96] *Tel-Oren v. Libyan Arab Republic*, 726 F.2d 774, 776, (DC Cir. 1984); Y. Ronen, *Human Rights Obligations of Territorial Non-State Actors*, Cornell International Law Journal, Volume 46, Issue I, Winter 2013, p. 34.

[97] G. M. Ekelove-Slydal , A. Pashalishvili, I. Sangadzhiyeva, *Human rights behind unsettled borders*, The Foreign Policy Center, 26 September 2019, URL: https://fpc.org.uk/human-rights-behind-unsettled-borders/.

chance that international organizations would be held responsible for the human rights violations. Particularly, the ECtHR concluded that even though the UN Interim Administration Mission in Kosovo ("UNMIK") exercised executive, administrative and judicial functions, it cannot be held responsible for the violations committed within Kosovo since the UNMIK is not a party to the Convention.[98]

As it can be understood from the aforementioned, there still a procedural gap in the process of enforcement of human rights within the territories of *de-facto* states (non-recognized entities). Although the international community believes that such subjects as patron state, parent state, international organizations and the representatives of de-facto states itself have to enforce the human rights obligations, there is a lack of clarity on how this system of enforcement should work.

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Notwithstanding the fact that the international conventions on human rights prescribe the territorial regime for the application of the obligations under the respective conventions, the well-established practice of both ICJ and the ECtHR confirmed that the human rights regime applies extraterritorially in case one state exercises the effective control on the territory of another state.

In light of that, the ECtHR evaluated the evidence for the establishment of effective control such as the presence of military troops of one state on the territory of another that triggered the extraterritorial application of the human rights regime. Given that, the specific territory falls within control of several subjects such as the parent state, patron state and the *de-facto* state (non-recognized entity) itself. The ECtHR concluded that it is the patron state which exercises effective control over the specific territory would be held responsible for the violations of human rights within the territory of the *de-facto* state (non-recognized entity). In the meantime, the parent state is also obliged to enforce its positive obligations under the human rights regime unless such parent state does not exercise any jurisdiction or control over the territory of the *de-facto* state (non-recognized entity).

[98] *Azemi v. Serbia*, Judgment, 2013, ECtHR, Application No. 11209/09, paras. 33-36.

Despite the non-recognition of the *de-facto* state (non-recognized entity), the so-called authority of the *de-facto* state (non-recognized entity) should guarantee respect for the human rights of their citizens. In the author's point of view, the precise frameworks of the *de-facto* state (non-recognized entity) obligations under the human rights regime should be further clarified in order not to give "a green light" to the *de-facto* states (non-recognized entities) that one day that would be recognized as a part of the international community.

In the meantime, international organizations should take an active part in the enforcement of human rights within the *de-facto* states (non-recognized entities) to build the bridge between the obligations of patron state, parent state and representatives of the *de-facto* state (non-recognized entity).

III. Overview of the human rights violations within the territories of *de-facto* states (non-recognized entities) of the post-Soviet area

Having discovered the problem of responsibility for the human rights violations within the territories of *de-facto* states (non-recognized entities) in the aforementioned chapter, this chapter would be devoted to the overview of the very facts of the human rights violations within *de-facto* states. The author relied on the reports of the non-governmental organizations and case-law of international courts. Additionally, the author would analyze the responsibility of the patron state and study the alleged responsibility of *de-facto* states (non-recognized entities) representatives. On a separate note, the author would like to indicate that this chapter does not provide an analysis of international humanitarian law violations during the armed combats.

1. *Human rights violations within the territory of Transnistria*

Various reports regarding the situation with the human rights in PMR define the territory as a "non-free territory" with an "alarming" human rights situation. The Human Rights Committee concluded that human rights are often breached in PMR.[99] Moreover, the representative of the United States and Canada to the Organization for Security and Cooperation in Europe expressed her concerns regarding the flagrant violations of human rights by the so-called representatives of PMR.[100] The representative stressed on the repeated violation of the right on the freedom of expression.

The activities of human rights defenders in PMR are *de-facto* prohibited. The local government of PMR believes that human rights activities would undermine the loyalty of

[99] HRC, *Experts Question Delegation on Trafficking in Persons, Spread of Tuberculosis in Prisons, Situation in Transnistria*, 18 July 2002, URL: https://www.ohchr.org/en/press-releases/2009/10/human-rights-committee-begins-consideration-initial-report-moldova.

[100] OSCE, *On Continuous Flagrant Violation of Human Rights in the Transnistrian Region of the Republic of Moldova by the Secessionist Regime*, Statement of the representative of USA, 29 July 2021, URL: https://osce.usmission.gov/on-continuous-flagrant-violation-of-human-rights-in-the-transnistrian-region-of-the-republic-of-moldova-by-the-secessionist-regime/.

separatist moves' supporters. Given that, there are no institutions or mechanisms to monitor the human rights situation within PMR. At the same time, reputable human rights organizations have arranged the monitoring process of human rights violations within PMR.

Freedom House being a non-governmental organization with a focus on the respect of political rights and civil liberties evaluated the human rights situation in PMR at 20 out of 100.[101] The Freedom House in its annual reports Freedom in the world described the PMR as a non-free territory considering the absence of respect to human rights. The Freedom House pointed out poor observation of political rights. For instance, there are no fair and impartial political elections (both presidential and parliament), and the government is controlled by the ruling party being unopposed in the whole region. Furthermore, the whole political establishment of PMR admits the Russian Federation as a patron state. Given that, people who are criticizing or somehow trying to arrange opposition to the ruling party are prosecuted on a political basis.

Basically, the Russian Federation remains a strong influence on the functioning of PMR's government. Consequently, the residents of PMR are excluded from the decision-making process and the residents are deprived of transparency and openness of the governmental procedures. That intense control of the Russian Federation over the governmental structure of PMR also affected the civil liberties of PMR's residents. The Freedom House reported that the so-called authorities of PMR closely monitor any activity of the public mass media establishing in this way the situation of the full censorship. Furthermore, any critic in relation to the ruling party of PMR may end up with criminal prosecution. In this context, the human rights situation in PMR reminds the human rights situation in the Soviet Union. Individuals are deprived of free expression of their thoughts on political issues without fear of surveillance. The so-called authorities of PMR prosecute both activists and social media users who express their views or opinions regarding the PMR's authorities. Notably, the residents of PMR may be subjected to criminal responsibility if they express any kind of disrespect to the Russian peacekeeping forces. The

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[101] Freedom House, *Freedom in the World 2021: Transnistria*, 2021, URL: https://freedomhouse.org/country/transnistria/freedom-world/2021.

latest again confirms the Russian Federation's heavy influence on the political situation in PMR.

The so-called government of PMR also tightly restricts the collective rights of the residents. In particular, the Freedom House concluded that the right to the freedom of assembly is strictly limited by the constant rejection of applications to convey protests. Moreover, even if the residents of PMR would gather for the protest, there is a very high chance that the organizers would be prosecuted by the local government. For instance, an activist and organizer of a protest against pandemic travel restrictions was arrested and placed into pretrial detention. The local government of PMR accused him of extremism charges.

Basically, the judicial system serves as a powerful tool for the protection of violated human rights. However, the residents of PMR do not have access to an independent and fair judicial system. The ECtHR concluded that the local courts of PMR are controlled by the Russian Federation,[102] given that the decisions of these courts do not satisfy any standards of fairness and impartiality. Moreover, criminal cases are adjudicated behind closed doors, thus there are no and will not be any guarantees of due process in criminal cases.

Alongside political and civil rights, the individual rights of residents of PMR are being infringed to the present day. The internal system of PMR is impregnated with discrimination against vulnerable groups of residents. For instance, women are excluded from a number of jobs that the government of PMR defines to be physically difficult. Same-sex activities and marriages are outlawed in PMR, so representatives of the LGBT community do not reveal themselves in public places to eliminate the risk of being prosecuted.

As it was mentioned in Chapter I of this thesis, the rationale behind the emergence of PMR is the language issue, namely Moldova's declaration of the Moldavian language as the official language and the alleged oppression of the Russian-speaking people in PMR. However, as a result of the war in PMR, the language issue of the region has drastically changed. Moldavian- and Romanian speaking people, especially teachers and pupils are now

[102] The respective decision of the ECtHR would be analyzed further.

perceived as a "fifth column" and "enemies" of the PMR's government.[103] For instance, parents whose children studied in Moldavian-speaking schools were threatened by the loss of jobs.[104] The so-called representatives of PMR started this linguistic discrimination from the very emergence of PMR as such. This policy of discrimination on a language basis started from the Romanian language. Thus, in 1994 the government of PMR explicitly outlawed the school teachings in the Romanian language.[105] Further, the policy of discrimination extended to the Moldavian language. In particular, the City Council of Tiraspol refused to contribute additional classrooms to the Moldavian-speaking schools that somehow managed to operate in PMR. In 2004, the PMR's authorities suspended the operation of the remaining Moldavian-speaking schools within PMR, while the property of these schools was confiscated.

According to OSCE, approximately 4000 students of PMR are studying under difficult conditions. Consequently, Moldavian-speaking pupils and students of PMR are deprived of their rights to study in their native language. The OSCE High Commissioner on National Minorities believes that this PMR's policy of linguistic discrimination is qualified as linguistic cleansing.[106] Moreover, one may define this policy as a "soft genocide".[107]

Considering the aforementioned cases of human rights violations, the question of responsibility for these violations is inevitably arising. The case-practice of the ECtHR includes a sufficient number of cases concerning human rights breaches within PMR. For the purposes of this section, the author will analyze the landmark decision of the ECtHR concerning PMR.

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[103] O. Andrysek, M. Grecu, *Unworthy Partner: The School Issue as an Example of Human Rights Abuses in Transdniestria*, Helsinki Monitor, Vol. 14, No. 2 (2003), pp. 101-16.

[104] OSCE Magazine, *Moldovan Schools in Transdniestria: An Uphill Battle against "Linguistic Cleansing"*, June 2005.

[105] O. Andrysek, M. Grecu, *Unworthy Partner: The School Issue as an Example of Human Rights Abuses in Transdniestria*, Helsinki Monitor, Vol. 14, No. 2 (2003), pp. 101-16.

[106] OSCE, *OSCE: Linguistic cleansing underway in Transdniestria*, 15 July 2004.

[107] V. Spanu, *Prospects of Unfreezing Moldova's Frozen Conflict in Transnistria*, The United States Helsinki Commission, 14 June 2011.

One of the well-known cases is *Ilascu and others v. Moldova and Russia*. The application was lodged by four applicants claiming the responsibility of Russia and Moldova for the violation of Articles 3, 6 and 8 of the Convention. According to the facts of the case,[108] the applicants are the local fighters with the separatist regime and influence of the Russian Federation. It is obvious that the local representatives of PMR considered the applicants as "enemies of the state". In the course of events, those applicants were arrested and accused of anti-Soviet activities and illegal oppression of the PMR's government. Additionally, they were charged with a number of crimes which according to PMR's representatives the applicants have allegedly committed. Given that, the applicants were convicted by the "Supreme Court of the Transdniestrian region". In addition, the applicants claimed that the conditions of their detention contradicted article 3 of the Convention, namely the applicants were ill-treated or were not able to freely receive the visits of their relatives.

This is the first case where the ECtHR placed the burden of responsibility for the actions of the *de-facto* state (non-recognized entity) on the state. The Court noted that the USSR's military troops acted on behalf of the separatist units of PMR. Additionally, the Russian troops were still present within PMR after the cessation of the conflict and provided political, military and economic support to the local authorities of PMR. Moreover, the ECtHR established that there were Russian militaries that arrested, detained and ill-treated the applicants. Considering these facts, the ECtHR concluded that applicants come within the jurisdiction of Russia and therefore Russia is responsible for the conduct of PMR's authorities with regard to the applicants.[109]

The Court also analyzed whether Moldova as a parent state is responsible for the human rights violations that occurred within PMR. The government of Moldova stated that the applicants did not fall within the jurisdiction of Moldova since Moldova was deprived

[108] *Ilaşcu and Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, paras. 188-219.

[109] *Ilaşcu and Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, paras. 384.

of control over PMR.[110] This argument has not persuaded the Court and it concluded that Moldova still has positive obligations under the Convention to take measures to secure the human rights obligations.[111]

Since the first case regarding PMR till one of the latest cases, the ECtHR maintained its position that it is Russia responsible for the acts of PMR's representatives and, consequently for the human rights violations. Additionally, in the subsequent practice, the ECtHR also indicated the joint and several responsibility of Moldova. In the meantime, the government of Moldova approved the Court's reasoning in *Ilascu* and accepted its jurisdiction in further cases. Remarkably, the ECtHR pointed out that Moldova complied with its positive obligations towards PMR in the following cases. For instance, in *Mozer v. the Republic of Moldova and Russia*, the ECtHR stressed again on positive obligations of Moldova given that PMR is recognized as a part of Moldova under the public international law. In the meantime, the ECtHR pointed out that Moldova fulfilled its positive obligations toward the applicant providing him with available diplomatic and legal measures. With regard to Russia's role, the ECtHR decided that Russia is solely responsible for the violations of Articles 3, 8 and 9 of the Convention considering the active support of PMR.[112] The Court also concluded that Moldova complied with its positive obligations towards the applicants in *Sandu and Others v. the Republic of Moldova and Russia*, while Russia was declared responsible for human rights violations within PMR.[113]

As conclusion, the author would like to stress the crucial moment. Even though in at least 6 cases the ECtHR held Russia responsible for human rights violations as a result of effective control over PMR, this conclusion is not a theorem. The Russian responsibility within PMR is triggered only with regard to human rights violations that occurred as a result

[110] *Ilaşcu and Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, paras. 300.

[111] *Ilaşcu and Others v. Moldova and Russia*, Judgment, Merits and Just Satisfaction, 2004, ECtHR, Application No. 48787/99, paras. 331.

[112] *Mozer v. the Republic of Moldova and Russia* [GC], Judgment, 2016, ECtHR, Application No. 11138/10.

[113] *Sandu and Others v. the Republic of Moldova and Russia*, Judgment, 2018, ECtHR, Application Nos. 21034/05 and 7 others).

of Russia's heavy influence on the region. That is why the ECtHR applied the "effective control" test for the precise determination of the responsible state.

2. *Human rights violations within the territory of Abkhazia and South Ossetia*

For the purposes of this section, the author would analyze the human rights situation in Abkhazia and South Ossetia separately.

A solid number of authoritative organizations have issued reports regarding the human rights situation in Abkhazia. The list of such organizations includes Freedom House, Independent International Fact-Finding Mission on the Conflict in Georgia, European Council and others. The common conclusion of these organizations is that residents of Abkhazia are suffering from severe human rights violations by the local authorities. For instance, the Human Rights Council expressed its concerns regarding the discrimination of ethnic Georgians within the region, violations of such the rights as right to life, right to health, right to peaceful possession of property, etc.[114]

It is reported that Abkhazia's government takes the easiest measures to guarantee human rights obligations within the region.[115] At the same time, since 2009 till 2022 Freedom House defined Abkhazia as a partly free territory. The Freedom House stressed the main problems of Abkhazia as a flawed criminal court system, wide-spread discrimination against ethnic Georgians and many others.[116] Notably, the mentioned human rights violations existed even before the escalation of the military conflict between Georgia, Abkhazia and the Russian Federation.[117]

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[114] United Nations Human Rights Council, Resolution A/HRC/5/40/L.24, 22 March 2019.

[115] UNPO, *Report of a UNPO Coordinated Human Rights Mission to Abkhazia and Georgia*, November/December 1992, p.17.

[116] Freedom House, *Freedom in the world: Abkhazia*, 2022, URL: https://freedomhouse.org/country/abkhazia/freedom-world/2022.

[117] UN Press Release, UN High Commissioner for Human Rights: *Georgia makes progress but human rights concerns remain*, 28 February 2008.

The Freedom House stressed on violation of a number of political and civil rights, especially the right to political participation. For instance, it is reported that the legal system of Abkhazia does not prescribe fully independent elections. In particular, the ethnic Georgians are not admitted to the election process. Even the Constitution of Abkhazia is imbued with a discriminatory perspective on the election process. For instance, only a person of Abkhaz nationality, being a citizen of Abkhazia and speaking the Abkhaz language can be elected as president.

Remarkably, the Freedom House concluded that a significant part of the domestic policy is determined by the local government of Abkhazia. At the same time, the Freedom House noted that Russia still controls the crucial spheres of internal policy such as the state budget. This Russian influence has a direct impact on the enforcement of human rights in the region. For instance, the freedom of expression is strictly limited in the region. In particular, the local government controls the local media resources and individuals cannot express freely their view on sensitive topics, especially those related to ethnic Georgians. Those individuals who somehow opine in the public domain regarding ethnical issues may get imprisoned.[118] Furthermore, considering that the main media are "state-owned", those media broadcast only the negative information regarding the situation in Georgia, thus depriving the ethnic Georgians of the updated information. As another example of harmful Russian influence is the Abkhaz government declaration regarding re-admission of the death penalty for drug dealing.[119]

As it was mentioned above, discrimination is one of the red-flag issue in the human rights situation in Abkhazia. As it was established by the UN Committee on Elimination of Racial Discrimination, the very conflict in both Abkhazia and South Ossetia resulted in discrimination against people of different ethnics.[120] In particular, the Gali region of

[118] UNPO, *Report of a UNPO Coordinated Human Rights Mission to Abkhazia and Georgia*, November/December 1992, p.17.

[119] Jam news, *Abkhazia introduces death penalty for drug dealing*, 10.04.2019, URL: https://jam-news.net/abkhazia-reintroduces-death-penalty-for-drug-dealing/.

[120] UN Committee on Elimination of Racial Discrimination, *Concluding observations of the Committee on Elimination of Racial Discrimination*, Georgia, 15 August 2005, CERD/C/GEO/CO/3, 27.03.2007, para. 7.

Abkhazia is the only region where ethnic Georgians are living.[121] The ethnic Georgians in the Gali region are facing constant discrimination from the local government, police harassment and unequal access to education and other social spheres. For instance, the ethnic Georgians are struggling to the obtainment of Abkhaz passport which affects their property rights, namely peacefully possess property in Abkhazia. Additionally, the local government restricted education in the Georgian language thus in this way violating the provision of their Constitution.[122] The Freedom House stressed separately that women are suffering from violence on a gender basis. Moreover, the Georgian government claimed that the Abkhaz authorities were preparing genocide of Georgian people and they are responsible for ethnic cleansing. However, the UNPO mission did not find any convincing evidence supporting the genocidal acts of the Abkhaz government against the Georgian people.[123]

On a separate note, it is worth mentioning that Abkhazia is attempting to comply with the human rights standards contrary to the aforementioned PMR. In particular, the monitoring bodies encourage the existence of Abkhazian NGOs that are trying to ensure human rights by addressing humanitarian and social issues. At the same time, there are a number of NGOs that represent the interests of the Russian Federation in the region. Additionally, the Abkhazian government established a Parliamentary Committee for Human Rights with the aim to monitor human rights violations in cooperation with reputable NGOs. From the author's point of view, the rationale behind these attempts is the conclusion of the International Fact-Finding mission that the local government must ensure the human rights protection.[124]

The human rights situation in South Ossetia is far worse than the situation in Abkhazia. The reasons for such a spread of human rights violations are the maintenance of Russia's heavy impact on South Ossetia contrary to the situation in Abkhazia. Evaluation of the human rights situation in South Ossetia is also complicated by the fact that the

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[121] *Independent International Fact-Finding Mission of the Conflict in Georgia Report*, Vol 2, p. 411.

[122] Article 6 of the Abkhaz Constitution provides that "*The State guarantees to all ethnic groups living in Abkhazia the right to freely use their mother tongue*".

[123] UNPO, *Report of a UNPO Coordinated Human Rights Mission to Abkhazia and Georgia*, November/December 1992, p.19.

[124] *Independent International Fact-Finding Mission of the Conflict in Georgia Report*, Vol 2, p. 416.

monitoring bodies do not have access to the region. However, there are few reports that reflect the respect for human rights in the region. For instance, the Freedom House evaluated the level of freedom in South Ossetia at 11 out of 100,[125] while in Abkhazia this level reaches 40 out of 100. The Freedom House classified South Ossetia as a "not free" area.

In fact, the whole political establishment is dependent on the Russian Federation as demonstrated by the inability to determine internal policy and the absence of fair elections in the region. In particular, many residents of South Ossetia cannot fully realize their rights to political participation. For instance, only the individual who permanently resides in South Ossetia may run for the presidency of the *de-facto* republic. At the same time, the voting rights of ethnic Georgians are severely restricted, sometimes even denied, similarly to in Abkhazia.

There are no independent media in South Ossetia, the channels and newspapers are heavily controlled by the local government and thus, by Russian Federation. One of the most popular news portals is Sputnik which is accessible in Russian and Ossetian only. Thus, the local government established a full-censorship of any media that might somehow criticize the local authorities and Russia. Moreover, residents of South Ossetia cannot opine on the geopolitical status of South Ossetia, the expulsion of Georgians and other sensitive issues.

The Freedom House stressed on the constant violations of property rights by the local government. The South Ossetia's authorities failed to guarantee enforcement of the rights to property of the ethnic Georgians. For instance, the 2008 war seriously affected the property rights of the residents living near the administrative border. Moreover, following the war the local South Ossetian authorities precluded the ethnic Georgians from their return to their homes.

Similarly to Abkhazia, the local government of South Ossetia established the institute of Ombudsman.[126] Notably, this is the only institution in the region that oversees the

[125] Freedom House, *Freedom in the World 2022: South Ossetia*, 2022, URL: https://freedomhouse.org/country/south-ossetia/freedom-world/2022.

[126] C. Knot, A. Parastaev, *South Ossetia: rights and freedoms in an unrecognised state*, the Foreign Policy Center, 26 September 2019, URL: https://fpc.org.uk/south-ossetia-rights-and-freedoms-in-an-unrecognised-state/#_ftn8.

enforcement of human rights obligations. It is reported that the period of the Ombudsman's main activities encompassed the period from 2004-2008, namely between two active phases of the armed conflict. At the present moment, there is a lack of information regarding the efficiency of this institution.

On a separate note, the author would like to stress that residents of South Ossetia are suffering from ill treatment and torture. Amnesty International reported that a young man had died in the custody in Tskhinvali, allegedly as a result of long-lasting tortures.[127] Later on, the photos of the young man's body that was all covered with severe injuries were published. That photos have triggered one of the biggest protests in the South Ossetia region with the demands of the local government's resignation. This is not the only example of torturing the residents of South Ossetia, this practice of ill-treatment and torture remains persistently and raises concerns. Amnesty International concluded that both the Russian Federation and *de-facto* authorities are unwilling to investigate this case, prevent further tortures and allow the monitoring bodies to enter the region.

One of the landmark cases of the ECtHR that addresses the question of responsibility for human rights violations within both Abkhazia and South Ossetia is the interstate case *Georgia v. Russia (II)*. The second case of Georgia against Russia concerned the grave human rights violations committed by Russian troops in South Ossetia, Abkhazia and the "buffer zone". As it was already described in Chapter II of this thesis, the ECtHR established the jurisdiction of the Russian Federation during the occupation phase, however decided that Russia did not exercise jurisdiction during the active phase of the conflict.

The cornerstone of this case is the ECtHR conclusion that the human rights regime is inapplicable during the active phases of the armed conflict, even in relation to civilians. The ECtHR believes that the protection during the active phases of the conflict shall be granted under the international humanitarian law, and not under the umbrella of human rights regime.[128] Notably, the ICJ persistently stated that the human rights regime does not cease

[127] Amnesty International, *Georgia's breakaway South Ossetia/Tskhinvali region: a crisis fueled by impunity for human rights violations*, 2 October 2020, URL: https://www.amnesty.org/en/documents/eur56/3158/2020/en/.

[128] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 141.

its protection during the armed conflicts.[129] Given that, the most vulnerable groups of the conflict obtain full protection of their rights under both general and special regime. However, Georgia's arguments concerning massive and severe human rights violations by Russia during the active phase of conflict remained only on the paper of its application.

Nevertheless, the ECtHR declared the responsibility of the Russian Federation during the occupation of the regions. Georgia claimed that Russia violated:

- the right to life,
- the prohibition of torture and inhuman treatment,
- the right of respect for private life,
- the right to peacefully possess the property,
- the right to freedom of movement.

The ECtHR found the violation of Russia's obligation to respect the all-aforementioned rights. Moreover, the ECtHR concluded that acts of torture, ill-treatment, and arbitrary detention of ethnic Georgians became the "administrative practice" and Russia is responsible for these violations.[130] Notably, the ECtHR mentioned that it is the so-called representatives of Abkhazia and South Ossetia who by "their hands" violated human rights of the residents. However, the ECtHR pointed out the massive presence of the Russian troops throughout the regions who did nothing to prevent the human rights violations.[131] Even though Russian troops did not participate directly in all human rights violations, the Russian Federation still be held responsible since the Georgian civilians fell within Russia's jurisdiction.

As it was described at the beginning of this section, ethnic Georgians are suffering from discrimination, especially pupils and students who were deprived of studying in the

[129] *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996, ICJ Rep 226, para. 25; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004, ICJ Rep 136, para. 106; *Armed Activities on the Territory of the Congo*, Democratic Republic of Congo v. Uganda, Judgment, 2005, ICJ Rep 168, paras. 215-216.

[130] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, paras. 254, 279.

[131] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 248.

Georgian language. Given that, Georgia claimed that Russia violated the obligation to respect the rights to education. Even though Georgia submitted reports confirming the prohibition of the Georgian language and forced use of the Russian language, the ECtHR stated that this evidence is insufficient to establish Russia's responsibility.[132]

As the author pointed out, the ECtHR studied the responsibility of Russia, thus in some way omitting the responsibility of Georgia or South Ossetia and Abkhazia's representatives for human rights violations. However, the ECtHR mentioned the alleged responsibility of Georgia for failure to investigate the violation of human rights especially of the right to life. The ECtHR referred to the statement of Pre-Trial Chamber I of the International Criminal Court that both Georgia and the Russian Federation failed to conduct a proper investigation of massive cases of killings and other atrocities. At the same time, the ECtHR repeated that since Russia established its jurisdiction during the occupation phase, it is obliged to properly investigate the killings of civilians in Abkhazia and South Ossetia. Furthermore, the ECtHR decided that Russia is obliged to investigate the killings of civilians committed during the active phase of the armed conflict.[133] Remarkably, as the author described earlier, the ECtHR did not find the jurisdiction of Russia during the active phase of the conflict. At the same time, the Court decided that Russia's obligation to investigate killings during the active phase of the conflict arose due to the fact that Russia established effective control over the territories of active hostilities later. Thus, the establishment of Russia's jurisdiction waived the responsibility of Georgia for the alleged failure to investigate the killings of civilians.

In contrast to the PMR case, one may note that Abkhazia and South Ossetia are, at least, trying to ensure and protect the human rights of the residents. At the same time, these efforts do not eliminate the instances of flagrant human rights violations committed under the protectorate of the Russian Federation. The ECtHR reaffirmed its position stating that only the parent state that exercised its jurisdiction bears the responsibility for the conduct of its proxies, and therefore is responsible for the human rights violations.

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[132] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 314.

[133] *Georgia v. Russia (II)*, Judgment, Merits, 2021, ECtHR, Application No. 38263/08, para. 331.

3. *Human rights violation within the territories of DNR and LNR*

The UN High Commissioner for Human Rights ("OHCHR") described the breakout of the war in East of Ukraine – Donbas as "the start of human rights crisis in Ukraine".[134] The OHCHR reported that as of 2016, the armed conflict within Donbas region resulted in 30,903 casualties of Ukrainian armed forces, civilians and separatists. Notably, the human rights situation in the Donbas region is more covered in NGO's reports and international media as such in comparison to situations in PMR, South Ossetia and Abkhazia. From the author's point of view, the rationale behind this is the commission of human rights violations during the long-lasting conflict between Ukraine and Russia's proxies D/LNR, which further led to the full-scale invasion of the territory of Ukraine by Russia. At the same time, there are almost no local NGOs, especially those working in the human rights field. The only NGOs that partly retained their operation are the ICRC, OSCE and various UN agencies.

The Constitutions of D/LNR prescribes guarantees, recognition and enforcement of the human rights and freedoms in light of international law norms and principles.[135] However, the Freedom House evaluated the level of civil and political rights in the Donbas region at 4 out of 100 defining the territory as not free.[136] Furthermore, the Freedom House rated the level of enforcement of political rights separately as -1 out of 100. For the purposes of this section, the author would study the human rights situation in Donetsk People's Republic and Luhansk People's Republic cumulatively.

Insulting of human rights of D/LNR residents is established on the level of D/LNR's Constitution and local legislation. In particular, the human rights provisions of D/LNR Constitutions are drafted in a chaotic manner. A large part of human rights is proclaimed as such that cannot be restricted, at the same time the Constitutions provide that all human

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[134] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 6.

[135] Article 12(1) of the Constitution of DNR and LNR.

[136] Freedom House, *Freedom in the World: Eastern Donbas*, 2022, URL: https://freedomhouse.org/country/eastern-donbas/freedom-world/2022.

rights can be restricted to the necessary extent.[137] Also, as it was mentioned, the Constitution stipulated respect to human rights and freedoms. However, the LNR Constitution envisaged the prohibition of the sale of land that contradicts the Constitution itself, and the First Protocol to the European Convention on Human Rights. The legislative acts of the *de-facto* republic also undermine the well-established standards of human rights. For example, the local act "On the mass media" imposed a ban on activities of foreign mass media and foreign NGOs without permission of the local government.[138]

The political rights of Ukrainians within D/LNR have been massively and flagrantly violated. The so-called representatives of D/LNR have usurped government power via unfair and uncompetitive elections. The Freedom House separately noted that the Ukrainians do not support the current "heads" of D/LNR, Mr Pasechnik and Mr Pushilin who are well-known for their loyalty to the Moscow government. Moreover, the Freedom House concluded that the Russian Federation controls two puppet *de-facto* republics from "head to feet". The control of the Russian Federation is present in each and every aspect of the Ukrainians starting from local media to business structures. Given that, the residents of D/LNR have no freedom of political choices. On the contrary, expressing unwelcome by the local representatives' position, such as the pro-Ukrainian position may be extremely dangerous for life.

Similarly to the PMR case, the political situation in both D/LNR reminds a totalitarian system of the Soviet Union. In particular, the separatist representatives of D/LNR hide any kind of public information that normally should be available to the residents. To further restrict the access to the public information, the de-facto government enacted a legislative act that would mark even the statistical data as "confidential".[139]

The number of international NGOs reported an unprecedented number of cases of torture, inhuman treatment and unlawful imprisonment. As of 2021, it is reported that

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[137] Article 48 (2) of the LNR Constitution, Article 48 (2) of the DNR Constitution.

[138] KHRPG, *Human Rights Violation in the LNR/DNR: legislation and practice*, Justice for Peace in Donbas coalition, 2016.

[139] Freedom House, *Freedom in the World: Eastern Donbas*, 2022, URL: https://freedomhouse.org/country/eastern-donbas/freedom-world/2022.

approximately 250 civilians are imprisoned in so-called "state" prisons. However, there might be much more than 250 cases considering the spread of so-called "secret" prisons where individuals are also might be detained unlawfully. The OHCHR reported that the location of hundreds of people is still unknown, they were either detained in the so-called "secret" prisons or their dead bodies are not identified yet.[140] Victims of the D/LNR militia's inhuman treatment described that these militias established a number of concentrations camps in Donetsk where they obtained necessary for them information by torturing detainees.[141] The civil residents of D/LNR has been abducted by the D/LNR militia on a regular basis and has been tortured or detained in the so-called concentration camps. The OHCHR reported the incident when the DNR militia abducted the member of the Ukrainian Armed Forces, put a plastic bag on his head, handcuffs and drove him to a private house. Then, he was tied to a tree, severely beaten, and tortured for three hours with the use of electric shocks. After this unprecedented humiliation, he was transferred to the basement of the military base in Makiivka and later released to the Ukraine controlled territory.[142] In addition, the international reports provide for an administrative practice of sexual violence against detainees of all gender. The reports described the witness statement of the militia's inhuman behavior toward women. For example, the militia has detained women for the alleged violation of some of the local "laws", those women were taken somewhere by the militia and either never come back or return with the torn clothes. The same level of sexual violence the militia applied to men, namely assaulting and subjecting men to the "rectal examination".[143]

Spending at least a year in these unlawful concentration camps or "secret" prisons, detainees then often were subject to unlawful courts of D/LNR, where they were tried for fictional accusations of spying and treason. The local militia defines spying as posting information on social media regarding the situation in the occupied Donbas. Thus, literally

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[140] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 9.

[141] Ui Reports on Human Rights and Security in Easter Europe No. 1, *Human Rights Violations in the Occupied Parts of Ukraine's Donbas since 2014*, January 2021, p.8.

[142] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 15.

[143] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 18.

every resident of D/LNR could be found guilty of the alleged spying. Moreover, the D/LNR militia introduced the death penalty for cases of killings and spying.[144] One of the recent examples of the death sentences would be analyzed further in this thesis.

The author mentioned that ethnic Moldovans and Georgians faced a wave of discrimination by the *de-facto* authorities of PMR, South Ossetia and Abkhazia. However, the discrimination policy against Ukrainians, the Ukrainian language and culture have no comparison to the aforementioned situations. For the sake of safety, all residents who identified themselves as Ukrainians with a pro-Ukrainian position left the *de-facto* republics since the start of the conflict. The so-called representatives of D/LNR completely outlawed the official-language status of the Ukrainian language, establishing the Russian language as the only official language on all levels, switching Ukrainian schools to Russian standards with revised history curricula and reducing the teaching of Ukrainian language to zero, etc. The level of anti-Ukrainian policy is tragically increasing every year. The Kyiv Institute for Mass Information concluded that the amount of fake propaganda against Ukraine extremely increased since 2017 to 2019.[145]

Given the extensive control of the Russian Federation, the is no independent local media that could impartially cover the situation in D/LNR, as well as the chronic of the armed conflict between Ukraine and Russia's D/LNR rebellions. The pro-Russian militia replaced the Ukrainian media with the Russian within a couple of days after the seizure of the governmental buildings.[146] All local media are publishing the information from Russian or pro-Russian sources. As the anonym former manager of a TV channel operating in the occupied Horlivka confirmed that all the media of occupied Donbas is directly controlled by the Russian Federal Security Service.[147] Local media devote special attention to the

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[144] Ui Reports on Human Rights and Security in Easter Europe No. 1, *Human Rights Violations in the Occupied Parts of Ukraine's Donbas since 2014*, January 2021, p. 9.

[145] Vchasno, *«Lies and Hatred»: how Militants' Media Manipulate People's Minds in Occupied Donbas*, 20 May 2020, URL: https://vchasnoua.com/donbass/66538-lies-and-hatred-how-militants-media-manipulate-peoples-minds-in-occupied-donbas.

[146] *Separatists in Sloviansk seize local television tower and cut Ukrainian television*, 17 April 2014, URL: https://novosti.dn.ua/news/205936-v-slavyanske-separatysty-zakhvatyly-mestnuyu-televyshku-y-vyklyuchyly-ukraynskoe-tv.

[147] Ukraine TV channel, Siogodni news, *Testimony of a defector: exclusive interview about life under occupation*, 24 May 2020, URL: https://www.youtube.com/watch?v=nN3H40UoGLU.

armed conflict, demonizing the Ukrainian side saying that it breaches a "cease-fire regime", shells the cities, commits genocide, while D/LNR militia always pointed out as a positive "protector" of the region. There are no pro-Ukrainian media or bloggers that left the region due to safety concerns since they were threatened by life-prison sentences. For instance, Ukrainian blogger Mr Nedeliaev was sentenced to 14 years in prison for spreading "negative information".[148] The international media is partly accredited and is obliged to comply with a bunch of restrictive policies to enter the region. At the same time, the obtainment of the permission is not a guarantee of a "green light" to the D/LNR territory. The OHCHR reported that the DNR militia rejected entry to British and Australian rapporteurs notwithstanding their "permission" from the DNR representatives.[149] Thus, the local residents receive information only from Russia's controlled source of media.

The appearance of the puppet republics in the Donbas region seriously affected the social and economic rights of Ukrainians. The local representatives introduced the Russian currency – the rouble in lieu of the Ukrainian hryvna. In view of this change, the pensions and salaries of public sector employees have decreased. For example, the minimum pension within occupied territories was calculated as UAH 760, while the minimum pension within Ukraine-controlled territory was UAH 1,130.[150] The problem of unemployment within the D/LNR has extravagated drastically. Unemployment has touched almost everyone, especially the coal miners and railway employees.[151] Due to the constant armed activities and termination of operations with the official Kyiv, the enterprises of these industries ceased their operation. The prices of almost all vital categories of food had increased tragically compared to the prices in the Ukraine-controlled territories.[152] Given that, many of the D/LNR residents are dependent on humanitarian aid only. Thus, the Ukrainians faced the difficult conditions to live since the income of the D/LNR residents had dropped

[148] KHRG, *Donbas militants 'sentence' blogger to 14 years for "spreading negative information"*, 02 August 2017, URL: https://khpg.org/en/1501597083.

[149] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 33.

[150] KHRPG, *Human Rights Violation in the LNR/DNR: legislation and practice*, Justice for Peace in Donbas coalition, 2016.

[151] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 37.

[152] KHRPG, *Human Rights Violation in the LNR/DNR: legislation and practice*, Justice for Peace in Donbas coalition, 2016.

significantly, while the prices on food become higher. The D/LNR residents also suffered from persistent destruction of their houses, and business property by the D/LNR militia. The residents claimed that a sufficient number of houses were destroyed because the "pro-Ukrainian" residents lived there.[153]

As it can be seen from the above, since 2014 the residents of D/LNR were subject to grave and persistent human rights violations. However, the number and gravity of these violations reached a new level on 24 February 2022, when the Russian Federation started a full-scale invasion of Ukraine. In other words, the Russian troops illegally crossed the border, among others, in the D/LNR and now, they are warring along with the D/LNR militia openly. The UN Human Rights Monitoring Mission in Ukraine ("HRMMU") reported that as of 26 March 2022, 1, 119 civilians are killed, including 52 children – within a month from the start of a full-scale war. As of June 2022, the Russian Federation troops and D/LNR militia control almost 90% of the Luhansk region and try to establish control over the Donetsk region. Given that, hundreds of civilian houses, medical facilities, schools and other civilian objects are damaged or destroyed at all as a result of massive indiscrimination attacks. The HRMMU stressed that the Russian Federation troops use heavy artillery and launch the widespread missile and air strikes that cause the highest level of damage to the civilian objects.[154] The author managed to obtain the confirmation of these statements from one of the members of the Ukraine Armed Forces. Mr Artur Voilov, a student of the law faculty of the NU of "Kyiv-Mohyla Academy" and the classmate of the author is currently fighting for the integrity and independence of Ukraine. He described the level of destruction in one of the villages of the Donbas region in the following manner:

> "*Executing the military order near Myronivka village (near Svitlodarsk) of the Donbas region, I witnessed that almost all the village was razed to the ground. There are almost no unbroken houses in the village. Many houses are destroyed to such a level, that they do not exist anymore at all. I was able to identify that there was a house sometime only because of the*

[153] OUNHCHR, *Report on the human rights situation in Ukraine 16 February to 15 May 2016*, p. 39.

[154] UNHRoHC, *Update on the Human Rights situation in Ukraine*, Reporting period: 24 February – 26 March, p. 3.

> *ruins and beams of the house that for unknown reasons remained undamaged. However, some houses are destroyed to zero. Also, being in the same region I saw that Vugledarska thermal power plant was heavily damaged as a result of Russia's shelling. I can describe the scope of destruction as enormous. Given that, I am not sure at all that this thermal power plant would be operating someday again*".

At the time of preparing this section (June 2022), the Donbas direction is the region of intense hostilities. For instance, it is reported that there are an unprecedented number of civilian casualties in Volhovakha, Popasna, Rubizhne, and Severodonetsk. The Ukrainian side and various NGOs are unable to identify even the precise number of casualties due to intense and heavy fighting from both sides.[155] The human rights NGOs acknowledge that residents of D/LNR and those territories that are controlled by D/LNR after 24th February 2022, experience difficulties with access to normal food, water, medicines and public utilities. At least 65 food shops, 2 hospitals and several public facilities were destroyed as a result of Russia's shelling and air strikes.

In the meantime, the DNR militia continues violation of human rights not only in the combat zone, but also within, as they believe, their territory. As it was mentioned above, the DNR militia introduced the death penalty for such alleged crimes as spying and treason. However, in practice, the militia has extended the application of the death penalty to any who is unwanted for Russians or DNR militia. Thus, the so-called Supreme Court of DNR has sentenced three members of the Ukrainian Armed Forces ("UAF") to the death penalty.[156] Mr Aiden Aslin, Mr Shaun Pinner, and Mr Brahim Saadoune are the nationals of Great Britain and Morocco respectively are serving in Ukrainian Armed Forces and fighting against Russian troops and D/LNR militia. Additionally, Mr Aslin has Ukrainian citizenship. According to the Ukrainian side, these three members were captured by the DNR militia in Mariupol and now they are considered to be prisoners of war.

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[155] UNHRoHC, *Update on the Human Rights situation in Ukraine*, Reporting period: 24 February – 26 March, p. 4.

[156] The Washington Post, *Separatist court gives death sentences to Britons, Moroccan who fought for Ukraine*, 9 June 2022, URL: https://www.washingtonpost.com/world/2022/06/09/ukraine-foreign-fighters-death-sentence/.

The Russian-controlled media firstly reported that three members of Ukrainian forces allegedly worked as foreign mercenaries and obtained the task from the Ukrainian side to fight against DNR. Given that, all three were sentenced to the death penalty. There is even no need to analyze the legality of this decision since the howling illegality of this decision is visible to the naked eye. According to Amnesty International, this death sentence is a brutal violation of the Geneva law that is used as a dirty political tool against Great Britain that supports the Ukrainian government.[157]

First of all, the status of those members of the Ukrainian Armed Forces does not satisfy the criteria of mercenaries under Article 47 (2) of the Additional Protocol I to Geneva Convention, namely they are residents of the Party to conflict – Ukraine, they lived in Ukraine for years and they receive the same wage as other members of the Ukrainian Armed Forces. In addition, the members of the UAF were deprived of their right to a fair trial. First of all, the so-called Supreme Court of DNR is unrecognized institution of the illegal entity, thus, it is does not satisfy the tribunal criteria under Article 6 of the European Convention of Human Rights at all. The court hearing was held behind closed doors without any particular reason for doing so. Mr Aslin, Mr Pinner and Mr Saadoune were not allowed to present any evidence to rebut the accusations of the DNR militia. This all only again confirms that the D/LNR are the places of gross and blatant human rights violations.

Notably, various reports of NGOs do not address the question of the Russian Federation's responsibility for human rights violations within D/LNR. For instance, OHCHR provided recommendations with regard to the human rights situation to Ukraine and "*all parties involved in the hostilities in Donetsk and Luhansk regions, including D/LNR*". The Russian Federation was mentioned only in the context of the human rights situation in Crimea, where its control was more obvious. Also, the ECtHR still studies the alleged responsibility of the Russian Federation for the violations within D/LNR while considering Ukraine's state applications against the Russian Federation. At the same time,

[157] Delfi, *Amnesty International: death sentence against members of UAF – is the violation of international law*, 10 June 2022, URL: https://www.delfi.lt/ru/abroad/global/amnesty-international-smertnye-prigovory-voennym-vsu-narushenie-mezhdunarodnogo-prava.d?id=90455143.

the case-law of the ECtHR contains cases concerning human rights violations within D/LNR. However, the respondent state in this category of cases is Ukraine. Moreover, according to Ms Anna Yudkivska, a Ukrainian judge to the ECtHR, that as of 2018, there are approximately 4000 claims concerning violations in D/LNR with almost 2800 claims against Ukraine, while 400 are against Russia.[158]

At the same time, the ECtHR has already concluded that Ukraine is not responsible for human rights violations that occurred within the territories of D/LNR. In the *Khlebik* case, the applicant claimed violations of the right to fair trial and the right to liberty and security. The ECtHR has not found any violations of Ukraine's obligations under the European Convention of Human Rights. Instead, the ECtHR mentioned Ukraine's declaration regarding temporal derogation from human rights obligations and noted that the Ukrainian government tried to restore the fair trial for the applicant. The ECtHR stated that the Government was unable to restore the applicant's rights effectively in view of obstacles the Ukrainian government faced.[159] The ECtHR did not study the alleged responsibility of the Russian Federation for the mentioned violations in light of the absence of jurisdiction to do so. However, the Ukrainian government mentioned that it cannot reasonably guarantee respect to human rights within the Donbas region since it is under the control of the militia supported and controlled by the Russian Federation. From the author's point of view, the ECtHR would finally announce the responsibility of the Russian Federation in D/LNR only in judgments on Ukraine's interstate applications against the Russian Federation. At the same time, there are no indications that the ECtHR would depart from its position in *Ilascu and Georgia v. Russia (II)* and would decide otherwise regarding Russia's responsibility.

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The human rights situation in the aforementioned *de-facto* states (non-recognized entities) is comparably the same. The author noted that the heavy influence of the Russian Federation on PMR and D/LNR has a direct impact on the respect and enforcement of

[158] R. Petrov, G. Gabrichidze, P. Kalinichenko, *Constitutional Orders of Non-Recognized Entities in Georgia and Ukraine. Can façade Constitutions Ensure Adequate Protection of Human Rights?*, Koninklijke Brill NV, Leiden, 2020, p. 122.

[159] *Khlebik v. Ukraine*, Judgment, Merits, 2017, ECtHR, Application No. 2945/16, paras. 79-81.

human rights in these regions. The human rights situation is close to that situation that existed in the Soviet Union with massive and flagrant restrictions and violations. The human rights situation in D/LNR is aggravated by the protracted armed conflict that further escalated into a full invasion of the territory of Ukraine by the Russian Federation. In contrast to these two *de-facto* states, Abkhazia and South Ossetia at least tried to guarantee human rights to the resident and established the institute of the Ombudsman. As the practice shows, the authorities of *de-facto* states (non-recognized entities) do not bear responsibility for the cases of human rights violations. As in the case of analyzed *de-facto* states (non-recognized entities), the ECtHR concluded that the Russian Federation is responsible for the breaches of human rights obligations in PMR, South Ossetia and Abkhazia. With regard to D/LNR, the Ukrainian government is still waiting for the resolution of the ECtHR. The author believes that the ECtHR would rule the responsibility of the Russian Federation for the long-lasting human rights violations in D/LNR.

CONCLUSION

At the stage of initial research, the author has been thinking what would be the answer and conclusion of this thesis. Finalizing the research, the author can conclude that the initial thoughts aligned with the outcome of this scientific research that is presented in this section.

It's been a year since the preparation of the author's course paper on the theory of recognition and the author noted that during this period international law did not specify the status of the *de-facto* states. There is still no clear answer whether the *de-facto* states are able to possess obligations and have rights. One may note that *de-facto* states exist beyond the regulation of international law, even in a sort of vacuum. At the same time, one may opine that the *de-facto* states are obliged at least to respect human rights within the territories under their control. In the meantime, the author does not believe that someday at least one of the *de-facto* states would be recognized as an independent state and subject of international law. Instead, the current political will of the international community indicates that these entities would not be accepted and recognized as states. The rationale behind this is the frequent use of such entities as a tool to expand the influence of one state on the territory of another state.

The great examples to support the aforementioned statement is the emergence of the *de-facto* states within the post-Soviet territories, namely Moldova, Georgia and Ukraine. These illegal entities are the creatures of the Russian Federation that emerged during the last 30 years under the same and well-thoughtful playbook prepared by the Russian government. The reasons for the emergence of PMR, South Ossetia, Abkhazia and D/LNR are either an alleged infringement of rights of the Russian-speaking people or return of the primordially Russian territories, or even both of them.

In fact, the Russian Federation used these entities for further flagrant violations of international law. In particular, the start of armed conflict in Georgia in 2008 and the full-scale invasion of Ukraine in 2022. There is enough evidence that the mentioned puppet republics are fully dependent on the Russian Federation and cannot exist as an independent state. Notably, the Fact-Finding Mission in Georgia concluded that only Abkhazia has some prospects to be considered as an independent state. However, the local political

establishment of the republic is heavily controlled by the Russian Federation. Given that, there are no grounds to consider Abkhazia as independent subject of international law.

The scope of Russia's influence can be evidenced by the human rights situation in the *de-facto* states. It is a well-known fact that Russia is the state of constant and gross violations of human rights. Thus, it decided to expand its poor experience to its puppet republics. The human rights situation in PMR and D/LNR reminds the human rights situation in the Soviet Union. Total prohibition to express the own view, full censorship, cruel treatment, tortures, arbitrary abduction and many others. The situation in South Ossetia and Abkhazia is characterized by, among others, the full-fledged discrimination of ethnic Georgians. At the same time, the local governments try to address and respond to the cases of human rights violations by introducing the institute of Ombudsman.

The Russian Federation believes that it does not exercise any control or jurisdiction over the *de-facto* states. It states that these republics reportedly exercised their right to self-determination. However, (and hopefully) international law does not work in this way. The international law prescribes that if military troops of one state are present on the territory of another, the first state established its jurisdiction via effective control over the territory. Given that, the landmark case practice of the ECtHR unequivocally concluded that the Russian Federation established effective control over the analyzed in this thesis puppet republics and consequently bears the responsibility for any conduct of the *de-facto* states. The parent states, namely Moldova, Georgia and Ukraine in their turn waived their responsibility due to the inability to control effectively these entities which is confirmed by the ECtHR.

Apparently, the Russian Federation would not enforce any of the analyzed in the thesis decisions, namely *Ilascu* case, *Georgia v. Russia (II)* case, even the future decision on Ukraine's application. The local representatives of *de-facto* states apparently would not comply with the mentioned decision as well. However, there is an emerging rule that *de-facto* states should in any event respect the human rights of its residents. However, in this context the problem is the absence of mechanisms that would enforce compliance by *de-facto* states of their obligations towards the residents. Thus, despite the clear conclusion of

the ECtHR, the residents of the *de-facto* states would not obtain effective protection of their rights. Additionally, there is little chance that these residents would ever obtain reasonable remedies for the violations of their rights.

Unfortunately, one may come to the conclusion that enforcement of human rights within *de-facto* states is directly dependent on the political situation in the world and political power of the patron state. The only solution that might be is the amendment and enhancement of the enforcement powers of international law. One may note that the current Russian-Ukraine war may trigger the respective amendments. From the author's point of view, the international order should step back as much as it is possible from the archaic rule of the power of the great nations only. Instead, the international order should be changed in favor of effective equality of the subjects and the inability to use such tools as political blackmail to avoid obligations under international law as the current so-called great powers do.

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