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LIST OF ABBREVIATIONS

ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
CFE	Conventional Armed Forces in Europe
CHR	Commissioner for Human Rights
CoE	Council of Europe
CPT	Committee for Prevention of Torture
DPR	Donetsk Peoples' Republic
HCNM	High Commissioner on National Minorities
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
KGB	Committee for State Security
LPR	Luhansk Peoples' Republic
MASSR	Moldovan Autonomous Soviet Socialist Republic
MSSR	Moldovan Soviet Socialist Republic
OGRF	Operational Group of the Russian Forces
OHCHR	Office of the High Commissioner of Human Rights
OSCE	Organization for Security and Co-operation in Europe
OSTK	Joint Union of Workers Collectives
OTP	Office of the Prosecutor
SMM	Special Monitoring Mission
TMR	Transnistrian Moldovan Republic
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNOMIG	United Nations Observer Mission in Georgia
US	United States
USSR	Union of Soviet Socialist Republic

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1. INTRODUCTION

The disintegration process of the Soviet Union from 1990 -1991, led to the formation of several new states on ex-USSR territory. However, none of the States had previous experiences of statehood. The national movements in Georgia, Moldova and Ukraine had combined their struggle of “running” out of the Soviet Union with ambitious Western agendas. Yet, these struggles on future directions of their newly-created states, either towards Moscow or Europe, have been accompanied by powerful secessionist movements, which challenged their territorial integrity.¹ In their fight for creating own fragile democracies, separatist military groups shaped the secessionist territories of Abkhazia and South Ossetia, Transnistria and recently Donbass. These breakaway entities have profited of unstable political and socio-economic situation and augmented their power to create their own secessionist entities, however, not without strong Russian support.²

Considering political commonalities, geo-strategical similarities as ex-soviet territories, and the comparable problematics existing in the secessionist territories, this paper will focus on three *de facto* entities: the separatist region of Abkhazia, *de jure* part of Georgia; the separatist left-Dniester bank Transnistria, *de jure* belonging to the Republic of Moldova; and the very recent separatist Donbass, comprised of the so-called Luhansk and Donetsk Peoples’ Republics, *de jure* part of Ukraine. In the academic literature of international relations very often these *de-facto* entities are referred to as “frozen conflicts” regions.

As “frozen conflict regions” these entities remain in a protracted state of legal uncertainty and with strong Russian Federation influence, which further aggravates the challenges related to human rights protection mechanisms, thus creating enclaves of “black holes” of international human rights mechanisms. Therefore, this thesis will look into the question on how international human rights mechanisms can provide effective

¹ A. Bebler, „*Frozen Conflicts*” in Europe, Opladen, Berlin, Toronto, Barbara Budrich Publishers, 2015, pp. 8-9.

² A. Puddington y T. Roylance, ‘Populistas y autócratas: la doble amenaza para la democracia global’, *Freedom World 2017*, 2017, https://freedomhouse.org/sites/default/files/FIW_2017_Overview_Essay_SPANISH_version.pdf, (accessed 15 May 2017).

human rights protection to people living in such *de-facto* entities, created and sustained in the context of “frozen conflicts”, based on the three case studies.

Referring to language, the use of terms “Constitution”, “Law”, “Regulation”, “Decree”, “Government”, “Ministry”, and others, in all three self-proclaimed entities in this paper do not indicate *de jure* recognition of their legislation, institutions or authorities.

This thesis follows a qualitative approach, based on the empirical study of relevant literature, *de facto* acts of the entities researched, international human rights law, relevant commitments and principles in the field of human rights, as well as relevant monitoring reports by international organizations such as the United Nations (UN), the Council of Europe (CoE), or the Organization for Security and Co-operation in Europe (OSCE) and decisions by the European Court for Human Rights (ECtHR). In light of accessibility and reliability of the needed sources, this study was completed as a desk research. A comparative analysis of the human rights situation and the effectiveness of international human rights protection mechanisms is carried on the three cases, aiming to address the research question on a sufficiently broad empirical base. In each case, the situation regarding the same set of international human rights obligations and the application of the same set of international human rights protection mechanisms is looked at, ensuring that the cases represent the variables in this study, while the selected obligations and protection mechanism remain stable.

The study has an inter-disciplinary approach, combining political science, history and legal analysis. The study starts by discussing the concept of “frozen conflicts” in order to lay the foundation for further analysis and to highlight the impact of the “frozen status” of peace process on the human rights situation, and the work of international protection mechanisms. It proceeds by presenting the historical and political background of the entities, with a particular emphasis on the genesis of the *de facto* entities – degree of independence and their *de facto* legislation and functioning. Subsequently, the human rights situation is analyzed in all three cases, with particular emphasis on the right to life, right to education, freedom of movement, freedom of expression and freedom of religion as the most precarious fields for human rights protection in these three cases. Finally, the national and international human rights protection mechanisms activated in Abkhazia,

Transnistria and Donbass are analyzed. Special emphasis is given in this chapter to the case of *Ilașcu and others v. Moldova and Russia* before the ECtHR due to its importance for the jurisprudence of the Court and perspective solution in other cases related to human rights protection in frozen conflicts.

2. THE CONCEPT OF FROZEN CONFLICTS

2.1. THE DEFINITION AND SPECIFIC PARTICULARITIES OF FROZEN CONFLICTS VIS-À-VIS ABKHAZIA, TRANSNISTRIA AND DONBASS

In international relations' academic literature, the term *frozen conflict* is very often shortly defined as follows – a separatist unrecognized region established by a de facto regime. One of the broadest definition of a *frozen conflict* has been put together by Professor (Prof.) Ghia Nodia.³ Prof. Nodia defines the condition of “frozen conflict” as those cases when:

‘There has been relatively *recent violent conflict* over secession, with the *secessionist* parties being militarily successful, having established *effective control* over specific territories and setting up *de facto state institutions*. However, this military outcome is *recognized neither by the military losers – the central governments, nor by the international community*. Therefore, the conflicts are not considered resolved’.⁴

The above definition serves as ground for identification of certain elements specific for frozen conflicts, such as:

- ✓ the presence of an ethno-political⁵ violent conflict;
- ✓ the reason of the violence to be related to secession;
- ✓ the secessionist party to be military successful;
- ✓ the secessionist party to establish effective control over a specific territory;

³ Ghia Nodia is the Chairman of the Board of the Caucasus Institute for Peace, Democracy and Development in Tbilisi, Professor of political science and member of the editorial board of the Journal of Democracy.

⁴ G. Nodia, ‘Europeanization and (not) resolving secessionist conflicts’, *Journal on Ethnopolitics and Minority Issues in Europe*, Issue 1/2004, 2004, p.1. Available from: ECMI, (accessed 10 May 2017).

⁵ M.A. Clancy and J. Nagle, ‘Frozen Conflicts, Minority Self-Governance, Asymmetrical Autonomies – In search of a framework for conflict management and conflict resolution’, *University of Ulster and International Conflict Research Institute*, 1 May 2009, p.14, https://www.asef.org/images/docs/1276-6th_AER_Background_Paper_-_Dr._Clancy_and_Dr._Nagle.pdf, (accessed 13 May 2017).

- ✓ the *de facto* secessionist party to set up institutions; and
- ✓ the effective control is recognized neither by the mother state it *de jure* belongs to, nor by the international community.

The cases of self-proclaimed entities of Abkhazia, Transnistria, LPR and DPR are all defined by these elements. All four have been accompanied by violent conflict before secession, do have effective control over their territories and set up institutions in order to function, however none of them have been recognized by the international community.

A study made by the OSCE Network on protracted conflicts in the OSCE area,⁶ looked at the frozen conflicts on Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh, and added to the above elements some additional basic characteristics. In particular that study points out that: both ethnic kin and outside patrons have played a major role; all sides believe their conflict is existential; all sides have been led to believe that victory without compromise is possible; all sides have adapted to the expectation that the conflicts will not be resolved in the foreseeable future; entrenched groups profit politically and economically from the stalemate; and the conflicts are not, in fact, frozen, but only the peace processes are. Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh are considered as the “classical” frozen conflicts as all have developed during the late 1980s/early 1990s on the territory of Soviet Republics. Northern Cyprus, although regionally and historically different, is sometimes also referred to as frozen conflict as it shares many of the above-mentioned characteristic.

The recent conflict in Donbass likewise meets the above criteria but is not yet openly referred to as frozen conflicts because the level of violence is still high, and the magnitude of the conflict in Donbass is politically seen as too massive as to accept openly that the conflict might remain unresolved for a prolonged period of time. However, subsequent the characteristics mentioned above, it is highly probable that LPR and DPR will follow the same path as the older frozen conflict cases, as it has been declared by the Russian Federation President on 13 November 2015 that there is a high threat that Donbass turns

⁶ OSCE Network of Think Tanks and Academic Institutions, ‘Protracted Conflicts in the OSCE Area, Innovative Approaches for Co-operation in the Conflict Zones’, *OSCE Network*, Vienna, 2016, p.2., http://osce-network.net/file-OSCE-Network/documents/Protracted_Conflicts_OSCE_WEB.pdf, (accessed 20 May 2017).

into “another frozen conflict”.⁷ However, taking into consideration strategic interests and influence of Russian Federation on previous frozen conflicts in Eastern Europe and Caucasus, there is little doubt that there will be another path for Donbass.

Although widely used in particular with regard to conflicts in the post-Soviet space, the term ‘frozen conflict’ is very often criticized, as it is highly arguable when and if such situations are ever fully ‘frozen’. Firstly, because there are acts of violence which occur or are under way in these conflict areas, or even large-scale military escalations such as the Georgia war in August 2008, causing loss of hundreds of lives. Secondly, these conflicts have a historical short duration when compared to other protracted conflicts, such as Palestine or the Western Sahara.⁸ Thirdly, minor changes do occur due to agreements. However, the third point leads to the argument made in the above-mentioned study by the OSCE Network, according to which the “peace processes” in these conflicts are frozen, rather than the conflicts as such. And even with respect to the intensity of conflict one could justifiably consider them ‘frozen’, as the violence surrounding the secession has had decreased considerably, even in those cases where flare-ups still exist.

A ‘frozen conflict’ can be easily confused with any other minority dispute. However, what distinguishes it from the latter is the presence and “interplay of endogenous and exogenous factors that obviates a conflict’s transformation and/or resolution”.⁹ The common endogenous factor of all frozen conflicts is a remnant state’s inability and/or lack of political will to modify the status quo, which is the main contributing factor to a conflict’s frozen character. This inability and/or reluctance is very often directly related to the ‘potential backlash from exogenous actors that any alteration to the status quo is liable to’.¹⁰ If related to the case of Abkhazia, Transnistria and Donbass, the main and strongest exogenous actor liable for the alteration of their status quo is Russian Federation, which is a resilient political influence inside these secessionist entities. Not by chance in the post-Soviet world these entities are very often referred to by Russians as

⁷ ‘Putin says east Ukraine crisis may yet turn into “frozen conflict”’, CNBC News, 13 November 2015. Available from: <https://www.cnn.com/2015/11/13/putin-says-east-ukraine-crisis-may-yet-turn-into-frozen-conflict.html>, (accessed 17 May 2017).

⁸ Bebler, “*Frozen Conflicts*” in *Europe*, pp.7-18.

⁹ Clancy and Nagle, ‘Frozen Conflicts, Minority Self-Governance, Asymmetrical Autonomies – In search of a framework for conflict management and conflict resolution’, p.14.

¹⁰ *ibid.*, p.14.

“near abroad”.¹¹

In conclusion, notwithstanding the debatable issue of frozen conflicts, Abkhazia, Transnistria, and even Donbass regions of LPR and DPR do qualify as frozen conflicts, and are treated as such.

2.2. THE SIMILAR RISE OF FROZEN CONFLICTS AND THEIR FORGOTTEN PATHS

Frozen conflicts very often have their roots in conflicts in which mobilization takes place along the division line of ethnic or linguistic groups.

Firstly, mobilization along ethnic lines was predominantly strong in the cases of Nagorno-Karabakh and Abkhazia,¹² whereas in the ethnical-mixed regions of Transnistria and Donbass, linguistic and socio-emotional orientations played an important role in addition to ethnicity.¹³ In the case of Georgia, the strong leader Zviad Gamsakhurdia was the one who mobilized support for a Georgian independence on ethno-nationalistic and patriotic platforms, threatening notably Abkhaz and Ossetian minorities in their respective autonomous republics. In the case of Transnistria, the coalition between the pro-Romanian Peoples Front Movement and the ethnic Romanian/Moldovan part of the Moldovan Communist Party pursued a policy of strengthening the role of the Romanian/Moldovan language, which was opposed by the Russian-speaking part of the population, which next to ethnic Russians and Ukrainians, Gagauz or Bulgarians included also ethnic Moldovans from Transnistria.

Secondly, after obtaining independence from the Soviet Union in August 1991, the state structures of these former Soviet republics were weak. Respectively, anarchy, gangsterism and lawlessness spread fast and easily.

¹¹ Human Rights Watch Arms Project and HRW Helsinki, ‘Georgia/Abkhazia: Violations of the law of war and Russia’s role in the conflict’, *Human Rights Watch Report*, vol.7, no.7, 1995, p.9, <https://www.hrw.org/reports/1995/Georgia2.htm> (accessed 2 June 2017).

¹² For an in-depth analysis of the Nagorno-Karabakh conflict see Thomas de Waal, *Black Garden – Armenia and Azerbaijan through Peace and War*, New York, New York University Press, 2003, available at <https://raufay.files.wordpress.com/2010/11/0814719449.pdf>.

¹³ C. Neukirch, *Konfliktmanagement im Rahmen von OSZE-Langzeitmissionen*, Baden-Baden, Nomos, 2001, p.129.

Thirdly, in an environment where lawlessness flourishes, independent armed groups with political pretences and chauvinistic agendas arose, covered by leaders. However, all aimed ultimately to serve their own private ends.¹⁴ These patterns have been particularly observed in Abkhazia, but also in Transnistria, and most notably since 2014 in Donbass.

The issue of solving ‘frozen conflicts’ has been simply bracketed by the concerned parties on both sides of the respective dividing lines, mother states and the separatist entities. Hence, there are hardly ever lively discussions about them, as none of the parties knows what to do about it, feeling like in a dead-lock situation. Therefore, they simply chose to hand the issue over to the international community to solve it, or rather waiting for the problem to resolve by itself, like in the case of Georgia and Moldova and their self-proclaimed entities. On these grounds, these situations remain simply frozen for years, leaving local population in incertitude and insecurity. As an example, in a 2016 opinion poll the Transnistrian conflict was not mentioned as an important problem by respondents,¹⁵ while if asked directly, how the Transnistrian issue should be solved, 48% replied it should be a part of Moldova without any autonomy¹⁶. There is no strategy, no consensus and how to work towards a solution of the Transnistrian conflict there is neither a solid nationalist consensus present, nor a democratic pluralism, apart from young groups of politicians, NGOs and a part of mass-media, which is not enough for a democratic society.¹⁷

In conclusion, being in a situation of a frozen conflict is dead-lock situation for both *de jure* States and *de facto* entities. Who is interested in keeping these separatist territories in state of ‘frozen’ and is that a ‘convenient’ situation for both of the parties, or maybe for any third parties? Clarifying this issue might be a tricky and difficult-to-prove task, however the background information from next chapter is aimed to provide historical and political information on all four entities, which might eventually elucidate how these self-proclaimed entities exist under their isolated ‘frozen’ status.

¹⁴ Human Rights Watch Arms Project and HRW Helsinki, ‘Georgia/Abkhazia: Violations of the law of war and Russia’s role in the conflict’, p.10.

¹⁵ International Republican Institute, *Public Opinion Survey, Residents of Moldova, March 2016*, p.4., http://www.iri.org/sites/default/files/wysiwyg/iri_poll_presentation-moldova-march_2016.pdf (accessed 2 June 2017).

¹⁶ *ibid.*, p. 50.

¹⁷ Nodia, *Europeanization and (not) Resolving Secessionist Conflicts*, p.11.

3. THE CASE OF ABKHAZIA, TRANSNISTRIA AND DONBASS – THE SURVIVAL OF THREE FROZEN CONFLICTS IN A VACUUM OF INTERNATIONAL RECOGNITION

3.1. BACKGROUND INFORMATION ON THE *DE FACTO* REPUBLIC OF ABKHAZIA

3.1.1. *HISTORICO-POLITICAL BACKGROUND ON ABKHAZIA AND ITS EFFECTS ON ETHNICAL DISTRIBUTION*

Abkhazia has been declared an autonomous principality under the protection of Russia already back in 1810. In 1864, it has been forcibly annexed to the Russian Empire, and in 1921 the Abkhazian Soviet Socialist Republic was established independently of Georgia, with its first Constitution dating 1925, and after 9 years, in 1930, it became an autonomous republic as part of Soviet Georgia.

Following the collapse of the Soviet Union, on 9 April 1991, Georgia declared its independence and alongside with a persistent economic depression, it was stalled in a sequence of civil wars and separatist conflicts backed by Russian Federation (Russia) – in Abkhazia and South Ossetia.

Abkhazia declared its independence in 1992, which brought it into a two-year old war with Georgia, leaving behind 10,000 to 15,000 deaths, at least 8,000 wounded, and more than 200,000 ethnic Georgians displaced.¹⁸ Abkhazia won its *de facto* independence in 1993, and in 1994 the UN, Russia and the OSCE signed a joint Declaration of the Political Settlement, in the presence of the UN Secretary-General, which set principles for the peaceful settlement of the conflict on the basis of equality between the parties. On July 27 1993 Sochi “Agreement on cease-fire in Abkhazia and on the control mechanism for its observation” has been signed, by the representative of Abkhazia, Georgia and the Russian Federation. As a result, a Joint Committee on the Regulation of the Situation in Abkhazia has been formed, peacekeeping forces have been invited in the conflict zone under the consultation of the UN Secretary-General and the Security Council, and a

¹⁸ Freedom in the World, *Abkhazia, Country Report 2013*, Freedom House, 2013, <https://freedomhouse.org/report/freedom-world/2013/abkhazia>, (accessed 3 June 2017).

successive demilitarization of the conflict zone has been agreed on.¹⁹

After the agreement, a “Memorandum of Understanding” has been signed in Geneva between Georgian and the Abkhaz sides, that gave start to negotiation rounds under the aegis of the UN, Russian Federation as facilitator and a representative of the CSCE, according to Security Council resolutions, aiming to maintain peace, exchange prisoners-of-war, solve the problem of the refugees and displaced persons, render humanitarian assistance, etc.²⁰

On 26 August 2008, a Georgian – Russian war started having on Russian side South Ossetia and Abkhazia. After invading Georgia in 2008, Russia started to control the separatist territories of Abkhazia and South Ossetia which occupy 20% of Georgian territories, and recognized their independence.²¹ Even if at the core of the war has stayed the secessionist South Ossetia, Russia was fuelling fires rather on the breakaway region of Abkhazia because of its strategical Black Sea shoreline. Regrettably, after the war in 2008, any dialogue between Sukhumi (capital of Abkhazia) and Tbilisi (capital of Georgia) on reconciliation has been discontinued.²²

During the war, lots of people from the villages under Georgian jurisdiction before August 2008 had to flee their homes, thus creating a new wave of internal displacements and migrations towards Georgia and Russia. This is one of the reason why ethnicity composition in Abkhazia dramatically changed after the wars, as it can be seen wrapped in the following graph, *Fig.1*:

¹⁹ *Agreement on cease-fire in Abkhazia and on the control mechanism for its observation*, text of Sochi agreement as signed on July 27, 1993, paragraph 5-6.

²⁰ *Memorandum of Understanding between the Georgian and the Abkhaz sides at the negotiations held in Geneva*, 15 December 1993.

²¹ United Nations Human Rights Council, *Report of the Special Rapporteur on violence against women, its causes and consequences on her mission to Georgia: comments by the State*, A/HRC/32/42/Add.6 (16 June 2016), p.2. Available from <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/123/52/PDF/G1612352.pdf?OpenElement>.

²² W. Górecki, ‘Abkhazia’s ‘creeping’ incorporation. The end of the experiment of a separatist democracy’, *Centre for Eastern Studies*, no. 164, 10.03.2015, p.5, www.osw.waw.pl, (accessed 7 July 2017).

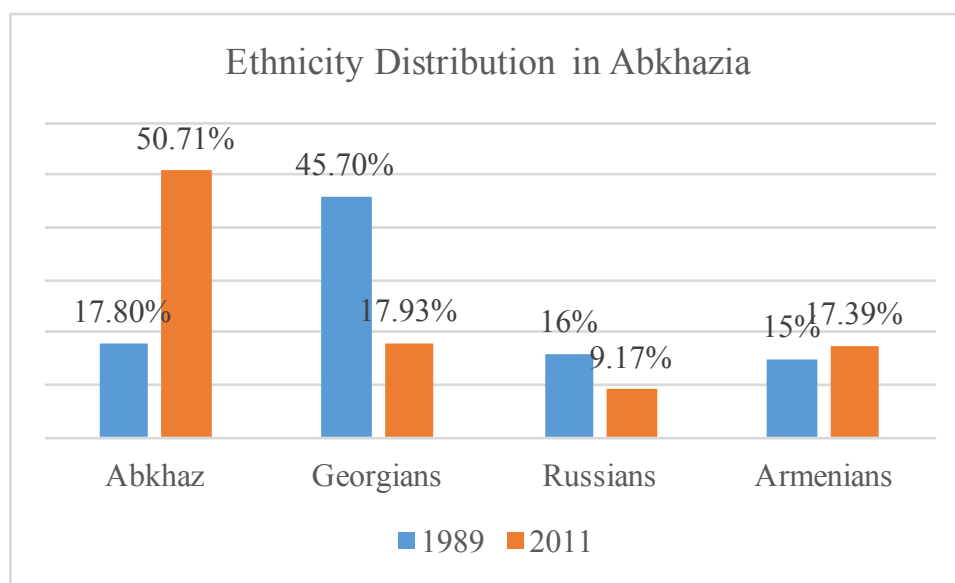


Fig. 1 A comparison of ethnical distribution *ante bellum* and *post bellum* in Abkhazia

The above chart is designed to show the comparison between ethnic composition before and after the wars in Abkhazia, which is relevant, bearing in mind the important role of ethnicity in all frozen conflicts and as root of ethno-political violence. It comprises ethnic distribution analysis data from 1989, before the conflict, and from 2011, after the two wars. Back in 1989, according to Soviet census, Abkhaz have constituted a minority of only 17,8% of the population in their self-proclaimed republic, with a majority of 45,7% Georgians.²³ After the Abkhaz – Georgian war in 1992 and Russian – Georgian war in 2002, the major change in ethnicity composition made out of ethnic Georgians a minority, and Abkhaz a majority. However, Armenians did not suffer any numerical drastic changes comparing it to the number of Russians living in Abkhazia, which shrank almost to half.²⁴ It shows clearly the influence of both wars on ethnicity changes and how wars can transform a majority into a minority with strong backup from Russia, and give rise to a separatist regime. The important issue of ethnicity has been, and still is at the ground-core of the situation of frozen conflict in Abkhazia, being used by Abkhazian

²³ Amnesty International, 'Georgia: Alleged Human Rights violations during the conflict in Abkhazia', *Amnesty International Report*, 30 June 1993, p.2, <https://www.amnesty.org/en/documents/eur56/007/1993/en/> (accessed 8 June 2017).

²⁴ Ministry of Foreign Affairs of the Republic of Abkhazia, *Abkhaz census 2011*, UNPO, 2011, <http://unpo.org/members/7854>, (accessed 9 June 2017).

politicians for their autocratic systems and not in last resort by Russia for its strategic-political influence inside this entity and by Georgia as a reason of stagnation of political settlement of the frozen conflict. However, beyond political interests of above mentioned “stakeholder” states, the issue of ethnicity poses huge problematics in respecting, protecting and fulfilling human rights in the enclave of Abkhazia, a topic elaborated in Chapter 4.

However, despite ethnicity clashes and historical developments, Georgia continues to insist that Abkhazia is an integral part of its territory, and at their turn, Abkhaz authorities consider they are entitled to exist independently as a “state” and create their *de facto* institutions, fully separated from Georgia.

3.1.2. *SUI JURIS* EXISTENCE OF ABKHAZIA

De jure, Abkhazia is part of Georgia. Georgia is divided into 12 provincial regions, and two autonomous republics – Adjara and Abkhazia.²⁵

De facto, after 1992-1993 events the new so-called Republic of Abkhazia set up its own state structures and organized free elections. The Constitution of the Republic of Abkhazia has been adopted on 26 November 1994, and has been approved by national voting on 3 October 1999. Their unrecognized Constitution sets that the Republic of Abkhazia (Apsny) is a sovereign and democratic state,²⁶ set under the right of people for self-determination, and functioning in accordance with law.²⁷

According to Article 4 of the Constitution of the self-proclaimed Republic of Abkhazia its territorial delimitation consists geographically of the following provinces: Sadz, Bzyp, Guma, Dal-Tsabal, Abzhywa, Samyrzakan which are the present day Gagra, Gudauta, Sukhum, Gulrypsh, Ochamchyra, Tkwardchal and Gal districts within which the cities of Gagra, Gudauta, New Afon, Sukhum, Ochamchyra, Tkwardchal and Gal are

²⁵ Nations in Transit, ‘Georgia’, *Country Report 2016*, Freedom House, 2016, <https://freedomhouse.org/report/nations-transit/2016/georgia> (accessed 9 June 2017) and Nations in Transit, ‘Georgia’, *Country Report 2017*, Freedom House, 2017, <https://freedomhouse.org/report/nations-transit/2017/georgia> (accessed 9 June 2017).

²⁶ *Constitution of The Republic of Abkhazia*, Art. 2. Available from: <http://www.kapba.de/Constitution.html>.

²⁷ *ibid.*, Art.1.

located.²⁸

The longest border line of Abkhazia is with Russia, and the smallest border line is with Georgia. One of the most important border lines constitutes the sea shore of Black Sea, which provides Abkhazia easier access to trade with Turkey and Russia by sea shipments. Considering the entity falls outside the jurisdiction of the central Georgian government, the entity's borders cannot be controlled by Georgia.

According to the latest 2017 data Abkhazia has 240.000 inhabitants,²⁹ the capital has been established the city of Sukhumi (Akwa),³⁰ and its official language is Abkhazian, along with Russian language as a functional language of official institutions. Significantly, based on their *de facto* Constitution provisions,³¹ all ethnic groups are guaranteed the right to use freely their own languages.

The 1999 Constitution established a presidential system. The President is also the Commander in Chief of the Armed Forces, holding the executive power and defining main directions of domestic and foreign policy, thus having an outstanding military role and political influence. He is elected only from ethnic Abkhaz for a term of 5 years. The self-proclaimed Republic of Abkhazia has its own *de facto* Parliament, Government and judicial power, exercised by *de facto* courts.

The Abkhazian Parliament is active in developing legislation, over 40 draft laws have been passed in 2015, on reforming elections laws, as well as the judiciary, media and banking system.³² As concerning the Government, authorities are unable to set and implement policies, being limited in practice by Moscow's influence and control.³³

Judicial power is on paper independent; however, rule of law is heavily undermined. Law enforcement agencies report the unwillingness of the local population to cooperate with police and prevent crimes, as people often prefer to solve their problems easier in an extra-judicial way or make use of telephone justice, meaning that those in leadership

²⁸ *ibid.*, Art. 4.

²⁹ Freedom in the World, 'Abkhazia', *Country Report 2017*, Freedom House, 2017, <https://freedomhouse.org/report/freedom-world/2017/abkhazia>, (accessed 5 June 2017).

³⁰ *Constitution of The Republic of Abkhazia*, Art. 10.

³¹ *Ibid.*, Art. 6.

³² Freedom in the World, 'Abkhazia', *Country Report 2016*, Freedom House, 2016, <https://freedomhouse.org/report/freedom-world/2016/abkhazia>, (accessed 6 June 2017).

³³ Freedom in the World, 'Abkhazia', *Country Report 2014*, Freedom House, 2014, <https://freedomhouse.org/report/freedom-world/2014/abkhazia>, (accessed 8 June 2017).

positions have the power to influence legal actions of the law enforcement bodies.³⁴ As the rule of law is weak, unsurprisingly it makes rather impossible to protect human rights of the local population living in Abkhazia.

Moreover, the entity is extensive corrupt,³⁵ Government officials are not obliged to provide income declarations. Even Russia's Audit Chamber accused Abkhaz authorities to have been misappropriating half of the aid funds allocated, lacking oversight, proper planning and lack of competitiveness in contracting practices.³⁶

In conclusion, it can be reiterated that Republic of Abkhazia set its own *de facto* institutions and structures, creating an illegal, autocratic and unrecognized entity inside of Georgia, to which *de jure* belongs to. Respectively, two questions arise implicitly – who is in reality recognizing Abkhazia's *sui juris* existence and how does it manage to survive as an enclave for more than 25 years?

3.1.3. *WHO RECOGNIZES THE SELF-PROCLAIMED REPUBLIC OF ABKHAZIA?*

The so-called Constitution of Abkhazia recognizes it as a state and a subject of international law.³⁷ However, nearly all international community continue to consider that *de jure* the territory of Abkhazia is an integral part of Georgia. Thus, Georgia is the only sovereign State under international law, nonetheless it is currently prevented from exercising its legitimate effective control over this entity.³⁸ Therefore, Abkhazia cannot enter in any international relations, sign any international treaty or be a State member of international organizations. Without international recognition it survives as an enclave inside Georgia's territory, unable to enter recognizable international relations of any kind, increasing its isolation with its *de facto* borders controls.

³⁴ L. Kvarchelia, 'Abkhazia, Issues of citizenship and security', *Centre for Humanitarian Programmes Report*, April 2014, p.18-19.

³⁵ Freedom in the World, 'Abkhazia', *Country Report 2016*.

³⁶ Freedom in the World, 'Abkhazia', *Country Report 2014*.

³⁷ *Constitution of The Republic of Abkhazia*, Art.3.

³⁸ Council of Europe Decision, 1255th meeting, *The Council of Europe and the conflict in Georgia* paragraph 3, (4 May 2016). Available from:

https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168064c4d6.

By the present day only Russia, Venezuela, Nicaragua, and the Pacific Island state of Nauru recognized Abkhazia's independence.³⁹ That also allowed Abkhazia to sign a number of bilateral agreements with Russian Federation and Republic of Nicaragua,⁴⁰ and set its own embassies in Moscow (Russia), Caracas (Venezuela), in the self-proclaimed Republic of South Ossetia.⁴¹ Another recognition Abkhazia has received is from other self-proclaimed entities, such as Transnistria and South Ossetia.

Most of international partners have not recognized Abkhazia's independence and stopped down their relations with the entity after Georgian-Russian war in 2008. However, Abkhaz local population consider that the lack of international recognition has led Abkhazia to a greater dependence on Russia, thus making it unable to diversify its economy.⁴² Notwithstanding the arguments, certain is that Abkhazia remains a frozen conflict without international recognition as a state, with big support from Russia Federation which calls for international recognition of this entity and that opens many doors to Abkhazia, confirmed by Russian-Abkhaz treaties which are explored in the next sub-chapter.

3.1.4. *RUSSIAN FEDERATION-ABKHAZ TREATY – AN OPEN DOOR FOR RUSSIA'S CONTROL OVER ABKHAZIA*

Along with South Ossetia, Abkhazia is considered a "Russia-backed" region,⁴³ that continues to exist outside of Tbilisi's power or direct influence. It keeps Georgia under tension and fear of a new war which can arise anytime. In recent 2016 there was little evidence of any progress to reintegration with Georgia, rather a deepening of Russian control over the region by ratifying the de facto Abkhazian-Russian treaty aimed to strengthen military and economic relations.

³⁹ Freedom in the World, 'Abkhazia', *Country Report 2015*, Freedom House 2015, <https://freedomhouse.org/report/freedom-world/2015/abkhazia>, (accessed 6 June 2017) and Freedom in the World, 'Abkhazia' *Country Report 2016*.

⁴⁰ Ministry of Foreign Affairs Republic of Abkhazia, *Agreements*, <http://mfaapsny.org/en/policy/agreements.php>, (accessed 8 June 2017).

⁴¹ Ministry of Foreign Affairs Republic of Abkhazia, *Councils*, <http://mfaapsny.org/en/policy/councils.php>, (accessed 8 June 2017).

⁴² Freedom in the World, 'Abkhazia', *Country Report 2014*.

⁴³ Nations in Transit, 'Georgia', *Country Report 2017*.

“Russian – Abkhaz treaty on alliance and strategic partnership” has been signed on 24 November 2014, restating the “traditional friendship”, “historical relations”, trust of Russian and Abkhaz people, and taking into account “new global and regional challenges threats”.⁴⁴ It aims predominantly to ensure security and stability in Caucasian region and to strengthen the “state sovereignties” of the Russian Federation and the Republic of Abkhazia, by guaranteeing their territorial integrities.⁴⁵

Their strategic partnership and alliance is defined in Art.3 of the treaty, as coordination of internal politics, creation of a common area for defence and security, creation of a common socio-economic area, assisting the Republic of Abkhazia in its socio-economic development, creating all the conditions to fully participation of Abkhazia in integration processes in the post-soviet region, which can be fulfilled at the initiative and (or) with the assistance of Russian Federation, securing territorial integrity and keeping the common cultural, religious and humanitarian areas. These provisions show clearly the recognition of Abkhazia as a “state” by Russia and its support.

They also agreed in Art. 5 and Art. 8 of the treaty to create a defence Joint Army Forces composed of Russian and Abkhazian armed forces which can be used in case of aggression, to reform Abkhaz military and provide new arming fully financed by Russian Federation.⁴⁶ Moreover, Art. 6 provides that if one treaty party undergoes aggression (armed assault) from any state or group of states, then it would be qualified as aggression (armed assault) against the other state party. If that is the case, the party will offer necessary help, including army, and also will support with its all resources to fulfil the right to collective defence. In real terms, this joint military force represents a unified Russian military base which is stationed on the territory of Abkhazia, and also put Abkhazian troops under full Russian control in case of potential threat or wartime. It also accentuates the preparedness of the parties for a prospective conflict.

Russia also sets common actions to protect the state borders of Republic of Abkhazia with Georgia, as well as seashore borders which belong to the countries’ sovereignty and

⁴⁴ Договор между Российской Федерацией и Республикой Абхазия о союзнчестве и стратегическом партнерстве, [Russian – Abkhaz treaty on alliance and strategic partnership]. Available from: <http://www.kavkaz-uzel.eu/articles/252910>.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

jurisdiction.

The treaty is translated in real terms as expansion of Russian influence, not by annexation, but rather as ‘associated territory’, a separatist entity which can be controlled by Moscow.⁴⁷ It radically reduces its ‘sovereignty’⁴⁸ and it has made the prospect of resolving the Abkhazian-Georgian conflict ever more distant. The treaty has been highly criticized both domestically and internationally.⁴⁹ Georgian Parliament considers it to be an attempt of annexation of Abkhazia by Russia,⁵⁰ and it calls international community to interfere and to call Russian Federation to “stop placing and remove barbed wire fences and other artificial obstacles and banners along the occupation line”.⁵¹ The agreement was also condemned by Western States, European Union, European Parliament, USA and NATO.⁵²

Apart from the treaty, Moscow is also funding a significant part of Abkhazia’s state budget, which made Abkhazia dependent on Russian subsidies.⁵³ Therefore, Abkhaz political elites became Moscow’s clients and are extremely influenced in developing and implementing policies.

In the Resolution on the Conflict in Abkhazia, adopted at the Twenty-Fifth Annual Session of the OSCE Parliamentary Assembly on July 2016, Russian Federation remains in breach of international law, disregarding the 2008 Ceasefire Agreement, by continuing its policy of creeping annexation and occupation of Abkhazia.⁵⁴

It can be concluded that Abkhazia’s existence is fully supported politically, economically and financially by Russia, thus pushing for an international recognition which none of the international community States or organizations are willing to offer.

⁴⁷ Górecki, *Centre for Eastern Studies*, p.1.

⁴⁸ *ibid.*, p.4.

⁴⁹ Freedom in the World, ‘Abkhazia’, *Country Report 2015*.

⁵⁰ Górecki, *Centre for Eastern Studies*, p.6.

⁵¹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, Government of Georgia, 2016, http://smr.gov.ge/Uploads/V1_69f1cb83.pdf, (accessed 12 June 2017).

⁵² Górecki, *Centre for Eastern Studies*, p.6.

⁵³ *ibid.*, p.2.

⁵⁴ OSCE Parliamentary Assembly Tbilisi, *Resolution on the Conflict in Georgia*, (July 2016), p. 24.

Available from: <http://www.oscepa.org/documents/all-documents/annual-sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>.

3.2. BACKGROUND INFORMATION ON THE *DE FACTO* TRANSNISTRIAN MOLDOVAN REPUBLIC

3.2.1. *HISTORY OF DE FACTO INDEPENDENCE OF TRANSNISTRIA*

The “Transnistrian Moldovan Republic” or short Transnistria, is a *de facto* entity on the left bank of the Nistru (Dniestr) river of the Republic of Moldova. Between 1924 and 1940 this strip of land was part of the Moldovan Autonomous Socialist Soviet Republic, which was created by Stalin on Ukrainian territory to underscore Soviet claims to Bessarabia, the territory between the Prut and the Nistru, which used to be the western part of the historical Moldovan Principality before it was annexed in 1812 under the name Bessarabia by Russia. In 1918 Bessarabia had declared independence from Russia and shortly thereafter joined Romania. In 1940 the Soviet Union annexed Bessarabia and created the MSSR by joining the central part of Bessarabia with the western part of the MASSR. This was the first time in history, that the territory left of Nistru was in the same administrative entity as the right bank. At the same time Transnistria was not a distinct territory within the MSSR and some of the districts within the MSSR extended on both sides of the river. Still, when the Peoples Front Movement with its pro-Romanian agenda gained ground in the MSSR towards the second half of the 1980s, Transnistria, due to its historical and socio-economic connections to Moscow proved to be a fertile ground for the development of a ‘reactive nationalism’ among the Russian-speaking population.⁵⁵ In August 1989 the Joint Union of Workers Collectives (OSTK) was formed out of several workers collectives from Transnistria. The OSTK became the core of the pro-Russian and pro-Soviet opposition to the Moldovan national movement. While it developed strong roots in the industrial centres on the left bank, but – with the notable exception of Bender - gained hardly support on the other side of the Nistru.⁵⁶

On 2 September 1990, Transnistria declared its independence from what was then still the Moldovan Socialist Soviet Republic establishing itself as “Transnistrian Moldovan Socialist Soviet Republic” within the Union of Socialist Soviet Republics (USSR). It was

⁵⁵ W. Crowther, ‘The Politics of Ethno-National Mobilisation: Nationalism and Reform in Soviet Moldavia’, *The Russian Review*, vol. 50, 1991, p. 183.

⁵⁶ International Crisis Group, ‘Moldova: No Quick Fix’, *Europe Report no. 147*, 12 August 2003, p.3, <http://old.crisisgroup.org/en/regions/europe/moldova.html>, (accessed 11 June 2017).

only after the disintegration of the USSR and the declaration of independence of the Republic of Moldova on 26 August 1991 that Transnistria claimed full independence through a referendum on 1 December 1991.⁵⁷ In the following weeks and months, the separatist movement slowly extended its grip from the Russian-dominated Transnistrian cities to the surrounding, Moldovan villages by surrounding and attacking several police stations still controlled by the central government in Chisinau. This “creeping putsch”⁵⁸ led to a step-by-step escalation,⁵⁹ which finally resulted in a civil war between March and June 1992 with a number of hot spots along the Nistru river and in particular in the city of Bender.

As documented in the ECtHR case *Ilaşcu and others v. Moldova and Russia* discussed further in this paper, as well as the body of available literature on the Transnistrian conflict,⁶⁰ Moscow played a key role in the development, consolidation and in particular the military strengthening of the separatists in Transnistria in this period. The assembly that declared Transnistrian independence in 1990 was protected by troops from the Soviet Ministry of the Interior⁶¹ and the ECtHR found that the conflict in 1991-92, ‘forces of the 14th Army stationed in Transnistria fought with and on behalf of the separatist forces within the territory and voluntarily transferred to them, or allowed to be seized by them, large quantities of armaments’ and that ‘throughout the conflict, the leaders of the Russian Federation provided political support to the Transnistrian separatists, inter alia, through their public declarations.’⁶²

The fighting between the central Moldovan government and the Transnistrian separatist ended with the official intervention of the 14th Army on 21 June 1992 which

⁵⁷ *ibid.*, p.2

⁵⁸ V. Socor, ‘Creeping Putsch in Eastern Moldova’, *RFE/RL Research Report*, 1992, pp. 8-13.

⁵⁹ CSCE Conflict Prevention Centre, ‘The Transdnistrian Conflict in Moldova: Origins and Main Issues’, CSCE, Vienna, 10 June 1994, <http://www.osce.org/moldova/42308?download=true> (accessed 15 June 2017).

⁶⁰ Case of *Ilaşcu and others v. Moldova and Russia*, European Court of Human Rights, (Application no. 48787/99), Judgment, Strasbourg, 8 July 2004. Available from: [http://hudoc.echr.coe.int/eng#{"itemid":\["001-61886"\]}](http://hudoc.echr.coe.int/eng#{) and C. Neukirch, ‘Russia and the OSCE- The Influence of Interested Third and Disinterested Fourth Parties on the Conflicts in Estonia and Moldova’, *Journal on Ethnopolitics and Minority Issues in Europe*, 2001. Available from: <http://www.ecmi.de/fileadmin/downloads/publications/JEMIE/2001/JEMIE07Neukirch11-07-01.pdf>, (accessed 15 May 2017).

⁶¹ S. Kaufman, ‘Spiraling to Ethnic war. Elites, Masses and Moscow in Moldova’s Civil War’, *International Security*, 21/2, 1996, pp.108-138.

⁶² *Ilaşcu and others v. Moldova and Russia*, p.131.

with 9,250 troops supported by large numbers of heavy equipment such as battle tanks, armoured combat vehicles and artillery represented an overwhelming military force for the Moldovan side. On 21 July the Presidents of the Russian Federation and Moldova, Boris Yeltsin and Mircea Snegur signed in Moscow in the presence of Transnistrian leader Igor Smirnov, a ceasefire agreement, which among others, stipulated the deployment of a trilateral peacekeeping force consisting of Russian, Moldovan and Transnistrian contingents.⁶³ Next to the newly introduced Russian peacekeeping contingent, the 14th army, reorganized in 1995 as Operational Group of the Russian Forces (OGRF) remained stationed in the region.

3.2.2. *RUSSIAN FEDERATION CONTROL – THE REASON OF TRANSNISTRIAN CONFLICT SETTLEMENT STAGNATION?*

In 1994 an agreement was signed between Russia and Moldova on the withdrawal of Russian Forces, however this treaty was never ratified. At the OSCE Istanbul Summit 1999, Russia committed itself in connection with the signing of the Adapted Treaty on Conventional Armed Forces in Europe (CFE II Treaty) to complete the withdrawal of the Russian forces from the territory of Moldova by the end of 2002⁶⁴. However, though the military strength of the OGRF was reduced over the years to around 1,200 troops and all heavy equipment such as tanks and heavy artillery were withdrawn or destroyed following the 1999 Istanbul agreement, Russia has vehemently opposed a full withdrawal of its forces prior to a political settlement of the conflict.

The continued presence of Russian military forces was from the beginning and has since remained an important psychological and military factor that helped to consolidate the de facto independence of the Transnistria.⁶⁵ The political support is evidenced among others by the positions taken by Russia in the framework of the Transnistrian settlement process or the frequent meetings by Transnistrian leaders with the Russian President,

⁶³ *Agreement on principles of a peaceful settlement of the armed conflict in the Transdnistriian region of the Republic of Moldova*. Available from: <http://www.stefanwolff.com/files/Russian-Moldovan-Ceasefire-Agreement.pdf>.

⁶⁴ *Istanbul Summit Declaration 1999*, OSCE. Available from: <http://www.osce.org/mc/39569?download=true>.

⁶⁵ Neukirch, *Journal on Ethnopolitics and Minority Issues in Europe*.

Prime Minister or Foreign Minister, while the economic support is demonstrated inter alia by the fact that Transnistria has continuously received gas deliveries from the state-owned company Gazprom without payment.⁶⁶ Russia has further provided direct budget support to the Transnistrian budget and has paid pensions to Transnistrian pensioners.

Political negotiations on the settlement of the Transnistrian conflict and the future status of Transnistria within Moldova have started right after the end of the armed conflict with the mediation of the Russian Federation, the OSCE⁶⁷ and Ukraine since 1995. The European Union and the United States joined these five-sided talks in 2005 as observers – resulting in the so-called 5+2 format. While these negotiations have led to a stabilization of the security situation and the adoption of political agreements such as the 1997 Moscow Memorandum as well as a series of Confidence Building Measures⁶⁸, a political settlement of the Transnistrian conflict seems 25 years later as distant – if not even more distant – than in 1992. In 2003, a bilateral Russian mediation effort by then Russian Presidential Advisor Dmitri Kozak brought both sides close to an agreement, however, the Moldovan President withdrew under internal as well as international pressure from the EU and the US in the last minute from the so-called Kozak Memorandum,⁶⁹ which was also not endorsed by OSCE as the proposed settlement solution would not have ensured a sustainable outcome and as provisions on the continued stationing of Russian troops had raised question marks among a number of OSCE participating States.

Under the political, economic and military protection of Russia, Transnistria has established and consolidated a full-fledged *de facto* state structure, including a Presidential government system, a Parliament, regional and local councils and government structures, a judiciary from first instance courts to a Supreme Court, a full-fledged law enforcement system with prosecutor, police (militia), secret service, prison system, national bank and banking system with its own currency, postal services etc. The Transnistrian legislation developed based on the legislation of the MSSR. Following the

⁶⁶ *Mozer v. the Republic of Moldova and Russia*, Judgment, European Court of Human Rights, p.10. Available from: http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf.

⁶⁷ until 1995: CSCE – Conference for Security and Co-operation in Europe.

⁶⁸ B. Aussedat, 'How can Confidence and Security be restored in Moldova', IFSH, *OSCE Yearbook 2009*, Baden/Baden, Nomos, 2010, pp. 191-199.

⁶⁹ W. Hill, *Russia, the near abroad and the west: lessons from the Moldova-Transnistria conflict*, Woodrow Wilson Center Press/Johns Hopkins University Press, Baltimore 2012, pp.149-159.

September 2006 referendum when an overwhelming majority voted to support the course of independence for the Transnistrian Moldovan Republic and subsequent free accession to the Russian Federation by Transnistria.⁷⁰ Transnistrian legislation became increasingly aligned to Russian laws, widening further and further the gap to the right bank which following the signing of the Association Agreement with the European Union in 2014 is aligning its legislation further to the European Union

Unlike Abkhazia and South Ossetia which were recognized as independent states by the Russian Federation in 2008, Transnistria's claim for independence has not been recognized by Russia. All the political, economic and military support by Russia for Transnistria notwithstanding has Russia recognized the territorial integrity and sovereignty of the Republic of Moldova multilaterally in the framework of the OSCE and bilaterally in the Russian-Moldovan Friendship Treaty of 2001.

3.3. BACKGROUND INFORMATION ON DONBASS REGION – *DE FACTO* LUHANSK PEOPLES' REPUBLIC AND DONETSK PEOPLES' REPUBLIC

3.3.1. *DONBASS – A HISTORICAL DISPUTABLE REGION WITH A SEPARATIST EFFECT*

The Donbass region of Ukraine comprises the oblasts of Luhansk and Donetsk in the eastern part of the country, bordering Russian Federation. The term Donbass has also been used to describe the entire coal-basin in the region, including Dnipropetrovsk to the Russian oblast of Rostov, however for the purpose of this study Donbass will refer strictly to Luhansk and Donetsk oblasts, LPR and DPR correspondingly. The area was settled by Cossacks in the 17th century and was under the control of the state of the Zaparochyian Cossacks and the Khanate of the Crimean Tartans until it was annexed by the Russian empire in the second half of the 18th century.⁷¹ Following the Russian civil war and the establishment of a Ukrainian Socialist Soviet Republic as part of the Soviet Union, Donbass became part of the Ukrainian SSR, and respectively part of Ukraine following

⁷⁰ C. Neukirch, 'From Confidence Building to Conflict Settlement in Moldova?', IFSSH, *OSCE Yearbook 2011*, Baden/Baden, Nomos, 2011, p.138.

⁷¹ H. Kuromiya, *Freedom and Terror in the Donbass: A Ukrainian-Russian Borderland 1870s-1990s*, Cambridge University Press, Cambridge, 1998, pp.11-13.

the dissolution of the Soviet Union.

Due to its large coal reserves, Donbass region was the industrial heart of Imperial Russia, the later the Soviet Union, and remained so for Ukraine. At the same time, it is the most Russified region of Ukraine following Crimea. Over 70% of the 7.4 million inhabitants regard Russian as their first language. While ethnic Ukrainians still make up the majority of the population (57% in Donetsk, 58% in Luhansk), most ethnic Ukrainians in the region consider Russian to be their mother tongue (59% in Donetsk, 49% in Luhansk).⁷² The question on whether the Donbass belongs historically to Russia or Ukraine has been an issue of dispute between Russian and Ukrainian nationalists for long.⁷³ Still, while Ukraine faced a crisis over Crimea in the 1990s, there has been no serious pro-Russian, separatist movement in Donbass similar to Crimea, Transnistria or even Narva in Estonia – until February 2014.

At the same time, Ukrainian election results have shown that this heavy-industry region with its Russian-speaking majority has always strongly supported pro-Russian parties and politicians. Both in the 2004 and 2010 Presidential elections Viktor Yanukovich won over 90% of the votes in both regions, while his Party of Regions polled between 65-75% there in 2006, 2007 and 2012 as compared to 30 – 34% nationwide.⁷⁴ However, with Ukraine – in contrast to Georgia or Moldova – being firmly linked to Russia, this pro-Russian sentiment did not lead to movements calling for a break-up with Kiev. Neither was there any need for Moscow to steer such a movement. Rather, politicians such as Viktor Yanukovich or oligarchs linked to the heavy industry of Donbass, such as Rinat Akhmetov, sought to shape politics in Kiev to their interest.

This worked until 21 February 2014. On 22 February 2014 President Yanukovich fled Kiev as result of the Maidan protests which started in Kiev on 21 November 2013 when President Yanukovich's cabinet put the signing of the Association Agreement with

⁷² State Statistics Service of Ukraine, *Ukrainian Census 2001*, <http://2001.ukrcensus.gov.ua/eng/regions/> (accessed 15 June 2017).

⁷³ A. Wilson, 'The Donbas between Ukraine and Russia: The Use of History in Political Disputes', *Journal of Contemporary History*, vol. 30, no. 2, April 1995, pp. 265-289, http://shron.chnyvo.org.ua/Andrew_Wilson/The_Donbas_between_Ukraine_and_Russia_The_Use_of_History_in_Political_Disputes_en.pdf, (accessed 12 June 2017).

⁷⁴ Election Resources on the Internet, *Presidential and Parliamentary Elections in Ukraine – Results Lookup, Donetsk*, 26 March 2006, <http://electionresources.org/ua/deputies.php?election=2006®ion=14>, (accessed 9 June 2017).

the European Union on hold and started to seek closer co-operation with Russia. The Maidan movement in Kiev and western Ukrainian cities grew constantly over the following weeks and ended in dramatic violence on 18-20 February 2014 when over 130 people were killed under unclear circumstances, most of them by sniper fire coming allegedly from Russian-trained Ukrainian special forces.⁷⁵ The escalation of violence prompted a mediation effort by the Foreign Ministers of Germany, France and Poland accompanied by a Russian special envoy which resulted in an agreement between Yanukovich and the opposition.⁷⁶ However, instead of initiating steps to implement the agreement, Yanukovich immediately fled Kiev and sought refuge in Russia.

Following the fall of Yanukovich and his Government and the immediate installation of a new, pro-European leadership in Kiev, tensions in Luhansk and Donetsk started to raise. However, the world's focus remained on Crimea, which following a referendum on 16 March 2014, has been annexed to the Russian Federation on 20 March 2014. As developments unfolded in Crimea, on 1 March 2014 a group of pro-Russian demonstrators seized the Regional Administration Building of Donetsk. Kiev-loyal forces took the building back five days later and arrested the self-declared governor of the so-called Donetsk People's Republic, but this did not stop the separatist movements in Donetsk and Luhansk. In the following weeks, pro-Russian demonstrators – at the beginning unarmed, but later more and more accompanied by masked men in camouflage uniforms and sophisticated weaponry, took over key installations in Donetsk, Luhansk and other cities of the two regions. On 11 May, “independence referendums” were organized both in Luhansk and Donetsk, however they were considered illegal by the central Government in Kiev, which already on 15 April 2014 had announced the start of an “anti-terror operation” and had deployed armed forces to Donetsk and Luhansk.⁷⁷ These events brought international community in finding a solution, described in next

⁷⁵ BBC, ‘Ukraine crisis – Timeline’, *BBC News*, 21 November 2014, <http://www.bbc.com/news/world-middle-east-26248275>, (accessed 14 June 2017).

⁷⁶ The Guardian, ‘Agreement on the Settlement of Crisis in Ukraine – full text’, *The Guardian*, 21 February 2014, <https://www.theguardian.com/world/2014/feb/21/agreement-on-the-settlement-of-crisis-in-ukraine-full-text>, (accessed 13 June 2017).

⁷⁷ International Criminal Court, The Office of the Prosecutor, *Report on Preliminary Examinations Activities 2016*, 14 November 2016, pp.33-42, https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf, (accessed 13 June 2017).

subchapter.

3.3.2. *INTERNATIONAL COMMUNITY INTERVENTION AND MINSK AGREEMENT*

The international community had watched developments in Eastern Ukraine with increasing concern since the end of February. On 21 March, the OSCE Permanent Council decided to deploy a Special Monitoring Mission to Ukraine, including with field offices in Donetsk and Luhansk.⁷⁸ On 17 April, Ukraine, Russia, the US and the EU issued in Geneva a Joint Statement agreeing ‘to end all violence, intimidation, or provocative actions’ and that deciding that all ‘illegal armed groups will be disarmed’.⁷⁹ However, the agreement was not observed and more and more building and entire cities such as Sloviansk came under the control of armed pro-Russian militia. At the same time, Russia built up massive military forces on its side of the border.⁸⁰

During July and August 2014, the Ukrainian forces succeed to push the armed groups back and drove them out from of several towns such as Sloviansk - their first stronghold. However, the military situation changed dramatically in late August, just as the Ukrainian forces had almost encircled the cities Donetsk and Luhansk. Faced with a strong counter attack and a sudden new front south at Novoazovsk, which threatened the strategically important black-sea port of Mariupol, the Ukrainian army was forced to retreat under heavy losses.⁸¹ On 3 September President Poroshenko has been faced with the danger of decisive military defeat and agreed with President Putin an immediate ceasefire, based on a seven-point plan proposed earlier by Putin and a peace plan proposed back on 20 June

⁷⁸ *Deployment of an OSCE Special Monitoring Mission to Ukraine – Decision No.1117*, OSCE Permanent Council, 21 March 2014. Available from: <http://www.osce.org/pc/116747?download=true>. and C. Neukirch, ‘The Special Monitoring Mission to Ukraine: Operational Challenges and New Horizons’, IFSH, *OSCE Yearbook 2014*, Baden-Baden, Nomos, 2015, pp. 183-197.

⁷⁹ *Joint Geneva Statement on Ukraine from 17 April 2014*. Available from: https://www.washingtonpost.com/world/joint-geneva-statement-on-ukraine-from-april-17-the-full-text/2014/04/17/89bd0ac2-c654-11e3-9f37-7ce307c56815_story.html?utm_term=.5c050926e053.

⁸⁰ S.L.Meyers and A.Smale, ‘Russian Troops Mass at Border with Ukraine’, *The New York Times*, 13 March 2014, <https://www.nytimes.com/2014/03/14/world/europe/ukraine.html>, <https://www.theguardian.com/world/2014/apr/10/satellite-images-russian-military-ukraine-border>, (accessed 20 June 2017).

⁸¹ C. Neukirch, *OSCE Yearbook 2014*, p. 193.

by himself.

On 5 September, the Trilateral Contact Group (TCG) established back in June 2014 on the initiative of the presidents of Ukraine, Russia, France and the German chancellor as a forum for negotiations between representatives of the OSCE Chairmanship⁸² Ukraine and Russia agreed in Minsk on joint steps for the implementation of these initiatives. The so-called Minsk Protocol,⁸³ complemented on 19 September by the additional Minsk Memorandum,⁸⁴ called, inter alia, for the immediate cessation of hostilities, the withdrawal of illegal armed formation and their military equipment from Ukrainian territory and the monitoring of the ceasefire and the Ukrainian-Russian state border by the OSCE. The Minsk agreements further called for the withdrawal of heavy weapons beyond defined withdrawal lines to further stabilise the ceasefire and called for the organisation of local elections, exchange of detainees, humanitarian assistance and economic rehabilitation.

However, as documented in the daily reports of the OSCE Special Monitoring Mission to Ukraine, the agreed ceasefire was never fully observed and both sides continued to use heavy weapons deployed in violations of the respective withdrawal areas. This led to intense diplomatic efforts, culminating in a so-called Normandy-format Summit of the presidents of Ukraine, Russia, France and the German Chancellor on 11-12 February in Minsk. As a result of the night-long high-level negotiations and the parallel efforts of the TCG, the Sides agreed to a Package of Measures for the Implementation of the Minsk Agreements,⁸⁵ reiterating the call for a ceasefire and withdrawal of heavy weapons while at the same time establishing a firmer basis for political dialogue and outlining a sequence for political steps to be taken to settle the conflict.⁸⁶

Since then, the front line between Ukrainian and separatist forces has remained stable.

⁸² H. Tagliavini, 'Mediation in Eastern Ukraine up to 23 June 2015', IFSH, *OSCE Yearbook 2015*, Baden-Baden, Nomos, 2016, pp.217-227.

⁸³ *Protocol on the results of consultations of the Trilateral Contact Group from 5 September 2014*, OSCE, 5 September 2014. Available from: <http://www.osce.org/home/123257>.

⁸⁴ *Memorandum of 19 September 2014*, OSCE, 19 September 2014. Available from: <http://www.osce.org/home/123806>.

⁸⁵ *Package of measures for the implementation of the Minsk agreements*, OSCE, 12 February 2015. Available from: <http://www.osce.org/cio/140156>.

⁸⁶ H., Tagliavini, *OSCE Yearbook 2015*, p.222.

However, there have been around 7,4 million people living in Donetsk and Luhansk before the armed conflict, and around 3 million people are estimated to still live in rebel held territories,⁸⁷ showing the great impact of the conflict on the population living in those areas, which have fled the war or have been killed. This led to the establishment of another two separatist regimes in the 21st Century Europe.

3.3.3. RUSSIAN FEDERATION INVOLVEMENT IN DONBASS

Notwithstanding the continued high-level involvements of the leaders, there has been no major breakthrough in the political settlement of the conflict. The OSCE Special Monitoring Mission (SMM) has recorded frequent violations through artillery, presence of sophisticated Russian-made weaponry⁸⁸ and shelling of Ukrainian positions from Russian territory in summer 2014⁸⁹, suggesting that the Russian Federation has been and remains directly involved in military operations in Eastern Ukraine. While Russia has denied direct military involvement in Donbass and has argued that the conflict in eastern Ukraine is an internal matter between Kiev and Russian-speaking population of Donetsk and Luhansk, there are ample reports and evidence of direct and continued Russian military involvement. At the end of 2016 an estimation of 6,000 Russian troops remained stationed in the separatist territories.⁹⁰

Beyond the military support, Moscow has always expressed political and material

⁸⁷ A.E. Kramer, 'Nowhere to Run in Eastern Ukraine', *The New York Times*, 13 November 2014, https://www.nytimes.com/2014/11/14/world/europe/nowhere-to-run-in-eastern-ukraine-.html?_r=0, (accessed 18 June 2017), and State Statistics Committee of Ukraine, *All-Ukrainian Population Census 2001, Luhansk region*, http://2001.ukrcensus.gov.ua/eng/regions/reg_luhan/, (accessed 2 July 2017) and State Statistics Committee of Ukraine, *All-Ukrainian Population Census 2001, Donetsk region*, http://2001.ukrcensus.gov.ua/eng/regions/reg_don/, (accessed 2 July 2017).

⁸⁸ OSCE Special Monitoring Mission, 'Latest from the OSCE SMM based on information received as of 27 September 2015', *Latest Report*, Kyiv, 28 September 2015, <http://www.osce.org/ukraine-smm/186276>, (accessed 11 July 2017) and OSCE Special Monitoring Mission, 'Latest from the OSCE SMM based on information received as of 19:30, 19 January 2017', *Latest Report*, Kyiv, 20 January 2017, <http://www.osce.org/ukraine-smm/2948566>, (accessed 11 July 2017).

⁸⁹ S. Case, 'Putin's undeclared war: Summer 2014 – Russian artillery strikes against Ukraine', *Bellingcat, The Home of Online Investigations*, 21 December 2016, <https://www.bellingcat.com/news/uk-and-europe/2016/12/21/russian-artillery-strikes-against-ukraine/>, (accessed 14 July 2017).

⁹⁰ International Crisis Group, 'Ukraine: Military Deadlock, Political Crisis', *ICG Briefing*, no.85, 19 December 2016. Available from: <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/b85-ukraine-military-deadlock-political-crisis>.

support for the two “Peoples’ Republics”. Up to 25 May 2017, Russia has sent 65 humanitarian convoys to the Donbass.⁹¹ Since 2015, Russia has also started to pay for pension, social benefits and salaries of local *de facto* officials and armed groups – costs which are estimated to run up to 1 billion US Dollars annually.⁹² In addition, Gazprom has supplied “DPR” and “LPR” with over 5.6 billion cubic meters gas since early 2015,⁹³ and electric power is likewise delivered from Russia since Ukraine cut the power delivery in spring 2017. On 18 February 2017, Russian President Putin decreed that inhabitants of certain areas of the Donetsk and Luhansk oblasts can enter Russia on the basis of locally issued identity documents,⁹⁴ in practice recognising DPR and LPR passports. Moreover, the Russian ruble has become the official currency in the separatist territories.

Thus, while the Russian support for DPR and LPR is evident, the degree of effective influence and control Moscow has over the leadership of both republics is more difficult to judge. Given the dependence of both territories on Russian military, material, financial and political support, it would be credible that Russia *de facto* controls these territories. At the beginning of the conflict, mercenaries with strong links to Russian security structures such as the (former) FSB officer Igor Girkin, alias Strelkov,⁹⁵ or the former head of the Transnistrian Security Service, Vladimir Antyufeev,⁹⁶ held key positions in the separatist areas. While the current leaderships of both DPR and LPR originate from the region, and not always seem to co-ordinate their steps with Moscow and with each

⁹¹ OSCE Observer Mission, ‘63rd Russian Convoy of 16 vehicles crossed into Ukraine, Kamensk – Shakhtinskiy, Russian Federation’, *Spot Report*, OSCE, 25 May 2017, <http://www.osce.org/observer-mission-at-russian-checkpoints-gukovo-and-donetsk/319606>, (accessed 16 July 2017).

⁹² International Crisis Group, ‘Russia and the Separatists in Eastern Ukraine’, *ICG Briefing*, no. 79, 15 February 2016. Available from: <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/russia-and-separatists-eastern-ukraine>.

⁹³ UAWIRE, ‘Russian Gazprom supplied 5,6 billion cubic meters of gas to separatists in eastern Ukraine’, *UAWIRE*, 1 July 2017, <http://uawire.org/news/russian-gazprom-supplied-5-6-billion-cubic-meters-of-gas-to-separatists-in-the-east-of-ukraine>, (accessed 1 July 2017).

⁹⁴ Указ о признании документов, выданных гражданам Украины и лицам без гражданства, проживающим на территориях отдельных районов Донецкой и Луганской областей Украины, [Decree on document recognition, issued to Ukrainian citizens and persons without citizenship, residing on the territories of Donetsk and Luhansk region of Ukraine], Russian Presidency, 18 February 2017, <http://kremlin.ru/events/president/news/53895>.

⁹⁵ G. Mezzofiore, ‘Igor Strelkov admits Russia FSB affiliation in Kremlin – censored interview’, *International Business Times*, 2 December 2014, <http://www.ibtimes.co.uk/igor-strelkov-admits-russia-fsb-affiliation-kremlin-censored-interview-1477713>, (accessed 21 May 2017).

⁹⁶ P. Mc Geough, ‘Vladimir Antyufeev: the man who decides who can access the MH 17 crash site’, *Sydney Morning Herald*, 2 August 2014, <http://www.smh.com.au/world/vladimir-antyufeev-the-man-who-decides-who-can-access-the-mh17-crash-site-20140801-zzp33.html>, (accessed 22 May 2017).

other, there is no record of any attempts from the leaders in Donetsk or Luhansk to emancipate themselves from Moscow. On 18 July 2017, DPR leader Alexander Zakharchenko announced the creation of “Little Russia” to underline a claim towards the entire Ukraine, with the exception of its western territories. While the initiative met with a cold response from official Moscow and was not welcomed by LPR leadership,⁹⁷ this does not mean that the initiative was not in Russian interest.

The latest episode on “Little Russia” underlines that Russia continues to treat the Donbass similar to Transnistria as compared to Abkhazia or Crimea. Russia has so far neither recognised DPR or LPR as independent states, nor has it undertaken any steps towards the formal annexation of those territories. Instead, Moscow describes both self-proclaimed republics in official documents formally as “certain areas of Donetsk and Luhansk regions” of Ukraine in line with the language used in the Minsk agreements.

While *de facto* under Russian control, DPR and LPR remain – even from the official Russian point of view - *de jure* part of Ukraine, and most probably following the path of a *frozen conflict*. As with Abkhazia and Transnistria, the peace process on Eastern Ukraine is effectively ‘frozen’ and the *de facto* authorities in Luhansk and Donetsk are able to consolidate their position under Russian protection. Whether Minsk Agreements will bring any solutions in the future or not, the situation of human rights in these regions remains precarious.⁹⁸

4. HUMAN RIGHTS VIOLATIONS IN THE SELF-PROCLAIMED ENTITIES OF ABKHAZIA, TRANSNISTRIA, DONETSK AND LUHANSK

4.1. OVERALL HUMAN RIGHTS SITUATION ASSESSMENT IN ABKHAZIA, TRANSNISTRIA, DONETSK AND LUHANSK

There is little official information on the human rights and humanitarian situation in Abkhazia, Transnistria and Donbass due to limited access to these regions, however

⁹⁷ G. Lechner, ‘Der Staat, den niemand will’, [The State which no one wants], *Wiener Zeitung*, 18 July 2017, http://www.wienerzeitung.at/nachrichten/europa/europastaaten/905485_Der-Staat-den-niemand-will.html, (accessed 19 July 2017).

⁹⁸ N. Schenkan, ‘Every Nation for Itself: What Trump’s Victory Could Mean for Europe and Eurasia’, *Freedom House Blog*, [web blog], 10 November 2016, <https://freedomhouse.org/blog/every-nation-itself-what-trump-s-victory-could-mean-europe-and-eurasia>, (accessed 17 June 2017).

allegations of human rights abuses persist and are reported, despite of encountered difficulties.

The reliability of human rights assessment in self-proclaimed entities is very shaky due to the difficulties imposed by de facto border controls, autocratic existent regimes, lack of access for international human rights monitoring mechanisms, and the isolating character of these regions. However, for a more objective assessment of the overall human rights situation in self-proclaimed entities, it is important to have a look at the existing de facto fundamental laws regulating human rights adopted in these entities and compare them to the international human rights situation indicators put at disposal by internationally recognized human rights protection organizations.

In the case of Abkhazia, Chapter Two of the Abkhazian de-facto Constitution is extensively dedicated to human rights and freedoms of a citizen, stating that Abkhazia recognizes and guarantees the rights proclaimed in the Universal Declaration of Human Rights (UDHR), the International Covenants on Civil, Political, Economic, Social, and Cultural rights (ICCPR and ICESCR), as well as other universally recognized international legal instruments.⁹⁹

The Constitution also guarantees equality before the law, presumption of innocence,¹⁰⁰ non-discrimination,¹⁰¹ right to life,¹⁰² freedom of speech and belief,¹⁰³ prohibition of torture, violence or other cruel or degrading treatment or punishment,¹⁰⁴ freedom of movement,¹⁰⁵ right to education,¹⁰⁶ and “state” and judicial protection of these rights and freedoms to everyone.¹⁰⁷ On the territory of Abkhazia, the limitations to human rights and freedoms can be introduced only by their own constitutional laws ‘whenever this might be necessary’, in order to protect constitutional system, security, public order, health and morality, as well as in the state of emergencies,

⁹⁹ *Constitution of The Republic of Abkhazia*, Art. 11.

¹⁰⁰ *ibid.*, Art.22.

¹⁰¹ *ibid.*, Art.12.

¹⁰² *ibid.*, Art.13.

¹⁰³ *ibid.*, Art.14.

¹⁰⁴ *ibid.*, Art.15.

¹⁰⁵ *ibid.*, Art.16.

¹⁰⁶ *ibid.*, Art.19.

¹⁰⁷ *ibid.*, Art.21.

time of natural disasters, or martial law.¹⁰⁸

In Transnistria, the situation is very much alike. Its *de facto* Constitution of Transnistrian Moldovan Republic (TMR) adopted on 24 December 1995 and amended in 2000, sets in Section Two the “rights and freedoms, responsibilities and guarantees of people and citizens”,¹⁰⁹ however, in comparison to Abkhazia, it does not make references to any international human rights conventions, other than stating that they should not derogate from other universally recognized rights and freedoms.¹¹⁰

It states *de facto* entity’s responsibility to protect its citizens, ensures “equality before the law”,¹¹¹ guarantees the “right to life”, however setting a capital punishment for committing grave crimes.¹¹² The capital punishment provision is abolished by a 1999 decree establishing a moratorium on death penalty, referring to the recommendations of Council of Europe Parliamentary Assembly. However, death penalty exists still in Art. 58 of the Transnistrian Criminal Code, granting the possibility to be changed to life sentencing, and in practice being confirmed by the case from 2003 when the citizen F. Negru has been sentenced to death.¹¹³

The *de facto* Constitution also guarantees the right to liberty and security,¹¹⁴ prohibition of torture, cruel, inhuman or degrading treatment,¹¹⁵ freedom of movement and residence and the right to leave it and come back unimpededly”,¹¹⁶ freedom of thought, speech and opinion,¹¹⁷ freedom from censorship for media,¹¹⁸ right to vote,¹¹⁹ right and access to education,¹²⁰ and interestingly, the right to ethnicity, the use of mother tongue and freedom to choose the language of communication.¹²¹ Transnistria also

¹⁰⁸ *ibid.*, Art.35.

¹⁰⁹ *Constitution of Transnistrian Moldovan Republic*. Available from: <http://mfa-pmr.org/en/bht>.

¹¹⁰ *ibid.*, Art.45.

¹¹¹ *ibid.*, Art.17.

¹¹² *ibid.*, Art.19.

¹¹³ Promo-Lex, *On death penalties in the Transnistrian region*, [Press Release], 13 June 2015, <https://promolex.md/2398-despre-pedeapsa-cu-moartea-in-regiunea-transnistreana/?lang=en> (accessed 20 June 2017).

¹¹⁴ *Constitution of Transnistrian Moldovan Republic*, Art.20.

¹¹⁵ *ibid.*, Art.21.

¹¹⁶ *ibid.*, Art.25.

¹¹⁷ *ibid.*, Art.27.

¹¹⁸ *ibid.*, Art.28.

¹¹⁹ *ibid.*, Art.31.

¹²⁰ *ibid.*, Art.41.

¹²¹ *ibid.*, Art.43.

pledges to unilaterally respect international human rights instruments, such as ICCPR, ICESCR, European Convention on Human Rights (ECHR) and the Convention on the Rights of the Child. However, a big part of local population is not even aware of human rights provisions set, as there is no human rights awareness and public information in the entity.

In the Ukrainian Donbass region, the Constitutions of the two self-proclaimed entities are relatively young, dating 18 May 2014 for Temporary Fundamental Law (Constitution) of LPR,¹²² and 14 May 2014 for Constitution of DPR,¹²³ however it has to be noted that Donetsk News Agency reported 18 July 2017 that LPR and DPR are drawing up a common Constitution together as they would form a common entity together called “Malorossiia” which in translation means “The small Russia”.¹²⁴

The de facto Constitutions of LDR and DPR are both providing in Chapter Two, the protection of human rights and freedoms of persons and citizens, according to internationally recognized principles and norms, alongside with their own constitutions. They provide equality before law, right to life, freedom from torture, ill-treatment and inhuman degrading treatment, prohibition of arbitrary arrest for more than 48 hours without a court decision, the right to speak and education in mother tongue, freedom of movement as well as choosing their domicile place, freedom of speech and media and prohibition of censorship, right and access to healthcare, etc.¹²⁵

All the constitutions analysed above have taken basic human rights into consideration while adopting their fundamental laws, and they do include references to international accepted human rights norms, however no matter how they proclaim to abide to international human rights standards, their fundamental laws are not respected in reality, and all of them present inconsistencies and vague language, in particular while referring

¹²² *Vremenyi osnovnoy zakon (Konstitutsiya) Luganskoy Narodnoy Respubliki*, [Temporary fundamental law (Constitution) of Luhansk Peoples' Republic]. Available from: <https://glava-lnr.su/content/konstituciya>.

¹²³ *Konstitutsiya Donetskoy Narodnoy Respubliki*, [Constitution of Donetsk Peoples' Republic], Available from: <http://dnr-online.ru/konstituciya-dnr/> and *Temporary fundamental law (Constitution) of Luhansk Peoples' Republic*.

¹²⁴ ‘Separatists in east Ukraine proclaim new state “Malorossiia”’, *The Irish Times*, 18 July 2017, <https://www.irishtimes.com/news/world/europe/separatists-in-east-ukraine-proclaim-new-state-malorossiia-1.3158718>, (accessed 18 July 2017).

¹²⁵ *Konstitutsiya Donetskoy Narodnoy Respubliki* and *Vremenyi osnovnoy zakon (Konstitutsiya) Luganskoy Narodnoy Respubliki*.

to limitations which are contradictory to international standards. In reality, they do not recognize the supremacy of the latter ones and function according to their local internal de facto laws. Moreover, there is one striking obligation which is provided in all of them, the supreme duty and obligation of their citizens to protect their entities, which emphasizes how important is the military aspect in these areas and how easily the human rights can be undermined under certain provisions.

Although their internal legislation is aiming to regulate human rights according to “international standards”, offering the broad spectrum of civil, political, economic, social and cultural rights, the indicators and charts developed by international human rights NGOs are showing and confirming the clear “black hole” in the field of human rights situation, an outstanding discrepancy between what is declarative and what is actually occurring in these regions.

Abkhazia and Transnistria country reports are provided on an early basis by Freedom in the World, offering overviews on human rights status in the entities, however there are no reports available for Donbass region of Ukraine, apart from general indicators for entire Ukraine.

This might be reasoned by poor access to the separatist regions of LPR and DPR due to the ongoing conflict situation. While analysing the data included in the reports during 2013 – 2017, the Freedom Status of Abkhazia is constantly “Partly Free”, meaning that the situation in the region is still tense, with an overall inert Freedom Rating of 4.5 (where 1 represents high level democratic progress to 7 - least democratic),¹²⁶ as shown in the chart below, *Fig.2*:

¹²⁶ Freedom in the World, *Table of Country Scores 2017*, Freedom House, <https://freedomhouse.org/report/fiw-2017-table-country-scores>, (accessed 20 June 2017).

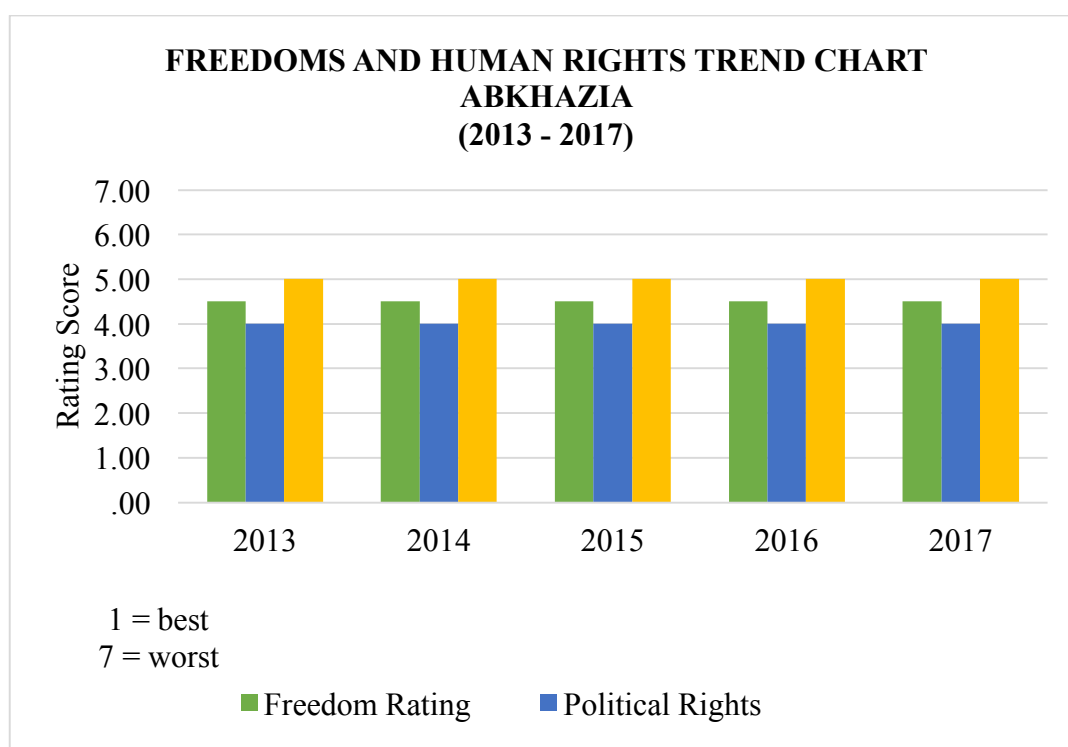


Fig.2 Freedoms and human rights rating scores in Abkhazia between 2013 and 2017

The chart above offers a yearly based overview of human rights situation in Abkhazia, collected from Freedom in the World Reports on Abkhazia (2013-2017).¹²⁷ At a thorough look at the rating scores of civil and political rights, as well as freedom rating, one can easily see that the human rights situation is poor. Abkhazia scores overall poorly in what concerns human rights, marking 4.0 for Political Rights, more specifically at electoral process, political pluralism and participation and functioning of Government. It scores even worse at civil liberties, meaning freedom of expression and belief, associational and organizational rights, rule of law, personal autonomy and individual rights - with 5.0. Even if the year 2012 to 2013 increased the political rights score from 5 to 4, due to competitive parliamentary elections that allowed independent candidates, between 2013 to 2017 there is a clear stagnation, with nor progression, neither regression in the human rights situations.

¹²⁷ Freedom in the World, 'Abkhazia', *Country Report 2013*, Freedom in the World, 'Abkhazia', *Country Report 2014*, Freedom in the World, 'Abkhazia', *Country Report 2015*, Freedom in the World, 'Abkhazia', *Country Report 2016* and Freedom in the World, 'Abkhazia', *Country Report 2017*.

Having a look to the indicators for Transnistria in *Fig.3* provided below, the situation looks much worse than in Abkhazia:

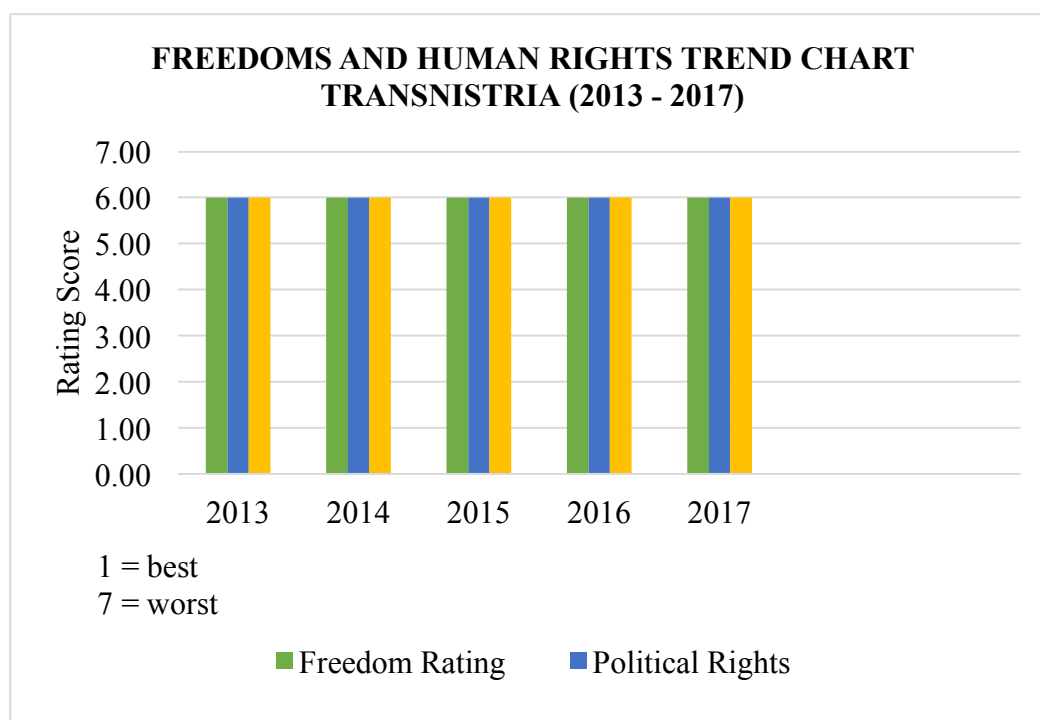


Fig.3 Freedoms and human rights rating scores in Transnistria between 2013 and 2017

During the last 5 years Transnistria's status is "Not Free", according to Freedom in the World Reports on Transnistria (2013-2017), scoring 6 out of 7 (almost the worst rating) for all three indicators: freedom rating, political rights and civil liberties.¹²⁸ Tension relations between Moldova and Transnistria in 2015, accelerated by Moldova pursuing closer ties with the European Union (EU) and following Russia's 2014 invasion on Ukraine has had a clear impact on lack of improvement of human rights situation.

Apart from poor indicators in Transnistria, there is one common feature to the situation in Abkhazia, that there is a clear status of stagnation in human rights situation, with nor progression, neither regression. This can be interpreted from two different opposite perspectives. It can either mean that the situation is more or less stable in the

¹²⁸ Freedom in the World, 'Transnistria', *Country Report 2013*, Freedom in the World, 'Transnistria', *Country Report 2014*, Freedom in the World, 'Transnistria', *Country Report 2015*, Freedom in the World, 'Transnistria', *Country Report 2016*, and Freedom in the World, 'Transnistria', *Country Report 2017*.

region, without any kind of developments, neither positive, nor negative, which emphasizes the “frozen” character of the area. Or, it can also be interpreted as a “black hole” of human rights monitoring mechanisms present, considering that no one has access to information of de facto situation in the secessionist area, thus being unable to provide updated and accurate information on the human rights situation. Either way or the other this is clearly not a positive development of human right situation, rather a “frozen” characteristic of this area, completely separated from international human rights standards and principles.

As previously stated, there are no assessment or indicators for Luhansk and Donetsk regions, however taking into account the precarious and conflict affected character of the area the situation of human rights is precarious as well, as it will be described more detailed in Chapter 4.2. of the paper.

It can be concluded that even if people in Abkhazia, Transnistria and Donbass regions have been guaranteed by their *de facto* constitutions rights and liberties, they are extremely isolated from the democratic world, and the indicators above confirm that they still live under high risk of human rights abuses, and proven by data and facts on violations in the next sub-chapter. This reiterates the need of serious follow-up of unilateral declarations of self-proclaimed entities to fully respect international human rights treaties, reviewing the inconsistent *de facto* legislations according to international law and ensuring the international rules and norms are applied in practice.

4.2. THE FUNDAMENTAL RIGHT TO LIFE – A BIG CHALLENGE IN SELF-PROCLAIMED ENTITIES

4.2.1. *UNLAWFUL KILLINGS IN SELF-PROCLAIMED ENTITIES*

As confrontational military conflict over Abkhazia and Transnistria ceased to exist, there are no systematic cases of unlawful killings registered, however sporadic cases still occur. On the opposite, LPR and DPR is in the middle of unlawful killings, as the armed conflict was recent, with occasional outbursts.

In Abkhazia, a Georgian citizen was killed allegedly by Abkhaz border guards on 19 May 2016 at the Khurcha-Nabakevi crossing point on the Administrative Boundary Line.

Even if Georgian authorities have launched criminal prosecution, it is impossible to deliver justice, as the perpetrator and his accomplices have fled to Abkhazia immediately after shooting, without being punished. In this case Russian Federation declared that it has no connection to the act of murder and Abkhaz authorities linked their inability to their status and nonexistence of relevant legislative framework.¹²⁹ The lack of personal liability after committing such a grave crime is outstanding.

Exactly the same pattern of lacking justice can be portrayed in Transnistria. A good example is the unlawful killing of Vadim Pisari, which took place on January 2012, when a Russian peacekeeper shot him dead in the back as he refused to stop his car at the peacekeeping post, near Vadul-lui-Vodă checkpoint. The peacekeeper has been transferred to Russia before investigation completion and at the end of 2012 he was found not guilty by the Russian Military Court. In the same time, Moldovan authorities have suspended the investigation as Russian authorities refused to cooperate.¹³⁰ However, the case reached the European Court of Human Rights (ECtHR), and in April 2015 the ECtHR held the Russian Federation accountable for its soldier's unjustifiable decision to shoot and the state's procedural problems to investigate the case. However, it has to be noted that Russia has not yet fulfilled its pecuniary obligation.¹³¹ Promo-Lex, which is a Moldovan-based NGO promoting and defending human rights in Transnistrian region, has reported that the above case is not singular, and Joint Control Commission's registers could confirm, however there is no open access to these data and many killing allegations are based on unofficial sources.¹³² Despite the fact, the country is relatively small, and allegations are very often proven to be real cases, though at late stages discovered due to prohibited spreading of information or fear to speak out in an autocratic regime.

In both entities cases of killings are reported at crossing points, without clear

¹²⁹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, pp.7 – 9.

¹³⁰ United States Department of State, 'Moldova 2013', *Country Reports on Human Rights Practices*, Diplomacy in Action, 27 February 2014, <https://www.state.gov/j/drl/rls/hrrpt/2013/eur/220308.htm>, (accessed 29 June 2017).

¹³¹ *Pisari v. the Republic of Moldova and Russia*, European Court of Human Rights. Available from: [http://hudoc.echr.coe.int/eng?i=001-153925#{"itemid":\["001-153925"\]}](http://hudoc.echr.coe.int/eng?i=001-153925#{).

¹³² Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, Chisinau, Promo-Lex, 2014, p.20., https://promolex.md/old/upload/publications/en/doc_1395657140.pdf, (accessed 1 July 2017).

subordination to the de facto self-proclaimed authorities or Russian Federation, however both cases are showing a gap of control of the actions of the guards appointed at the self-protective border controls.

The situation of unlawful killings in Donbass is much more problematic, due to the armed conflict character persisting in the region. Amnesty International has identified many cases of summary killings in 2014 and 2015, most of the cases have been documented on sufficient information, some with video footages and documentary evidences. There have been at least 13 pro-Kyiv captives to have been summarily killed while in the custody of separatist militia, battalions or separatist fighting units in Donetsk.¹³³ However, apart from summary killings, the Office of High Commissioner for Human Rights (OHCHR) recorded from 14 April 2014 to 15 May 2017 10,090 people killed in relation to the conflict, including 2,777 civilians.¹³⁴ As pointed out by the OSCE SMM, as well as the UN Special Rapporteur on extrajudicial, summary or arbitrary executions in his report following his 2015 visit, indiscriminate shelling and the positioning of military positions and equipment in civilian areas are a matter of concern when it comes to the killing of civilians.¹³⁵ Ukrainian Helsinki Human Rights reported slightly different statistics, 2,300 cases of civilians killings by 1 February 2017.¹³⁶ However, as the situation is tense in Donbass region, it is impossible to get exact data on the number, based on the data available the number of killings is still very high.

Additional to these numbers, on 17 July 2014, 298 civilians, out of which 80 children,

¹³³ Amnesty International, 'Summary Killings during the Conflict in Eastern Ukraine', *Amnesty International Publications*, 2014, pp.8-11, <https://www.amnesty.org/en/documents/EUR50/042/2014/en/>, (accessed 18 June 2017), and Amnesty International, 'Ukraine: Breaking bodies, torture and summary killings in Eastern Ukraine', *Amnesty International Publications*, 2015, pp.16 – 20, <https://www.amnesty.org/download/Documents/EUR5016832015ENGLISH.pdf>, (accessed 28 June 2017).

¹³⁴ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine 16 February to 15 May 2017*, OHCHR, 2017, p.2, http://www.ohchr.org/Documents/Countries/UA/UAReport18th_EN.pdf, (accessed 3 July 2017).

¹³⁵ United Nations Human Rights Council, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions - Mission to Ukraine*, A/HRC/32/39/Add.1), 4 May 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/43/PDF/G1609143.pdf?OpenElement> (accessed 25 June 2017), and OSCE Special Monitoring Mission, *Thematic Report: Hardship for conflict affected civilians in eastern Ukraine*, February 2017, <http://www.osce.org/ukraine-smm/300276?download=true>, (accessed 25 June 2017).

¹³⁶ Ukrainian Helsinki Human Rights Union, *Human Rights situation in Donbas*, Kyiv 2017, p.2, https://helsinki.org.ua/wp-content/uploads/2017/04/booklet_ENG1.pdf, (accessed 30 June 2017).

were killed when Malaysian Airline flight MH17, which was shot down by a BUK 332 surface-to-air missile fired from separatist controlled territory of DPR,¹³⁷ position confirmed by the Office of the Prosecutor (OTP) of the International Criminal Court in its Preliminary examination report on Eastern Ukraine.

In conclusion, cases of illegal killings take place in Abkhazia, Transnistria, Luhansk and Donetsk violating Art.3 of the UDHR, and the right to life in Art. 2 paragraph 1 of the ECHR which states that “everyone’s right to life shall be protected by law” and that it is an “inalienable attribute of human beings and forms the supreme value in the hierarchy of human rights”.¹³⁸ Art.15 of ECHR points out clearly that no derogations from Art.2 are possible “except of deaths resulting from lawful acts of war”¹³⁹ and when it is “absolutely necessary”.¹⁴⁰ Moreover, referring to the situation of armed conflict like in the case of Donbass, there have to be arrangements made to evacuate civilians by creating safe escape routes and civilians in an area of conflict, and exercise use of lethal force with “extreme caution”.¹⁴¹ Any exceptional situations like the state or threat of war, internal political instability, internal armed conflict, may not be invoked as justification of extra-legal, arbitrary and summary execution. No matter if these violations are done by a state or a non-state actor, persons held by any armed conflict party are protected under international human rights and international humanitarian law.¹⁴² The killings in these entities are unlawful, thus constituting a great violation of human rights law.

¹³⁷ *Investigation crash MH17, 17 July 2014 Donetsk*, Dutch Safety Board. Available from:

<https://www.onderzoeksraad.nl/en/onderzoek/2049/investigation-crash-mh17-17-july-2014/publicatie/1686/found-buk-missile-parts-in-final-report-dutch-safety-board>.

¹³⁸ *Written Contribution in view of the Preparation by the Human Rights Committee of the General Comment on Article 6 (Right to life) of the International Covenant on Civil and Political Rights*, European Centre for Law and Justice, OHCHR, 12 June 2015, p.2. Available from: www.ohchr.org/Documents/HRBodies/CCPR/Discussion/2015/ECLJ.doc.

¹³⁹ *European Convention for the Protection of Human Rights and Fundamental Freedoms 1950*, Art. 2, and Art.15.

¹⁴⁰ D. Korff, *The right to life. A guide to the implementation of Article 2 of the European Convention on Human Rights*, Human Rights Handbook No.8, Council of Europe, Strasbourg, 2006. Available from: <https://rm.coe.int/168007ff4e>.

¹⁴¹ *ibid.*, p.56.

¹⁴² Office of the United Nations High Commissioner for Human Rights, *UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions*, 24 May 1989, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ArbitraryAndSummaryExecutions.aspx>, (accessed 2 July 2017).

4.2.2. ARBITRARY DETENTIONS

Arbitrary detentions are a common practice in self-proclaimed entities, without international monitoring supervision and monitoring. In Abkhazia, arbitrary detentions are very often performed by *de facto* Abkhaz authorities, along with Russian FSB (security services) officers, usually on charges related to people's "illegal border crossing" of the administrative boundary line checkpoints.¹⁴³ According to data provided by the Institute for the Development of Freedom of Information, 1,641 Georgian citizens have been detained near Abkhazia between 2009 and 2015.

The chart below, *Fig.3*, shows the number of illegal detentions in both occupied regions of Abkhazia and South Ossetia between 2011 – 2015. The chart is based on the data from the Second Quarterly Report of the Ministry of Foreign Affairs of Georgia for 2011-2014, and data from the Russian statistics for the first three months of 2015.¹⁴⁴

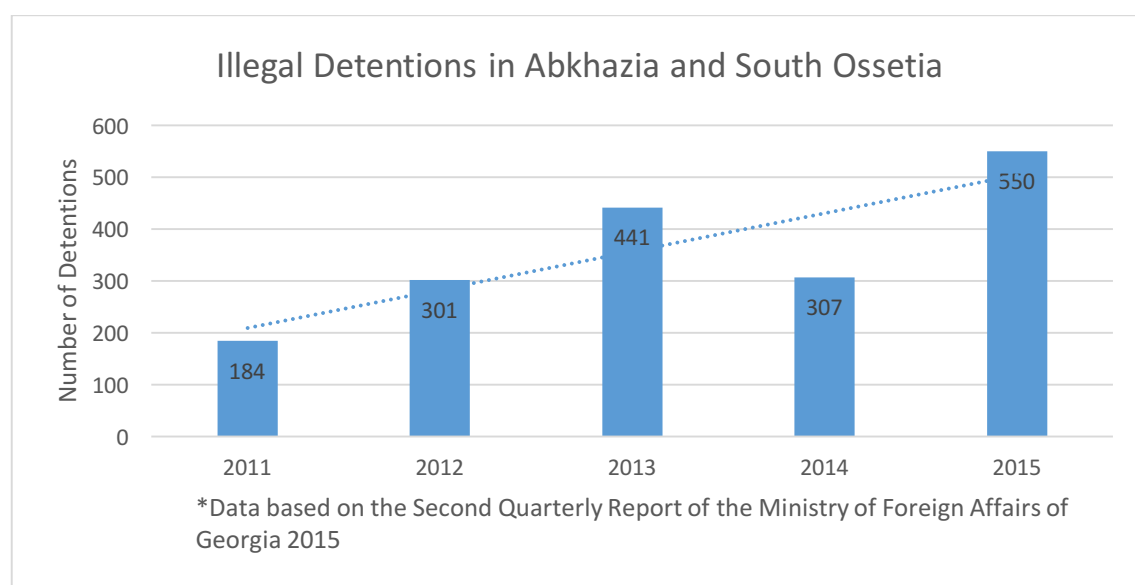


Fig.1 Illegal detentions in Abkhazia and South Ossetia in numbers and trend axis

Even if the chart provides overall data for both occupied regions, it can be seen a

¹⁴³ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, p.2.

¹⁴⁴ 'Basic human rights violated in Georgia's occupied regions', Agenda News, 2 June 2015, <http://agenda.ge/news/36282/eng>, (accessed 16 June 2017).

gradual increase in cases of illegal detentions throughout the years. It has to be restated the fact that for the 2015, 550 cases of illegal detentions have been reported only in the first three months of the year and there is no statistics on the number of illegal detainees at the year's end available, thus there is a high probability that the number of illegal detentions by the end of 2015 has been extremely high. It has also to be mentioned that out of these 550 cases of illegal detentions in both occupied regions of Georgia, 341 cases happened in Abkhazia.¹⁴⁵

Reports show that detentions usually last between two to three days until the detainee pays “fines” set by the de facto “court”, after which the detained individual is released, or it can last up to several months.¹⁴⁶ It has to be emphasized, that many arbitrary arrests are of ethnic Georgians from Gali region, without being informed on the reasons of their arrest. Human rights groups alleged that *de facto* authorities held them to negotiate prisoner exchanges with Georgian authorities.¹⁴⁷

In Transnistria, the official number of illegal detentions is unknown, but at least 1,000 persons are estimated to be held in preventive detentions, with lengthy periods of time spent waiting for a “court hearing” or “sentence”, with a period of detention up to 3-4 years.¹⁴⁸ Statistically, 563 people out of every 100,000 are kept in detention in Transnistria.¹⁴⁹ It is a high number if compared to 180 people in detention from Moldovan penitentiaries, or an average of 129 people in detention in EU. According to Promo-Lex, approximately 90 detainees in pre-trial detention centre in Tiraspol reported arbitrary detention, along with torture and ill-treatment, with a detention period of more than six months without a court hearing.

Lots of illegal detention cases are reported while crossing the “border” or “customs”

¹⁴⁵ United States Department of State, ‘Georgia 2015’, *Country Reports on Human Rights Practices for 2015*, Bureau of Democracy, Human Rights and Labor, 2015, p.12, <https://www.state.gov/documents/organization/253061.pdf>, (accessed 7 July 2017).

¹⁴⁶ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, p.10.

¹⁴⁷ Georgia 2015 Human Rights Report, *Country Reports on Human Rights Practices for 2015*, United States Department of State, Bureau of Democracy, Human Rights and Labor, p.13, <https://www.state.gov/documents/organization/253061.pdf>

¹⁴⁸ United States Department of State, *Country Reports on Human Rights Practices for 2009*, vol. II Europe and Eurasia, Near East and North Africa, Department of State US, October 2012, Washington, U.S. Government Printing Office, 2012, p.1687.

¹⁴⁹ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.22.

of Transnistria, or peacekeepers' checkpoints. Detentions can be easily fabricated by "border guards", just randomly or in order to put political pressure on Moldovan side, slipping a pack of drugs a bag or car while checking the belongings. The reason is most of the cases simply financial related, as to extort money from people crossing the border.¹⁵⁰ Border authorities are directed by the security services, allegedly a highly corrupt independent body, subordinated to the President, entitled to detain anyone temporarily for up to seven hours. People are also arbitrarily detained in open markets, public spaces, at places of residence or work. However, there is no access to statistical data showing neither how much these "bodies" use their excessive powers in performing illegal detentions, nor the exact number of cases, other than post-detention confessions while moving to a safer area on the left side bank.

In Eastern Ukraine, the problem of illegal detentions is enhanced by the following factors: there is a legal vacuum as no functional laws exist in LPR and DPR, and armed groups exercising effective control are led by their own consideration of law and order, thus encouraging arbitrariness and impunity, and brutal violations in form of illegal detentions.¹⁵¹ Illegal detentions are abusive, as there are no explanations of the grounds or reasons for apprehension, no records kept, no rights or obligations explained to detainees, no access to attorney guaranteed, and usually no information on duration and lawfulness of the detention.¹⁵² As in the case of Abkhazia and Transnistria, in LPR and DPR apprehensions are also taking place mostly at checkpoints, as well as in public gatherings, places of residence, workplaces and localities around. However, in the latter case the checkpoints are controlled by different illegal armed groups, and detentions can be made not only by militants of armed groups ("Prizrak", "Platov Cossack regiment", "Oplot", "Vostok" or other unidentified armed groups), but also by quasi-state agencies (security forces of LPR and DPR, commandant's offices, and police).¹⁵³ Usually the groups initially detaining, are also the ones deciding on further detention of the civilians

¹⁵⁰ *ibid.*, pp. 17 - 18.

¹⁵¹ Coalition of Public Organizations and Initiative "Justice for Peace in Donbas", *Surviving Hell. Testimonies of Victims on Places of Illegal Detention in Donbas*, Kyiv, 25 September 2015, pp.6-7, <http://www.osce.org/odihr/185431?download=true>, (accessed 8 July 2017).

¹⁵² Coalition of Public Organizations and Initiative "Justice for Peace in Donbas", *Surviving Hell. Testimonies of Victims on Places of Illegal Detention in Donbas*, p.7.

¹⁵³ *ibid.*, p.16.

and convoy transfers, following military confrontation with direct involvement of the armed forces of Russian Federation in the majority of cases.¹⁵⁴

Civilians detained are usually individuals who have pro-Ukrainian views or affiliated to Ukrainian Armed Forces, however due to limited access to places of deprivation of liberty, very often cases are poorly documented, and only reported after people are released and have moved to safer areas.

Human Rights Watch and Amnesty International have documented between 2015 until the first half of 2016, nine cases in which separatists from LPR and DPR hold civilians in arbitrary and prolonged detention without charges, accompanied by ill-treatment, no access to lawyer and without informing relatives, under self-proclaimed laws and regulations of detention formalized by the DPR's Ministry of State Security, which provide a period of up to 30 days in "administrative" detention without procedural guarantees.¹⁵⁵ Even the exact numbers are difficult to verify, there is reliable information from people released from detention reporting that there are dozens, if not hundreds of people unacknowledged and unlawful detained by the facto authorities, without due processes, access to lawyers, isolated from outside world and never leaving their cells.¹⁵⁶

It has to be mentioned that both Ukrainian authorities and self-proclaimed LPR and DPR conducted unlawful detentions, including for use of prisoners' exchanges, similar to the case of Abkhazia. Even if a State Investigation Bureau has been formally set with the intention to investigate these violations by the military and law enforcement officially, it has not operated by the end of 2016.¹⁵⁷ Moreover, the existent impunity in LPR and DPR contributed that the practice of arbitrary detention becomes an inherent feature for the territories outside of Ukrainian authorities' control.¹⁵⁸

¹⁵⁴ *ibid.*, p.16-17.

¹⁵⁵ Amnesty International and Human Rights Watch, "You Don't Exist", Arbitrary Detentions, Enforced Disappearances, and Torture in Eastern Ukraine', *Amnesty International Publications*, 21 July 2016, p.33, <https://www.amnesty.org/en/documents/eur50/4455/2016/en/>, (accessed 9 July 2017).

¹⁵⁶ A. Neistat, 'No justice for eastern Ukraine's victims of torture', *Amnesty International Eastern Ukraine*, 27 May 2016, <https://www.amnesty.org/en/latest/news/2016/05/no-justice-for-eastern-ukraine-victims-of-torture/>, (accessed 11 July 2017).

¹⁵⁷ Amnesty International, 'Ukraine 2016/2017', *Annual Report*, 2017, <https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/>, (accessed 5 July 2017).

¹⁵⁸ A. Neistat, 'No justice for eastern Ukraine's victims of torture', *Amnesty International Eastern Ukraine*.

In conclusion, while in principle all detentions in Abkhazia, Transnistria, LPR and DPR, have to be considered illegal as they are carried out by *de facto* authorities or illegal armed groups, there is also a considerable number of arrests recorded which would have to be considered arbitrarily, without legal backgrounds and against international human rights law principles. No one shall be subject to arbitrary arrest or detention, and if deprived of liberty shall be informed of the reason and charges of detention, with access to lawyer or other legal representative and notification of the family, as set in Art. 9 and Art. 11 of the UDHR, Art.5 of the ECHR,¹⁵⁹ Art. 9 of the ICCPR and Principles 10,11,12 (2), 14, 15,17, 18 of the Principles of Detention or Imprisonment.¹⁶⁰ These international human rights law principles regarding detentions are not respected in the analysed self-proclaimed entities.

4.2.3. TORTURE AND ILL-TREATMENT IN “INHUMANE” DETENTION CONDITIONS

Incidents of torture and ill-treatment have been reported by individuals detained by Abkhazian de facto forces who returned to safer places of Georgia. The usual abuses while being in custody have been cigarette burns and beatings.¹⁶¹ However, the last report of the 2005 visit by the Special Rapporteur on Torture has not noted serious allegations of ill-treatment. Detention conditions have been reported as chronically substandard according to Georgian authorities, and below international standards, with overcrowded cells.¹⁶² Due to the lack of access onto the territory after 2008, it is very difficult to assess the actual situation of prison system and cases of torture in Abkhazia, situation further

¹⁵⁹ D. Korff, *The right to life. A guide to the implementation of Article 2 of the European Convention on Human Rights*, p.92.

¹⁶⁰ United Nations General Assembly, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, <http://www.un.org/documents/ga/res/43/a43r173.htm>, (accessed 2 July 2017).

¹⁶¹ United States Department of State, ‘Georgia 2016’, *2016 Country Reports on Human Rights Practices*, US Department of State, 3 March 2017, <http://www.refworld.org/docid/58ec8a3513.html>, (accessed 5 July 2017).

¹⁶² M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to Georgia*, UN Economic and Social Council, 23 September 2005, p.14, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G05/160/45/PDF/G0516045.pdf?OpenElement>, (accessed 14 July).

described in Chapter 5.

Compared to Abkhazia, there are enough reports referring to allegations of torture in Transnistria. There are five penitentiary institutions active in Transnistria, three for men (one in Hlinaia and two in Tiraspol), one for women and one for minors, where both allegations of torture and ill-treatment have been reported. Even if its de facto Constitution prohibits torture, it is not defined in its Criminal Code, and it can be punished in combination with “torment” with up to 7 years of imprisonment.¹⁶³

Cases of torture and ill-treatment have been reported both in police stations, as well as in penitentiaries from Transnistrian region by human rights NGOs. Referring to police stations, the most common practices is deprivation of food and water during detention period, aiming to make the victims admit their “guilt” or make them sign documents or statements.¹⁶⁴ As referring to prisons, cases of torture and ill-treatment, are also accompanied by suicidal cases of “bed sheets” hangings or deaths.¹⁶⁵ The known methods used for torture are suffocations, beatings, electrocutions, “Palestinian hanging”, deprivation of food and water, prohibition of access to sanitation. These are aimed to obtain self-incriminatory confessions and useful information.

Allegations of torture and ill-treatment in Transnistria have been confirmed by the U.S. Embassy in Moldova, which stated that ‘it has credible information about cases of torture, deprivation of the right to a fair trial, and detention conditions in the region that do not meet international standards’.¹⁶⁶ The allegations have been also confirmed by the UN Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, Manfred Nowak, during the visit in 2008. There have been reported frequent cases of severe beatings by militia and guards during interrogations to get confessions, use of force leaving bruises over the bodies, use of punishment cells with iron beds, needles inserted under fingernails, electrocutions, accompanied by poor medical facilities, limited outdoor times, prolonged solitary confinements, restricted access to

¹⁶³ T. Hammemberg, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, UN Senior Expert, 14 February 2013, http://md.one.un.org/content/dam/unct/moldova/docs/pub/Senior_Expert_Hammarberg_Report_TN_Human_Rights.pdf, (accessed 28 June 2017).

¹⁶⁴ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.38.

¹⁶⁵ *ibid.*, p.15.

¹⁶⁶ *ibid.*, p.37.

water or to sanitary facilities.¹⁶⁷ Cells are small-sized and overcrowded, with up to ten persons in a cell, allowing sleeping only in shifts. Solitary confinement is required for those convicted to capital punishment or life imprisonment, which is an inhuman punishment. Torture and ill-treatment methods have been also used among young people who are engaged in paramilitary structures of Transnistria, such as: beatings, kicks in ears, abdomen or face; hitting with a wet towel or salted wet towel; hits with the belt buckle over the fingers; kicks in arm muscles; body burns using objects; sinking down the toilet; money extortions; strangulation; seizing food, etc.¹⁶⁸ There has been reported even a suicidal case of a young military student in January 2016.¹⁶⁹ The number of 628 prisoners per 100,000 is one of the highest figures in Europe.¹⁷⁰ The cells are small - sized, overcrowded, cold and mouldy, lacking ventilation and fresh air, lacking sanitary conditions and sufficient light, however unofficial sources report that if people pay regular “fees”, they get better imprisonment conditions. Those who do not pay are put in cells for 60 people.¹⁷¹ The health and medical situation in prisons is poor, people are dying from tuberculosis, the infection is spread to others already during inhuman transportation of prisoners by the police to penitentiary institutions in metal wagons without any ventilation, thus increasing the contamination risk.¹⁷²

There is also a lack of medical facilities to treat the infection. HIV is another health problem with a high rate among prisoners, and due to lack of international programs in Transnistrian region, the percentage of infection is increasing. The local Ombudsman reported 59 tuberculosis cases and 141 HIV cases among the detainees. Referring to detainees with disabilities have no special conditions provided by human rights

¹⁶⁷ M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova*, UN Human Rights Council, A/HRC/10/44/Add.3, 12 February 2009, p.51 – 55.

¹⁶⁸ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.28.

¹⁶⁹ United States Department of State, ‘Moldova 2016’, *Country Reports on Human Rights Practices 2016*, US Department of State, 3 March 2017, <http://www.refworld.org/docid/58ec89fba.html>, (accessed 15 July 2017).

¹⁷⁰ M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova*, p.19.

¹⁷¹ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.15.

¹⁷² M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mission to the Republic of Moldova*, p.12.

standards.¹⁷³ Transnistrian authorities have established a separate Investigation Committee for torture and ill-treatment cases in 2012, and a Transnistrian Human Rights Commissioner has been instituted, however it does not undertake monitoring visits to places of detention, rather being ineffective, as complaints from alleged victims of torture and inhuman or degrading treatment are still continuing to be reported.¹⁷⁴ In the same time, any attempts of prisoners to complain to international organizations have been intercepted. Thus, there is no effective mechanism put in place to investigate alleged acts of torture or ill – treatment in Transnistria.

In case of Eastern Ukraine, about 71 percent of civilians and 68 percent of servicemen, captured by the LPR and DPR have been subjected to torture.¹⁷⁵ Since September 2014, when the first Minsk agreement has been signed, 3083 persons have been released through organized exchanges, while another 117 remain in captivity.¹⁷⁶ The Eastern Human Rights Group reported systemic detainees' abuses, such as torture, starvation, denial of medical care, solitary confinement, use of prisoners in slave labour to produce goods which can be sold and provide source of personal income for Russian-backed separatist groups.¹⁷⁷ The persons illegally detained reported widespread torture practices, such as: assaults, pneumatic weapons, cold steel arms, mock executions, sleep, water and food deprivation, blindfolding, cuffing, plastic bags over heads, cutting and electric shocks on body parts, severe beatings, belt suffocations, tied with ropes and rubber straps, bullet wounds from small-calibre weapons, etc.¹⁷⁸

Regarding facilities, a total number of 61 places of detention have been recorded. However, detainees are held in law enforcement agencies buildings, administrative buildings, industrial premises or public enterprises, which are not equipped for these

¹⁷³ United Kingdom Home Office, *Moldova: Human rights in Transnistria*, Country Policy and Information Note, 1 May 2017, p.43, <http://www.refworld.org/docid/59439c794.html>, (accessed 14 July 2017).

¹⁷⁴ United States Department of State, 'Moldova 2016', *Country Reports on Human Rights Practices 2016*.

¹⁷⁵ Ukrainian Helsinki Human Rights Union, *Human Rights situation in Donbas*, p.2.

¹⁷⁶ Amnesty International, 'Ukraine: Breaking bodies, torture and summary killings in Eastern Ukraine', p.14.

¹⁷⁷ United States Department of State, 'Ukraine 2016', *Country Reports on Human Rights Practices*, US Department of State, 3 March 2017, <http://www.refworld.org/docid/58ec89ad13.html>, (accessed 15 July 2017).

¹⁷⁸ Coalition of Public Organizations and Initiative "Justice for Peace in Donbas", *Surviving Hell. Testimonies of Victims on Places of Illegal Detention in Donbas*.

purposes and lacking medical assistance, nutrition or basic sanitary conditions. Half of detainees reported to have stayed sometimes in basements and vehicle shades, using plastic bottles instead of sanitary facilities.¹⁷⁹ The particularity and severity of Eastern Ukraine situation is the use torture as a systematic practice before the background of an ongoing armed conflict and the presence of illegal armed groups, increased by a lack of any monitoring mechanisms of torture cases other than information perceived from former detainees. Access for international human rights monitoring to LPR and DPR is extremely limited and those few organizations which keep a presence in the separatist territories are restricted in their operations by the de facto authorities as well as their own limitations.

The OSCE SMM which has a mandate to monitor the human rights situation and establish facts and report on incidents, de facto concentrates its efforts on monitoring cease-fire violations, including civilian casualties and hardships related to the armed conflict, but – as evidenced through its reporting - does not conduct a systematic human rights monitoring. The ICRC has offices in Donetsk and Luhansk,¹⁸⁰ but next to supporting the exchange of captives and search for missing persons, likewise concentrates its efforts on conflict related humanitarian aspects.¹⁸¹ The OCHCR Human Rights Monitoring Mission to Ukraine has deployed human rights monitors also to Donetsk and provides the most comprehensive information on the human rights violations in Eastern Ukraine.¹⁸²

Any form of torture and ill-treatment is absolutely prohibited under all circumstances¹⁸³ by Art. 5 of the UDHR, Art.7 of the ICCPR, Art.5 of the ECHR, however the limited international monitoring leaves the victims with no remedy against these criminal acts and without any justice.

¹⁷⁹ *ibid.*, p. 13.

¹⁸⁰ International Committee of the Red Cross, *Around the World*, <https://www.icrc.org/en/contact#worldwide-contacts>, (accessed 16 June 2017).

¹⁸¹ International Committee of the Red Cross, *Where we work*, <https://www.icrc.org/en/where-we-work/europe-central-asia/ukraine>, (accessed 16 June 2017).

¹⁸² United Nations Ukraine, *UN Human Rights Monitoring Mission in Ukraine*, <http://www.un.org.ua/en/information-centre/news/1870>, (accessed 10 June 2017).

¹⁸³ Office of the United Nations High Commissioner for Human Rights, *International Human Rights Standards for Law Enforcement, A Pocket Book on Human Rights for the Police*, OHCHR, Geneva, p.5.

4.3. *DE FACTO* LAWS – A GROUND FOR ETHNICAL DISCRIMINATION AND THEIR DETRIMENTAL EFFECT ON FREEDOM OF MOVEMENT AND RIGHT TO EDUCATION

4.3.1. “PASSPORTIZATION” IN ABKHAZIA – AN ELECTORAL DISPUTE OR AN ISSUE OF SECURITY AND STABILITY BY MEANS OF DISCRIMINATION?

The issue of “passportization” is one of the most controversial issues discussed for years, starting with contestation of 2004 presidential elections in Abkhazia, when it has been questioned the legitimacy of a majority of ethnic Georgians voters’ participation in elections, thus becoming an electoral hot topic. However, even if at the surface it is always brought up as electoral interest, the problem goes deeper and is connected to security and stability issues in Abkhazia.

After 1990 most ethnic Georgians fled Abkhazia and live in Tbilisi and Western Georgia. However, since 1994, over 47.000 former Gali residents returned to Abkhazia, and additionally, 5.000 travel between Abkhazia and Georgia.¹⁸⁴

In 2015 the entity started to issue new Abkhaz passports, which obliges all residents to exchange their documents. A new provision states that Georgians from Gali who hold a double citizenship with Georgia can receive only residence permits, thus leaving 22,000 ethnic Georgians in Gali with invalid passports. Moreover, according to de facto Law on Foreign citizenship adopted in December 2015, individuals who hold residence permits are not able to vote or own property.¹⁸⁵ However, ethnic Georgians are entitled to receive the Abkhaz passports, which immediately brings out a set of benefits, like the right to vote, to own property, run a business, obtain additionally Russian citizenship and pensions, bringing them significant economic and legal benefits. The biggest condition required by Abkhaz authorities is to give up their Georgian passports.¹⁸⁶

Some people hold Abkhaz and Georgian passports, which is prohibited according to Abkhaz Law on Citizenship, which forbids dual citizenship, with the exception of Russian citizenship.¹⁸⁷ Moreover, the procedure of revoking the passports is very often discussed

¹⁸⁴ Freedom in the World, ‘Abkhazia’, *Country Report 2014*.

¹⁸⁵ Freedom in the World, ‘Abkhazia’, *Country Report 2016*.

¹⁸⁶ Freedom in the World, ‘Abkhazia’, *Country Report 2013*.

¹⁸⁷ L. Kvarchelia, ‘Abkhazia, Issues of citizenship and security’, p.ii.

in terms of ethnic-based discrimination.

Abkhazia passports have not been internationally recognized, therefore those with Abkhaz passports can travel only to Russia and those few states which have recognized their independence.¹⁸⁸ However, those who possess Russian passport are able to travel to Europe or other countries of the world. Therefore, many hold dual citizenships, around 90% Abkhazian residents hold Russian passport along with their Abkhaz one.¹⁸⁹

The situation in the Gali region of Abkhazia, where many ethnic Georgians live, remained complicated and specific, as their situation is problematic according to the following reasons: firstly, the absence of valid documents by Gali residents due to expiration; secondly the lack of issuance of new documents by Abkhaz *de facto* authorities which continue to suspend the issuance of passports arguing with the need to investigate possessions of Georgian citizenship; thirdly, ethnic Georgians are obliged to give up their citizenship in order to vote or participate in regional elections at any times they are taking place. Ethnic Georgians who applied for Georgia citizenships, were not able to get them on time, thus leaving them unable to exercise the right to vote.¹⁹⁰ The issue of “passportization” affects also children, as the lack of valid documents of parents, leave newly born children without birth certificates. There have been 400 case of returnee children registered. Thus, the issue of discrimination related to “passportization” puts people living on the territory of Abkhazia them in vulnerable conditions.

The issue of passports is continuously changing and of high importance for Abkhaz authorities, as it has been planned to adopt around 40 *de facto* “by-laws” in order to carry out the process of “passportization”, more related to the legal status of foreigners and on entry and exit of Abkhazia. In 2016, 25 000 Abkhaz passports belonging to ethnic Georgians have been cancelled in order to give them the status of “foreign citizens” and that means lots of restrictions on their human rights, such as the right to property and

¹⁸⁸ Freedom in the World, ‘Abkhazia’, *Country Report 2016*.

¹⁸⁹ A. Tskitishvili, ‘Isolation of Abkhazia and South Ossetia Complicates Defense of Human Rights’, *Web Portal on Human Rights in Georgia*, 16 July 2016, <http://www.humanrights.ge/index.php?a=main&pid=18817&lang=eng>, (accessed 17 July 2017).

¹⁹⁰ United States Department of State, ‘Georgia 2015’, *Country Reports on Human Rights Practices for 2015*, p.32.

freedom of movement along the occupation line.¹⁹¹

Apart from ethnical discrimination in issuing passports, the issue of citizenship is posing problems to exercising political rights on the territory of Abkhazia. As vivid example, during the 2014 presidential elections, which have never been recognized internationally, more than 20.000 of Georgians from Gali have been excluded from voter lists, alleging that their passports have been invalid.

Looking at this problem from societal perspective, the population is divided into two viewers, the first are the ethnic Georgian residents living in the Eastern part, who associate themselves to Georgia and consider Abkhazia is in a state of conflict, and the second are Georgians descending of ethnic Abkhaz who were integrated into the Georgian population since Soviet times.¹⁹²

Why the political participation is restricted to the residents who live in the Eastern part of Abkhazia? Why are they considered a threat? Because their political participation is considered dangerous, thus the restriction being necessary in order to prevent them from influencing the local political processes with pro-Georgian views. They are considered that part of population which is ethnically connected and affiliated to Georgia.¹⁹³

According to a study made on issues related to the population of the eastern districts of Abkhazia,¹⁹⁴ the Abkhaz society views the procedure of obtaining a passport for Gali district much easier, when compared to other non-Abkhaz ethnicities, such as Russian, Armenians or Greeks. Interesting enough, the majority of ethnic Georgians see the procedure to be more complicated. They have to give up Georgian passports if they want to take the Abkhaz , and the reason for obtaining and keeping Abkhaz passports are usually: the opportunity to secure property rights, the need for free movement within Abkhazia, ability to obtain higher education, ability to gain employment or start business, access to healthcare, access to social and pension fund, as well as affecting ethnic Georgians dignity as being deprived of passports is considered humiliating and not

¹⁹¹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, pp.6-7.

¹⁹² L. Kvarchelia, 'Abkhazia, Issues of citizenship and security', p.2.

¹⁹³ *ibid.*

¹⁹⁴ *ibid.*, p.3.

knowing where they belong to.¹⁹⁵ There were cases when passports were invalidated or passport application rejected without being informed on the reasons of rejection – lack of information. Cancellation of passports, no documents offered to replace the annulled ones, not being offered another legal status (like resident permits), and not knowing what kind of rights they are entitled under such a new status, it causes insecurity and confusion among eastern districts residents.¹⁹⁶

It can be concluded that the situation described in the occupied regions of Georgia, particularly adoption of so called “laws” and the process of “passportization” clearly violates prohibition of discrimination provisions of Article 14 and Protocol No. 12 of the European Convention on Human Rights (ECHR); Article 26 of the International Covenant on Civil and Political Rights (ICCPR); and International Convention on the Elimination of All Forms of Racial Discrimination. Society is polarized regarding this issue, but whatever approach is to be taken, it is clear that cannot be achieved through exclusion, the issue of “passportization” is not used as a measure for integration of the population.

4.3.2. FREEDOM OF MOVEMENT

4.3.2.1. THE ISSUE OF “BORDERIZATION” IN ABKHAZIA

Restrictions on freedom of movement remains issue of concern in Abkhazia, hindered by a “continued unacceptable process of “borderization” along the administrative boundary lines of Abkhazia and by ongoing installation of barbed wire and razor wire fences.¹⁹⁷ Due to Russian overtaking of control over the administrative line between Abkhazia and Georgia in 2012, there have been lots of restrictions to travel and place of residence disputes. Considering that Abkhazian border is crossed 80,000 – 125,000 times over a period of 3 months, it is obstructing the freedom of movement, thus creating physical barriers, hindering people’s access to medical care, religious services, education,

¹⁹⁵ *ibid.*, p.6.

¹⁹⁶ *ibid.*, p.7.

¹⁹⁷ United Nations Human Rights Council, *Joint Statement on the Human Rights and Humanitarian Situation in Georgia's Regions of Abkhazia and the Tskhinvali Region*, 32nd Session of the UN Human Rights Council, 29 June 2016.

agricultural land, water supplies, and cemeteries.¹⁹⁸

Out of all crossing points closed, there is one only left as an exception - “Enguri” crossing point, as reported on 15 April 2016.¹⁹⁹ Additional complications poses the fact that people residing in Abkhazia need a special “permit” issued by so called “State Security Service of Abkhazia” in order to enter the “border zone”, such as for entering the village of Gali district, thus tremendously limiting the freedom of movement.

Mostly are affected those Georgians who are living on different sides of the fences along the occupation line. The opportunity to travel to Georgia is a vital necessity for many residents who live in the border districts as opportunity to trade, to work the land and crop which is an important source of income, access to free and high-quality medical-services, communication with relatives, however the situation of difficulty while crossing the border remains unchanged.

Another problem while crossing the border, which is related to the issue of “passportization” described in the above sub-chapter, is that due to confiscation of passports which have been annulled, many residents of the border region avoid travelling to Georgia, because the Russian border guards can confiscate them while crossing the border. Some residents are crossing the border illegally, facing the risk of detention or fines. Even people who believe that their documents are in order prefer not to travel, as for example the parents of children with Georgian birth certificates, afraid to cross borders because Georgian documents have become as basis of the confiscation of Abkhaz passports.²⁰⁰

4.3.2.2. RESTRICTIONS OF MOVEMENT IN TRANSNISTRIA

In Transnistria, there are many restrictions of movement, both for their own residents, as well as for Moldovans who travel between separatist region and government controlled area. People are thoroughly verified at checking points, vehicles are searched, people thoroughly interrogated, arbitrary fines imposed, restricting at times entrance or even

¹⁹⁸ L. Kvarchelia, ‘Abkhazia, Issues of citizenship and security’, p.15.

¹⁹⁹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, pp.10-12.

²⁰⁰ L. Kvarchelia, ‘Abkhazia, Issues of citizenship and security’, p.14.

detained.²⁰¹ Crossing the self-established checking points give rise to lengthy interrogations, accompanied by other human rights violations. These are highly corrupt and used as additional illegal income sources for those who work at the checkpoints, as Transnistria serves as a barrier “border” to Ukraine, thus an impediment for Moldovan citizens. Illegal taxes are imposed for crossing self-established “borders” and a discriminatory attitude towards Moldovans and Romanian-speakers.

As Transnistrian passports are not recognized, around 75,000 locals living in Transnistria hold Moldovan passports, which gives them the benefit to travel from Moldova to the European Union without a visa.²⁰² However, many hold Russian, Ukrainian or other passports besides Moldovan, as it clearly advantages their mobility and decreases their isolation with unrecognized Abkhaz passports.

4.3.2.3. FREEDOM OF MOVEMENT IN LUHANSK AND DONETSK – A SERIOUS CONCERN FOR THE PROTECTION AND SECURITY OF CIVILIANS

LPR and DPR are separated from Ukrainian government by five operating crossing points or also called traffic corridors (“Mayorsk”, “Gnutovo”, “Novotroitske”, “Maryinka”, and “Stanitsa Luhanska”), however both sides temporarily shut down one crossing point. State Border Guard Service estimate that between 15,000 and 27,000 people cross each day the contact line, and whenever one crossing point closes down, it leads to long lines and staying overnight.

The Security Service of Ukraine introduced on 11 January 2015 a temporary order on control of movement in and out the danger zone of Donbass. The permit system established a difficult application procedure requiring inexistent documentation, which severely limits the capacity of individuals to leave the conflict-affected areas or to have access to safe areas, which raises serious concerns for the protection and security of

²⁰¹ Freedom in the World, ‘Transnistria’, *Country Report 2016*, Freedom House, 18 August 2016, <https://freedomhouse.org/report/freedom-world/2016/transnistria>, (accessed 2 July 2017).

²⁰² Freedom in the World, ‘Transnistria’, *Country Report 2015*, Freedom House, 2015, <https://freedomhouse.org/report/freedom-world/2015/transnistria>, (accessed 10 July 2017).

civilian population.²⁰³ The permits can be issued for personal reasons, such as visits of relatives or a relative's death. However, they do not include the option to leave the dangerous zone due to security reasons.²⁰⁴ Additionally, even with permits people are often denied passage without explanation or justification for the refusal.²⁰⁵ Donbass civilians are considering the procedure highly bureaucratic and slow and a reason for bribing at checkpoints. Thus, the state of Ukraine is violating not only the freedom of movement, but also right to life or to choose the place of residence or leave the country, as provided by its national Constitution.

This situation is worsened by additional access restrictions imposed by DPR and LPR checkpoints, making the area difficult to reach. People are often forced to travel through Russian Federation, however it is not a viable solution for many as it requires internationally recognized identity documents.

The freedom of movement in Donetsk is also restricted by the security situation on the roads which are prone to shelling, crossfire, or presence of anti-tank mines on the roads, despite the ongoing implementation of the ceasefire agreement. However, evacuations from LPR and DPR are possible, and essentially carried out by civil society volunteer organizations or sometimes by Ukrainian government. Due to these restrictions of freedom of movement, humanitarian assistance cannot be provided to people without water, food, heating, electricity or medicine, as many are forced to live in basements without basic needs. Border crossing points have become a source of abuses, as detention, lengthy interrogations, intimidation, interference in private life (checking telephone information)²⁰⁶ or corruption.²⁰⁷

All public transportations via the contact line are prohibited since June 2015, thus impossible to cross the control points by public transport. This leads to passengers

²⁰³ Organization for Security and Co-operation in Europe, 'Protection of Civilians and their Freedom of Movement in the Donetsk and Luhansk Regions', *Thematic Report*, OSCE, 6 May 2015, p.3, <http://www.osce.org/ukraine-smm/156791?download=true>, (accessed 8 July 2017).

²⁰⁴ *ibid.*, p.4.

²⁰⁵ *ibid.*, p.6.

²⁰⁶ HDIM, *Freedom of Movement in Eastern Ukraine. Crossing the contact line in Donetsk and Luhansk Regions*, Charitable Foundation "East-SOS", Warsaw 2016, <http://www.hfhr.pl/wp-content/uploads/2017/03/Freedom-of-movement.pdf>, (accessed 7 July 2017).

²⁰⁷ N. Muižnieks, *Report by the Commissioner for Human Rights of the Council of Europe, Following his Visit to Ukraine from 29 June to 3 July 2015*, Council of Europe, Strasbourg, 3 November 2015, p.13, [https://rm.coe.int/ref/CommDH\(2015\)23](https://rm.coe.int/ref/CommDH(2015)23), (accessed 13 July 2017).

changing four buses in DPR to get from the city of Donetsk to Mariupol instead of one direct transport as it had been before.²⁰⁸ The restricted freedom of movement in Ukraine is lingering the further isolation of the people living in LPR and DPR, and by far favouring reintegration.

It can be concluded that the situation described above in separatist regions with regard to freedom of movement and examples provided constitute violations of the right to freedom of movement under Art.13 of the UDHR, Art.12 of the ICCPR, Article 2 of the Protocol No. 4 of the ECHR, and the OSCE commitments on freedom of movement in the case of Ukraine, interrelated with security and protection of the civilians.

4.3.3. *THE VOLATILE SITUATION OF THE RIGHT TO EDUCATION IN SELF-PROCLAIMED ENTITIES*

The right to education and access to education in Abkhazia is facing discriminatory patterns. Ethnic Georgians living in the Gali district of Abkhazia face problems receiving an education in their native Georgian language as well as access to education.

The first issue is imposition of physical barriers for Gali pupils by de facto authorities. There have been reported cases when de facto Abkhaz authorities did not allow Gali pupils to cross the administrative boundary line in order to attend school in Georgia.

The second issue, is the regulation of the language of instruction in Abkhaz schools. Out of 31 schools present in Gali district, only 11 had the status of Georgian schools and they subject have been taught in Georgian. However, the de facto Abkhaz Ministry of Education declared the necessity to transform all Gali district schools to Abkhaz standards and to eliminate the Georgian curriculum. Thus, starting with the 2014 academic year, the language of instruction for primary school has been shifted to Russian. Additional to that, the Georgian curriculum has been replaced with the Russian curriculum. In practical terms, this means that Georgian-language education in the Gali district has stopped and that Georgian is taught as a foreign language only while the curriculum is based on Russian textbooks, approved by the Ministry of Education and Science of the Russian

²⁰⁸ HDIM, *Freedom of Movement in Eastern Ukraine. Crossing the contact line in Donetsk and Luhansk Regions*.

Federation.²⁰⁹

This situation obliges those who want to be taught in Georgian, to travel to Georgian-controlled regions in order to attend classes. Some families even have to leave their places of residence and move to government-controlled areas in order to continue their studies in their native language.

However, the last situation leads to another discriminatory issue. Those who graduate from Georgian schools, are not issued Abkhaz passports.²¹⁰ As a result of not having an Abkhaz passport, ethnic Georgian residents are restricted to attend the Sukhumi State University. This shows that there is a chain of violations to the right to education, a whole construct of discrimination of ethnic Georgians or Georgian speaking students.

A fourth problematic issue is that de facto officials regularly enter these schools to check whether the language of instruction is Georgian or Russian, threatening teachers with dismissal if they do not obey, and banning Georgian songs and dances. These transformations are forcing families to withdraw their children from these schools and transfer them to the schools located on the other side of the occupation line. There have been reported 65 of such cases during the academic year 2015-2016.²¹¹

This way, Abkhaz authorities have built a succession of hindering factors to attend any schools which have correlations to Georgia, Georgian language or Georgian ethnicity, thus having a totally discriminatory character.

In Transnistria, the situation is very much similar in regards to education, with discriminatory attitude towards the Romanian native speakers on Transnistrian territory. There are 145 schools in Transnistria, out of which 122 are teaching in Russian, 3 teaching in Ukrainian, 32 are teaching in Moldovan (Romanian) using the Cyrillic script and 8 using Latin script.²¹² As Transnistrian authorities have reversed the change from Cyrillic to Latin script in 1989, the Transnistrian administered Moldovan (Romanian) schools are the only educational institutions today in the world teaching Moldovan

²⁰⁹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, p.14-15.

²¹⁰ United States Department of State, 'Georgia 2015', *Country Reports on Human Rights Practices for 2015*, p.45.

²¹¹ Ministry of Foreign Affairs of Georgia, *Second Quarterly Report (April - June 2016) on the Human Rights Situation in the Occupied Regions of Georgia*, p.14-15.

²¹² Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.3.

(Romanian) in Cyrillic. Only eight schools in Transnistria have resisted this step back to Cyrillic and teach in Romanian using the Latin Script. These schools continue to be administered also by the Moldovan Education Ministry in Chisinau and follow the Moldovan curricula.

Students attending the Cyrillic script schools, which are subordinated to the de facto Transnistrian Ministry of Education have limited opportunities for university education as Moldova uses Latin script in the educational system and Transnistria does not offer higher education in Moldovan (Romanian). Thus, these circumstances oblige students to opt for the easiest option and attend schools teaching in Russian, which is alienating the new generation from any Moldovan ties and language, not mentioning that it is lowering the chances for any reintegration.

The only alternative for Transnistrian students who would like to secure higher education in their mother tongue and learn Romanian in the Latin script is to move to the right-bank or to attend one of the eight Chisinau-administered schools.

Transnistrian de facto authorities twice attempted to forcefully close these Chisinau-administered Latin script schools in 1994 and 2004. Since the 2004 school crisis the building of the Latin-script school in Rîbnita remains seized while the Grigoriopol school has been evacuated to near-by Dorotcaia under government control. The pupils which are bused to the evacuated school daily have to cross Transnistrian check-points. Directors of these eight schools have been intimidated, threatened and limited in their activities, teachers and parents have been intimidated and persecuted. Pressure during school opening ceremonies, fiscal, health and fire police checks and seizures of school books at check-points have been used as tools for intimidation on a regular basis. Following the last school crisis in 2004, an arrangement between Moldovan and Transnistrian authorities has been found allowing the eight Latin script schools to continue to operate in Transnistria, however, pressure and intimidation have not stopped.²¹³

Even if these Latin script schools managed to survive, it happened only grateful to principals, teachers and students who were fighting for it. However, the number of pupils studying in these schools dropped dramatically from 5,500 to only 1,500, a more dramatic

²¹³ OSCE, 'The Moldovan-Administered Schools in Transnistria', *Report*, OSCE, November 2012, <http://www.osce.org/moldova/99058?download=true>, (accessed 12 July 2017).

drop than with other schools in the region.²¹⁴ The reason for leaving these schools is continuous harassment of the parents by local authorities, fear to study under constant pressure of de facto authorities and intense Russification by means of local propaganda.

The access to education is difficult as well for children with special needs and with disabilities. They rarely attend schools as there is no access to specialized facilities for this vulnerable group.

Comparing the situation to the one in Abkhazia and Transnistria, in LPR and DPR the right to education is intrinsic with the security situation due to the ongoing conflict. Armed groups are ignoring the protections given to schools, as objects used for educational purposes, under international humanitarian law. Thus, many schools and kindergartens have been extensively damaged by shelling.²¹⁵ The facilities are also being used for military purposes, DPR armed groups are positioning themselves in local schools, as for example happened in Zaitseve.²¹⁶

From 1,067 schools existing in DPR and 688 in LPR, around 117 schools have been completely or partially destroyed in 2014.²¹⁷ However, the most recent data is reporting 280 educational institutions damaged in LDR and LPR, increasing more than a double.²¹⁸

The presence of armed soldiers also prevents children from walking unaccompanied to school.²¹⁹ Mines, but in particular unexploded ordnance poses great risks to children on their way to school or even on the schools' territory. Some children are not even attending school, as there is a risk of military operations nearby. Some do not attend or partially attend, because of joining up the fights in conflict zones. There have been reported cases when children, boys aged 13 and above have been recruited through social

²¹⁴ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.6.

²¹⁵ Muiznieks, N., *Report by the Commissioner for Human Rights of the Council of Europe, Following his Visit to Ukraine from 29 June to 3 July 2015*, p.6.

²¹⁶ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine, 16 May to 15 August 2016*, OHCHR, 2016, p.11, <http://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport.pdf>, (accessed 7 July 2017).

²¹⁷ UNICEF, *Ukraine: Access to education for children affected by the crisis should be at the top of national agenda*, UNICEF, Kyiv, 8 August 2014, https://www.unicef.org/ceecis/media_26464.html, (accessed 11 June 2017).

²¹⁸ GfK and UNICEF, *Out of School Children in Ukraine, A study on the Scope and Dimensions of the Problem with Recommendations for Action*, 5 May 2016, p.18, http://allinschool.org/wp-content/uploads/2016/08/Ukraine-OOSCI-report_Engl_f.pdf, (accessed 1 June 2017).

²¹⁹ OSCE Special Monitoring Mission, 'Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities', *Thematic Report*, July 2016, p.20, <http://www.osce.org/ukraine-smm/261176?download=true>, (accessed 22 June 2017).

networking sites in DPR.²²⁰

Apart from the security situation imposing restrictions to education, there is no civil registration system in the areas which validates the studies by certification. However, the only possibility to be certified is travelling to government-controlled territories, which is limited by the restrictions on freedom of movement, thus resulting in an arduous process.²²¹

As it concerns human resources, many teachers have fled the conflict areas, resulting in shortages of pedagogical staff capacities, leaving around 662,245 children in LDR and 334,455 children in LPR without proper education.²²²

In conclusion, all entities are violating the right to education provided in Art. 26 of the UDHR, Art. 13 of the International Covenant on Economic, Social and Cultural Rights, Article 2, of the First Protocol of the ECHR, and Art.2, 28 and 29 of the United Nations Convention on the Rights of the Child.

4.4. FREEDOM OF THE MEDIA AND ITS REPERCUSSIONS ON FREEDOM OF EXPRESSION

Freedom of the media in Abkhazia is very restricted by *de facto authorities*. “Abkhazian State Television” and “Radio Broadcasting Company” (AGTRK)²²³ are two broadcasters controlled by the de facto government, heavily criticized by the oppositions because of its failure to reform.²²⁴ “Apsua TV” is run by the Abkhaz government, and “Abaza TV” is privately owned, both licensed to cover the whole territory. Russian television stations broadcast into Abkhazia, while there is little or no access to Georgian TV other than by satellite.²²⁵ As of newspapers, the Government is publishing

²²⁰ GfK and UNICEF, *Out of School Children in Ukraine, A study on the Scope and Dimensions of the Problem with Recommendations for Action*, p.32.

²²¹ Muižnieks, N., *Report by the Commissioner for Human Rights of the Council of Europe, Following his Visit to Ukraine from 29 June to 3 July 2015*, p.11.

²²² UNICEF, *Ukraine: Access to education for children affected by the crisis should be at the top of national agenda*.

²²³ Apsua TV, Abkhazia, <http://www.apsua.tv/eng/>, (accessed 25 June 2017).

²²⁴ Freedom in the World, ‘Abkhazia’, *Country Report 2016*.

²²⁵ BBC, ‘Abkhazia profile – Media’, BBC News, 27 August 2015, <http://www.bbc.com/news/world-europe-18175396>, (accessed 17 June 2017).

“Respublika Abkhazia” in Russian and “Apsny” in Abkhaz. Several Russian-language private newspapers are competing alongside – “Ekho Abkhazii”, “Novaya Gazeta”, “Chegemskaya Pravda”, “Nuzhnaya Gazeta”, “Novyy Deni”. There is one official news agency – “Apsynpress”, one private – “Abkhaz-inform” and one Russian state-run – “Sputnik”. There is an increased self-censorship of journalists, out of fear to be persecuted.²²⁶

Around 80 % of Transnistrian media outlets are officially funded by the separatist administration. External funding from international sources is extremely difficult.²²⁷ There are two important official newspapers in Transnistria, and both are subordinated to *de facto* administration - “Pridnestrovie” and “Dnestrovskaya Pravda”. There are several independent newspapers, such as “Novaya Gazeta” and “Chelovek I Evo Prava”, however, they have a limited territorial circulation, have difficulties registering and many independent journalists are often subjected to KGB controls²²⁸ and harassed if they publish critical articles of Transnistrian authorities, leading to keeping mostly silent and not criticize heavily the *de facto* internal situation. Almost all newspapers in Transnistria are available in Russian language only. The situation of TV and radio stations in Transnistria are not any more diversified. The private TV station “TSV” is owned by the largest commercial entity “Sheriff Holding”, a business conglomerate with considerable influence in the Transnistrian Supreme Soviet, which also owns the sole ISP to provide internet in the region. “Transnistrian Moldovan Republic Television” belongs to Transnistrian authorities.²²⁹ Similar to Abkhazia, freedom of the media and expression is limited in Transnistria as well, as many journalists are subject to censorship and self-censorship, fearing to voice out their opinions on internal situation in the *de facto* entity and leading to silence, which is not what freedom of the media and of speech is about.

The most influential Transnistrian information portals are managed and hosted by two servers which are situated in the Russian Federation, according to Promo-Lex. An interesting similarity is that Abkhazian information portals are also routed in the same

²²⁶ *ibid.*

²²⁷ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.42.

²²⁸ United Kingdom Home Office, *Moldova: Human rights in Transnistria*, p.17.

²²⁹ United States Department of State, *Country Reports on Human Rights Practices for 2009*, p.1695.

virtual command centre in Russian Federation as Transnistria.²³⁰

In May 2013, at Transnistria's leader order, there has been a heavy restriction on access of websites and forums for criticism on Transnistrian administration, and imposed obligatory registration of media outlets with de facto authorities, in order to be able to be controlled. Journalists critical towards the authorities were not accredited to attend official media events. This led to a rally against the closure of websites in Tiraspol, where mostly opposition politicians from Tiraspol took the floor.²³¹ This has been followed by another decree from 2015, that restricted freedom of expression, allowing KGB, Transnistrian prosecutors and office for telecommunications to shut down suspicious websites which promote "forbidden topics", such as inter alia calls to overthrow the government. As a consequence, online forums have been restricted without any explanations.²³² On 27 June 2016, another prohibitive provision has been introduced in Transnistrian Criminal Code, punishing for up to 3 years imprisonment, any public activities and expressions, including online, which show disrespect to Russian armed forces which operate in Transnistria. Moreover, access by right-bank and western journalists to Transnistria has been restricted over the past years.

How does the restrictive legislation on local media, self-censorship, journalists' intimidation and prosecution, and lack of independent media affect human rights awareness in this case? As media is the only strong voice which can reach most of the public in the entity, it means that information about 60% of human rights violations cases in Transnistria remain out of reach to locals,²³³ as well as external communities, thus leaving a "black hole" in monitoring human rights in Transnistria.

Referring to Ukraine, there have been documented at least 995 violations of free speech in 2014 by the Institute of Mass Information, a Ukrainian nongovernmental organization, including six journalist fatalities cases during the fighting in Donetsk and Luhansk.²³⁴

²³⁰ Civil Rights Defenders and Promo-Lex, *Human Rights in the Transnistrian region of Moldova*, p.40.

²³¹ *ibid.*, p.42.

²³² United Kingdom Home Office, *Moldova: Human rights in Transnistria*, p.18.

²³³ *ibid.*, p.19.

²³⁴ Ukraine Freedom of the Press 2015, Freedom House, <https://freedomhouse.org/report/freedom-press/2015/ukraine>

Independent media is not allowed to work freely in LPR and DPR.²³⁵ In Donetsk 15 cases of freedom of media and speech violations reported, such as closing “Donbass” and “Vecherniy Donetsk” newspapers, switching of the transmission of “The First National TV Channel”, “Rada”, “Channel 5” and “Donbass” stations in parallel with abductions and kidnappings of editors. Most of the Ukrainian channels are blocked in both separatist regions.

Journalists cannot access easily LPR and DPR, and those who are local are reporting increasing self-censorship on political sensitive issues.²³⁶ Moreover, separatist authorities of Donetsk have intimidated and used arbitrary detention with journalists who were trying to cover the Malaysia Airlines case and access the crash area.²³⁷ In LPR there have been reported 3 cases of pressuring and abductions of journalists by the Army of the Southeast.²³⁸

Journalists, along with online media outlets from LPR and DPR, who try to provide information on the human rights situation and freedom of speech in Eastern Ukraine are very often risking their own safety.²³⁹

Thus, freedom of the media, expression and speech are violated in self-proclaimed entities. Media is highly censored, accentuating the desire of de facto authorities to control the internal information space, to isolate themselves from the international community and to create inside nationalistic and autocratic systems, without democratic values. These policies also diminish any attempts to report, monitor or investigate human rights violations, leaving the enclaves completely “black holes” dominated by their self-installed oppressive systems.

In conclusion, all self-proclaimed entities are violating Art. 10 of the ECHR, notwithstanding freedom of expression plays a key role in respect of other human rights

²³⁵ Annual Report Ukraine 2016/2017, Amnesty International, <https://www.amnesty.org/en/countries/europe-and-central-asia/ukraine/report-ukraine/>

²³⁶ Freedom of the Press, *Ukraine Freedom of the Press 2016*, Freedom House, 2016, <https://freedomhouse.org/report/freedom-press/2016/ukraine>, (accessed 16 July 2017).

²³⁷ Freedom of the Press, *Ukraine Freedom of the Press 2015*, Freedom House, 2015, <https://freedomhouse.org/report/freedom-press/2015/ukraine>, (accessed 13 July 2017).

²³⁸ Institute of Mass Information, *Ukraine: cases of abduction of journalists becoming more frequent in Donetsk oblast and Crimea*, IMI, Ukraine, www.imi.org.ua, (accessed 10 July).

²³⁹ Freedom on the Net, *Ukraine Freedom on the Net 2016*, Freedom House, 2016, <https://freedomhouse.org/report/freedom-net/2016/ukraine>, (accessed 22 June 2017).

and constitutes one of the essential foundations of any democratic society, as claimed in all entities in their self-proclaimed constitutions. Freedom of expression is the freedom to hold opinions and exchange ideas without the interference of public authorities, without territorial restrictions.²⁴⁰ Notwithstanding that Article 10 is not explicitly mentioning the freedom of press, the ECtHR case-law grants the press a special status in the enjoyment of these freedoms. In line with Art.10 (2) these freedoms may be subjects to restrictions, formalities, conditions or penalties in interests of national security however these provisions are set strictly in the national legislation. Albeit the laws are *de facto* in these entities, and are not necessarily based on international human rights principles, most of the cases these laws are abusive and nationalistic, lacking subordination to international instruments or corroboration to mother state's legislation which is more standardized and adapted to international human rights principles. The reasoning of "national security" is highly conflictual with freedom of expression, it has to provide the necessity, proportionality principle and public interest argument. However, the similar observed pattern of restrictions on freedom of the media in the *de facto* entities shows rather as a protective measure for keeping the critical opinions away from public information sources, rather than a "state" necessity.

Also searches of media premises happening in Transnistria and Donbass are forms of interference with freedom of the press and function as a censorship for all journalists in the entity.²⁴¹ The public has to be informed on other views than those of the *de facto* entities, which are installing monopolies and censorship on media, leading to a disproportionate violation of the freedom of expression. In addition to Art.10 of the ECHR, they violate also Art.19 of the UDHR and Art.9 of the ICCPR.

4.5.FREEDOM OF RELIGION

Religion in self-proclaimed entities is intertwined with internal political situation, with patterns of minority religion groups' discriminations. In case of Abkhazia it is

²⁴⁰ M. Macovei, *Freedom of expression. A guide to the implementation of Article 10 of the European Convention on Human Rights*, Human rights handbook No.2, Council of Europe, Strasbourg, 2001, 2004, p.8. Available from: <https://rm.coe.int/168007ff48>.

²⁴¹ *ibid.*, p.29.

displayed by an internal split of the Abkhaz Orthodox Church into two, where the new one accuses the other part of being controlled by the Russian Orthodox Church. In the same time Georgia considers Abkhazia to be under the jurisdiction of the Georgian Orthodox Church. This dispute serves as reason for conflicts and reciprocal accusations.

Along with Orthodox, Muslims constitute 30% of the population and generally allowed to practice freely, however there have been reports indicating attacks, murders and assassinations of Muslim leaders in Abkhazia.²⁴² Regarding other beliefs, in 1995 Abkhazian adopted a decree banning Jehovah's witnesses,²⁴³ but under extreme pressure from local authorities when practicing openly. The situation leads to non-equality of diverse religious groups.

In Transnistria, religious groups' activities are regulated by "laws" which are not complying with international standards, however the procedure of registration is overly complicated by legislative requirements, such as being active for a minimum of ten years or having at least ten members. For example, Jehovah's Witnesses could not register new branches in the region being unable to fulfil all legislative requirements. Those who are active without registration are punished and left without property. Due to security forces incidents of religious materials' confiscations, questionings, biased attitudes resulting in school harassments, media discrimination or questionings, Muslims continue to abstain from open religious activities. The same qualifies for Baptists and Pentecostals who are highly discriminated and even verbally abused.²⁴⁴

In Donbass region, the religion is systematically exploited and used as a ground for "persecution, torture and even the murder of priests and believers".²⁴⁵ Russian Orthodoxy is the major faith in LPR and DPR, like in Ukraine. Notwithstanding the fact that separatist forces are using churches as military facilities and are taking military control of religious buildings by force, de facto authorities are also persecuting Evangelical Christians, Orthodox of the Kyiv Patriarchate, Greek-Catholics, Jehovah's Witnesses and other religious minorities. Cases of harassment and physical assaults by armed men on

²⁴² Freedom in the World, 'Abkhazia', *Country Report 2014*.

²⁴³ Freedom in the World, 'Abkhazia', *Country Report 2016*.

²⁴⁴ United Kingdom Home Office, *Moldova: Human rights in Transnistria*.

²⁴⁵ Institute for Religious Freedom, *Religious persecution in Donbas region of Eastern Ukraine as a consequence of the Russian aggression*, Statement at Working Session 12, ODIHR, Warsaw, 27 September 2016, <http://www.osce.org/odihr/270366?download=true>, (accessed 4 July 2017).

Jehovah's witnesses, such as beatings, simulating shootings, abductions, blindfolded and taken for interrogations, have been reported.²⁴⁶

It can be concluded that the entities do not comply with international standards and violate the freedom of thought, conscience and religion provided by Art.9 of the ECHR, alongside with Art.18 of the ICCPR providing the freedom of thought and religion and the freedom to adopt a religion or belief of own choice and Art. 18 of the UDHR. This right guarantees the religious liberty and entitles people to manifest one's religion, only with limitations in accordance with laws and necessary in a democratic society. The manifestation can be expressed by acts of "worship, teaching, practice and observance", activities central to the expression of a belief or a religion.²⁴⁷ Discrimination on grounds of religion, which clearly has happened in all three entities, have a strong negative impact on exercising this right. Additionally, there is also the principle of non-discrimination on grounds of religion or belief which constitutes an affront to human dignity and against UN Charter principles. The violation of freedom of religion in self-proclaimed entities closes any prospects for pluralism, tolerance or democratic values in their local communities.

In conclusion, there is difficulty in assessing how many human rights violations occur in these entities due to lack of access on their territories. Their *de facto* laws and constitutions provide the respect of human rights, however the separatist administrations ruling these regions are the ones limiting these rights, alongside with Russian occupying forces. Human rights protection is absolutely crucial in protracted conflicts and legally unrecognized territories, where millions of people still live in overwhelming insecurity. Therefore, following chapter aims to explore existing human rights monitoring and protection mechanisms in self-proclaimed entities.

²⁴⁶ Jehova's Witnesses, *Ukraine, Donetsk and Luhansk Regions, Religious Freedom Concerns*, OSCE Human Dimension Implementation Meeting, Warsaw, 30 September 2015, <http://www.osce.org/odihr/187486?download=true>, (accessed 5 July 2017) and Deutsche Welle, 'The dangers of religion on Donetsk', *Deutsche Welle*, 04 June 2014, <http://www.dw.com/en/the-dangers-for-religion-in-donetsk/a-17679915>, (accessed 7 July 2017).

²⁴⁷ J. Murdoch, *Freedom of thought, conscience and religion, A guide to implementation of Article 9 of the European Convention on Human Rights*, Human rights Handbooks No.9, Council of Europe, Strasbourg, 2007, p.15, <https://rm.coe.int/168007ff4f>.

5. NATIONAL AND INTERNATIONAL HUMAN RIGHTS MONITORING AND PROTECTION MECHANISMS EXISTING IN ABKHAZIA, TRANSNISTRIA AND DONBASS.

'No UN or OSCE can protect us. If they want to kill us, they will just come. Who can protect us from this?'

- Resident of a village near the contact line, Eastern Ukraine²⁴⁸

Chapter 4 of the thesis dedicated to human rights violations clearly shows the “black hole” in human rights area, protruded by a broad spectrum of human rights violations and echoes the urgent need of unhindered and continuous access of international human rights monitoring mechanisms in the occupied territories of Georgia, Moldova and Ukraine. The present chapter will focus on what monitoring mechanisms exist and which are in reality functioning, if any, in the three case studies of Abkhazia, Transnistria and Donbass region.

After the war Abkhazia was accused of large scale of human rights violations and violations of international humanitarian law. The same path is valid for Transnistria after the war. Abkhazia denied these accusations, but admitted individual cases of violations. However, neither Abkhazia, nor Transnistria are admitting these days the human rights violations which still persist in their entities despite the fact that the conflict is over. In case of DPR and LPR however, the armed conflict still persists, and it gives arise to even more systematic abuses of human rights and freedoms.

The population living in these isolated entities has no access to international mechanisms of human rights protection, such as for example the European Court of Human Rights (ECtHR). Notwithstanding the fact that there are many tools developed to defend human rights, such as those developed by the UN, EU, Council of Europe, OSCE and other international organizations, they are unfortunately not applied in these areas and there is hardly any access granted to these organizations into these regions. Thus, leaving a ghetto for its local residents, not only territorially, but also from human rights

²⁴⁸ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine 16 February to 15 May 2017*.

protection mechanisms.

5.1. THE DIFFICULTY OF INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS' ACCESS IN ABKHAZIA, TRANSNISTRIA AND DONBASS

International institutions and human rights organizations do not have representatives or offices neither in Sukhumi, nor in Tiraspol, and by far any in Luhansk and Donetsk. Notwithstanding that Georgia, Moldova and Ukraine are members of international organizations and have set headquarters in their counties for international organizations, the de facto authorities, along with effective controlled exercised by Russian Federation, are preventing numerous international organizations from entering their entities, thus making it extremely difficult to report on the real situation of human rights inside this territory, leaving them as complete “black hole” in monitoring, or in terms of holding human rights violators accountable. *De facto entities* established their own local mechanisms of human rights monitoring, law enforcement bodies and courts, however they are lacking reforms, are heavily corrupt and unreliable.

Notwithstanding that the activity of the locally established “Investigation committee” for torture cases in 2012 in Transnistria, or the local Ombudsman, is not effective and their reporting is doubtfully credible, there is no other efficient independent monitoring mechanism set in place. The Transnistrian Ombudsman²⁴⁹ did create an advisory group as a monitoring mechanisms, however the local authorities are denying access to detention institutions, pretexting with impossibility to guarantee the physical safety during the meetings with prisoners.²⁵⁰ In Abkhazia, a post of Human Rights Commissioner since 2008 exists, however under the de facto President of Abkhazia. It is clear that there is an absence of effective tools that could protect or monitor human rights in these entities.

The only international presences on the ground are: an OSCE field office Tiraspol and

²⁴⁹ Transnistrian Ombudsman, *About*, <http://ombudsmanpmr.org>, (accessed 15 June 2017).

²⁵⁰ United States Department of State, ‘Moldova 2016’, *Country Reports on Human Rights Practices 2016*.

one in Bender referring to Transnistria; Action Contre La Faim, Danish Refugee Council, Première Urgence - Aide Médicale Internationale, United Nations Development Programme (UNDP), and The United Nations Children's Fund (UNICEF) in Abkhazia; and OSCE field office in Donetsk and Luhansk, ICRC in Donetsk and UN Human Rights Monitoring Mission in Donetsk.²⁵¹

Considering tense relations between Abkhazia and Georgia, Transnistria and Moldova, and between LPR and DPR and Ukraine, the access for official national human rights monitoring institutions is not granted. All mother-states' Ministries of Foreign Affairs prepare reports, assessing the human rights situation in their occupied regions, aiming to inform international community on the situation on the ground. However, the reporting is based on existing information from national and international open sources on human rights violations and assesses only some of the most known examples, therefore the methodology applied does not enable the reporting to collect and produce new data on human rights situation in occupied regions.²⁵²

It cannot be drawn a clear line on who is exactly responsible for the lack or arbitrarily and partial access of international human rights mechanisms in self-proclaimed entities. However, it can be stated that the responsibility lays on both the *de facto* authorities or armed groups and on Russian Federation forces.

5.2 . THE UNITED NATIONS MECHANISMS – THE ARBITRARY ACCESS IN *DE FACTO* ENTITIES

The UN has been playing a key role in Abkhazia, when United Nations Observer Mission in Georgia (UNOMIG) has been established in 1993 to monitor the cease fire agreement, with special attention given to Abkhazia. In 1996 a UN human rights office (HROAG), part of UNOMIG has been set in Georgia, having as aim to protect human rights in Abkhazia, together with the OHCHR and OSCE. The expiration of its mandate

²⁵¹ UNDP Georgia, *Abkhazia Project Mapping*, <https://undp.elva.org>, (accessed 27 June 2017).

²⁵² Human Rights Council, *Letter dated 25 November 2016 from the Chargé d'affaires a.i. of Georgia to the United Nations Office at Geneva addressed to the President of the Human Rights Council*, A/HRC/34/G/2, Human Rights Council, 13 January 2017, p.1, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/006/06/PDF/G1700606.pdf?OpenElement>, (accessed 27 May 2017).

on 16 June 2009, vetoed by Russia, has left about 60,000 ethnic Georgians in Abkhazia vulnerable, as declared by the former UN Mission head, Johan Verbeke.²⁵³ In Transnistria and Donbass, the UN has never established any peacekeeping missions. However, UN has been continuingly using the human rights mechanisms to monitor the situation in all three regions, with difficulties accessing them, a topic further explored in Chapter 5.2.

Mostly UN bodies, have raised concerns in the self-proclaimed entities. On 29 June 2016, UN Human Rights Council has made a “Joint Statement on the Human Rights and Humanitarian Situation in Georgia's Regions of Abkhazia and the Tskhinvali Region” stating the deep concerned on the human rights and humanitarian situation in Georgia's region of Abkhazia, stressing the importance of assisting international monitors in objective and independent reporting of the situation on the ground.

However, many UN bodies have been restricted access onto the secessionist territories. UN Working Groups have been unable to enter the occupied region of Abkhazia, due to the unwillingness of the proxy regimes of these regions to grant access to the Working Group.²⁵⁴ In Ukraine, United Nations Human Rights Monitoring Mission in Ukraine monitors and reports on human rights situation in Donetsk and Luhansk, also expressing concerns about the protection of civilians and freedom of movement, however also experiencing problems accessing these territories. On 25 May 2016, the UN Subcommittee on Prevention of Torture postponed its visit to Ukraine because Ukrainian Security Services (SBU) rejected its access to those facilities known for secret detention, torture and ill-treatment of prisoners from Eastern Ukraine. The latter situation shows the degree of difficulty in assessing and protecting human rights in Eastern Ukraine.

The most important UN human rights mechanisms which managed or attempted to access into the enclaves are explained below, showing the “black hole” in the field of human rights protection in protracted conflicts.

²⁵³ J. Verbeke, ‘Abkhazia: UN’s Role In Georgia Has ‘Fundamentally Changed’’, Radio 27 January 2010, *Radio Free Europe, Radio Liberty*, https://www.rferl.org/a/UNs_Role_In_Georgia_Has_Fundamentally_Changed/1941495.html, (accessed 16 May 2017).

²⁵⁴ Human Rights Council, *Report of the Working Group on Arbitrary Detention Addendum, Mission to Georgia: comments by the State on the report of the Working Group*, A/HRC/19/57/Add.4, Human Rights Council, 1 March 2012, p.2, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/111/25/PDF/G1211125.pdf?OpenElement>, (accessed 18 May 2017).

5.2.1. *THE UNITED NATIONS OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS*

The Office of the High Commissioner for Human Rights (OHCHR) is addressing and assessing human rights situation in the world, having as the principal human rights official the High Commissioner for Human Rights (HCHR)

In the opening statement by Zeid Ra'ad Al Hussein, UN HCHR at the 33rd session of the Human Rights Council, on 13 September 2016, he stated the following regarding Abkhazia:

'I am deeply concerned over the repeated refusals to permit access for my staff to both Abkhazia and South Ossetia by those in effective control – despite the Secretary-General's emphasis on the importance of that access in the context of the Geneva International Discussions. We continue to receive allegations of violations, including killings, arbitrary detentions, torture and ill-treatment and restricted freedom of movement. Other serious concerns include unresolved queries regarding missing persons and persistent difficulties regarding access to livelihood, education, property rights and administrative documentation, as well as the need to ensure the space for civil society and independent media'.²⁵⁵

In a nutshell, this statement reiterates the persistent grave human rights violations in Abkhazia, and the lack of access for human rights monitoring mechanisms of OHCHR.

Transnistria has been visited last by the UN Deputy HCHR, on April 2014, discussing with de facto authorities on human rights issues, encouraging the implementation of the recommendations set by the UN Senior Expert, Thomas Hammarberg in 2013, and raising the issues of the freedom of religion, gender-based violence. The meeting did reinforce the obligation of effective control authorities and “non-State actors” to respect and ensure all human rights of the people living in the territory which are laid down in international human rights instruments. It has also laid down the vital need to address all protection

²⁵⁵ *Opening Statement by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, at the 33rd session of the Human Rights Council, 13 September 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20474>, (accessed 12 June 2017).*

gaps in situations of such protracted conflict.²⁵⁶

Regarding the situation in LPR and DPR, OHCHR has noted that none of the armed groups' members have been brought to for such human rights abuses as torture, ill-treatment or arbitrary deprivation of life, instead, prosecuted for their mere armed group membership.²⁵⁷

Considering the fact that Georgia, Moldova and Ukraine are all UN member states, they are bound by the Universal Periodic Review mechanism, which is providing every state with the opportunity to declare which actions have been taken in order to improve the human rights situation. Notwithstanding that all three countries deliver the reports, and acknowledge their responsibility on protecting the human rights of people living in separatist entities, they do not have actual access into these territories and thus also, the data presented on their separatist regions is a mere “outsider” assessment of human rights situation.

5.2.2 *INDIVIDUAL SPECIAL PROCEDURES – SPECIAL RAPPORTEURS AND EXPERTS VISITS IN DE FACTO ENTITIES*

Special Procedures constitute the independent fact-finding and monitoring mechanism of the UN Human Rights Council, that address country situations and thematic issues by undertaking country visits. It is considered a vital element of human rights machinery, as it covers all civil, political, economic, cultural and social rights, performed by Special Rapporteurs or Expert Visits.

In the last visit of the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in Georgia from March 2015, has been denied access in Abkhazia by de facto authorities.²⁵⁸ Therefore the last visit in Abkhazia has been made

²⁵⁶ *Statement by the UN Deputy High Commissioner for Human Rights, Flavia Pansieri, at the end of her mission to the Republic of Moldova*, OHCHR, Chisinau, 11 April 2014,

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14498&LangID=E>

²⁵⁷ Office of the United Nations High Commissioner for Human Rights, *Report on the human rights situation in Ukraine 16 February to 15 May 2017*.

²⁵⁸ J. E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Georgia*, A/HRC/31/57/Add.3, Human Rights Council 31st session, 6 November 2015, p.3.

back on 26 February 2010, by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak. The report emphasized the necessity to abolish the death penalty in Abkhazia and improve conditions of detention.²⁵⁹

The Special Rapporteur on the sale of children, child prostitution and child pornography has not been granted access to assess the situation in Abkhazia during its 2016 last visit in Georgia.²⁶⁰ De facto authorities also denied the access of UN Special Rapporteur on the human rights of internally displaced persons in October 2016, which prevented him to visit Abkhazia and witness the situation first – hand.²⁶¹ The last visit has been undertaken back in 2010, reporting that the main obstacles for IDP's remained political.²⁶²

Concerning Transnistria, the report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez from 2012, emphasized that none of the previous recommendations have been implemented. Torture has not been criminalized, death penalty has not been abolished, solitary confinement is still practiced, and arbitrary detentions continue.²⁶³ The Human Rights Commissioner instituted does not undertake monitoring visits to places of detention, and there is no independent monitoring mechanism established.²⁶⁴

In its previous visit from 2008 of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, and the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk,

²⁵⁹ M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum*, A/HRC/13/39/Add.6, Human Rights Council, 26 February 2010, p. 76, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/116/20/PDF/G1011620.pdf?OpenElement>, (accessed 18 June 2017).

²⁶⁰ M. de Boer-Buquicchio, *Report of the Special Rapporteur on the sale of children, child prostitution and child pornography on her visit to Georgia*, A/HRC/34/55/Add., Human Rights Council, 21 December 2016, p.3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/437/57/PDF/G1643757.pdf?OpenElement>, (accessed 10 July 2017).

²⁶¹ W. Kälin, *Report of the Representative of the Secretary – General on the human rights of internally displaced persons, Follow-up mission to Georgia*, A/HRC/16/43/Add.3, Human Rights Council, 23 December 2010, <http://www2.ohchr.org/english/bodies/hrcouncil/docs/16session/A-HRC-16-43-Add3.pdf>, (accessed 12 July 2017).

²⁶² *ibid.*, p.10.

²⁶³ J. E. Méndez, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum*, A/HRC/19/61/Add.3, Human Rights Council, 1 March 2012, p.357, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/111/23/PDF/G1211123.pdf?OpenElement>, (accessed 18 June 2017).

²⁶⁴ *ibid.*, p.312.

which included the Transnistrian, the same problems have been raised up and was highly concerned of persistent allegations of human rights violations.²⁶⁵ De facto authorities have been urged to improve criminal procedure safeguards to prevent torture and ill-treatment., however, as has been attested later by the next Rapporteur not much has been done in practice by de facto authorities.²⁶⁶

After visiting Transnistrian region in November 2011, UHCHR raised the issues after the above Rapporteurs visits and attested the need to particular attention to the human rights situation in order to ensure there are no human rights protection gaps It reiterated the obligation of de facto authorities to cooperate with all international and human rights mechanisms. This resulted in a follow-up visit of the UN Senior Expert on Human Rights in Transnistria, Thomas Hammemberg in 2012, which has been granted access on the de-facto entity and presented a comprehensive report on the situation of human rights inside the enclave. He did however, identify the lack of independent monitoring and human rights protection mechanism, lacunae in de facto laws, and set a list of comprehensive recommendations for de facto authorities in respect of human rights.²⁶⁷

Eastern Ukraine has been visited by the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns in 2015, however he could meet only the self-proclaimed DPR ombudsperson, as no other officials accepted to meet. Despite this fact, he was concerned by the lack of accountability for grave human rights violations and abuses.²⁶⁸ However, the Special Rapporteur on the human rights of IDP's managed to get access to Eastern Ukraine the preceding year, 2014.

Notwithstanding the importance of the visits of the Special Rapporteurs and UN Experts in the examples provided above, the biggest problem lays in the arbitrariness of allowing or prohibiting access of special procedures mechanisms to enter self-proclaimed entities. It seems this is a rather a matter of arbitrariness in letting international experts to

²⁶⁵ M. Nowak, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum*, p. 163.

²⁶⁶ *ibid.*, p. 149.

²⁶⁷ T. Hammemberg, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*.

²⁶⁸ *End of visit statement of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Ukraine: Lives lost in an accountability vacuum*, Kyiv, 18 September 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16460&LangID=E>, (accessed 5 July 2017).

assess the situation on the ground in an objective way and unwillingness to allow an objective evaluation of human rights in these entities. This can either mean that the de facto authorities do not want human right violations to be internationally discovered, or that they do not want to obey international human rights standards, or a tool of self-protectionism and political isolation. On the other hand, it also means that the existence of secessionist regimes installed in these countries create serious difficulties for the implementations of commitments which result from international conventions Georgia, Moldova and Ukraine are parties to. They are not able to exercise their obligations for human rights protection, as these de facto local powers have usurped parts of their countries, and only raising awareness is not enough to ensure the respect and protection of human rights of people living in isolated territories.

5.3.THE ROLE OF ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE IN HUMAN RIGHTS MONITORING

5.3.1. *OSCE PARLIAMENTARY ASSEMBLY*

OSCE Parliamentary Assembly is employing a variety of means useful for human rights monitoring, such as resolutions, recommendations and a Final Declaration adopted each year at the Annual Session.²⁶⁹

At its Twenty-Fifth Annual Session Tbilisi, between 1 and 5 July 2016, it adopted the Resolution on the Conflict in Georgia where it expressed “concern about the humanitarian situation of the internally displaced persons and refugees, continuously being deprived of the right to voluntary, safe, dignified, and unhindered return to their places of origin, as well as the right to property” in occupied regions of Georgia. It also condemns the installation of razor wire fences by the Russian occupation forces which deprives local population of “fundamental rights and freedoms, including, but not limited to, the freedom of movement, family life, right to property, education in their native language,

²⁶⁹ OSCE Parliamentary Assembly, *About*, <http://www.oscepa.org/about-osce-pa>, (accessed 27 June 2017).

and other civil and economic rights”.²⁷⁰

At the 2017 OSCE Parliamentary Assembly in Minsk between 5-9 July 2017 it adopted Minsk Declaration and Resolutions, it again expressed concern over the humanitarian and security situation in occupied Abkhazia,²⁷¹ and encouraged the demilitarization in the conflict region of Transnistria.²⁷² It also called upon all participating States “to grant unimpeded access to international human rights monitoring mechanisms and missions, including in particular to areas under the military control of participating States or of their proxies”.²⁷³

Concerning Eastern Ukraine, the OSCE PA in Tbilisi recognized the need to grant all international and humanitarian organizations immediate access to the territories currently under occupation, LPR and DPR.²⁷⁴ It also urged the removal of military equipment of foreign regulator troops from LPR and DPR.²⁷⁵

5.3.2. OSCE FIELD MISSIONS

Georgia is a participating state in the OSCE, therefore committed with regard to human rights, rule of law and democratization, including the prohibition of torture and other cruel, inhuman or degrading treatment and freedom from arbitrary arrest or detention. The OSCE has been established in December 1992, and has deployed human rights monitors in Abkhazia, to monitor the abuses, intervene on behalf of victims, receive complaints, report to the Secretariat of the OSCE. The OSCE Mission to Georgia has also liaised with the UN operations in Abkhazia towards a comprehensive settlement and negotiations and to promote the respect of human rights by developing human rights

²⁷⁰ *Resolution on the Conflict in Georgia*, OSCE Parliamentary Assembly at the Twenty-Fifth Annual Session Tbilisi, July 2016, p.25. Available from: <http://www.oscepa.org/documents/all-documents/annual-sessions/2016-tbilisi/declaration-24/3371-tbilisi-declaration-eng/file>.

²⁷¹ *Minsk Declaration and Resolutions*, OSCE Parliamentary Assembly, at the Twenty – Sixth Annual Session Minsk, July 2017, p.6. Available from: <https://www.oscepa.org/documents/all-documents/annual-sessions/2017-minsk/declaration-25/3555-declaration-minsk-eng/file>.

²⁷² *ibid.*

²⁷³ *ibid.*, p.16.

²⁷⁴ *Resolution on the Conflict in Georgia*, p.5.

²⁷⁵ *ibid.*, p.6.

projects related to Abkhazia.²⁷⁶ However, the mission has been closed in 2009 and the EUMM is the only international monitoring mechanism on the ground. Regrettably, it is unable to fulfil its mandate fully, as it is denied access to the occupied regions Abkhazia.²⁷⁷

The OSCE Mission to Moldova was established in 1993 to facilitate a lasting comprehensive political settlement of the Transnistrian conflict in all its aspects. While being primarily tasked to mediate between Chisinau and Tiraspol, the Mission was also mandated to gather and provide information, to investigate specific incidents and to provide advice and expertise on the effective observance of international obligations and commitments regarding human and minority rights.²⁷⁸ Thus, the Mission had a clear mandate to support the implementation of international human rights obligations in Transnistria.²⁷⁹

The OSCE Mission opened a field office in Tiraspol in 1995 and one in Bender in 2003. While these offices were staffed only with local staff, they serve as a bridgehead for the international staff traveling to Transnistria several times per week and as an antenna for the OSCE in the region. The offices provide also room for meetings and smaller events. An exchange of letters between the Mission and the Transnistrian leader guaranteed Mission staff freedom of movement in the region.²⁸⁰ However, this access was in reality not always granted and after the agreement was unilaterally revoked by the then Transnistrian leadership in 2013, access became more limited.²⁸¹

While the OSCE Mission also receives and deals with individual human rights complaints its main value for human rights monitoring and protection is its access to the region and to all levels of the de facto authorities and key decision-makers.

The OSCE Mission has been crucial in closely following on the ground developments

²⁷⁶ OSCE, *The Georgian-Abkhaz conflict*, <http://www.osce.org/georgia-closed/44629>, (accessed 2 May 2017).

²⁷⁷ *Resolution on the Conflict in Georgia*, p.26.

²⁷⁸ CSCE, 'Mission to Moldova', *CSO Vienna Group*, Journal 7, annex 1, Vienna, 11 March 1993. Available from: <http://www.osce.org/moldova/41137?download=true>.

²⁷⁹ K. Büscher, 'The Missions to the Republic of Moldova and Ukraine, A Double Entry Balance Sheet', IFSH, *OSCE Yearbook 1999*, Baden-Baden, Nomos, 2000, p.198.

²⁸⁰ R. Welberts, 'Der Einsatz der OSZE in der Republik Moldau', [The operation of OSCE in the Republic of Moldova], *OSZE-Jahrbuch 1995*, Baden-Baden, Nomos, 1996, p. 197.

²⁸¹ Amb. D. B. Baer, *Concerns about OSCE Access to the Transnistrian Region of Moldova*, United States Mission to the OSCE, 3 April 2014, <http://www.osce.org/pc/117322?download=true>.

regarding the Moldovan administered Latin script schools in Transnistria and has supported through its permanent presence also the work of the OSCE High Commissioner on National Minorities on this issue. Through its reporting to the OSCE Permanent Council and in particular through its active media work during the 2014 school crisis, the work of the Mission had a preventive and respectively correcting effect with regard to violations to the right of education in Transnistria. As part of its mediation role in the overall conflict settlement, the Mission facilitated together with the HCNM the agreement on a range of ad hoc and systematic measures which have allowed the schools to continue operating.²⁸² The Mission displayed this mixture of on the ground monitoring, reporting to the international community and direct intervention with Transnistrian authorities,²⁸³ as well as facilitating and mediating difficulties faced by media outlets and journalists critical towards the regime, individual cases before the ECtHR, elections and access of Transnistrian voters to Moldovan elections. In addition to this direct contribution to human rights monitoring and protection, the Mission further facilitated visits by other international organizations to Transnistria, including the CPT and the UN Special Rapporteur on Torture.

In Ukraine, the OSCE opened its first field operation in 1994 primarily to prevent the escalation of a potential conflict over Crimea.²⁸⁴ This Mission was closed in April 1999 as its mandate was considered fulfilled²⁸⁵ and replaced with the Project-Coordinator in Ukraine (PCU), which in contrast to the first Mission has no mandate for human rights monitoring and reporting, although the Office can carry out project activities in this field and as a matter of fact, the first large scale project of the PCU concerned the review of human rights legislation.²⁸⁶ While the PCU still exists in 2017, its activities do not reach beyond the area controlled by the Government in Kiev.

However, the OSCE Special Monitoring Mission to Ukraine (SMM), established on

²⁸² W. Hill, 'The Transnistrian Settlement Process – Steps Forward, Steps Back: The OSCE Mission to Moldova in 2005/2006', *OSCE Yearbook 2006*, Baden-Baden, Nomos, 2007, p.156.

²⁸³ Welberts, R., 'Der Einsatz der OSZE in der Republik Moldau', [The operation of OSCE in the Republic of Moldova], p. 200.

²⁸⁴ Büscher, K., 'The Missions to the Republic of Moldova and Ukraine, A Double Entry Balance Sheet', p. 197.

²⁸⁵ *ibid.*

²⁸⁶ *Decision No. 295, OSCE Permanent Council*, OSCE, 1 June 1999. Available from: <http://www.osce.org/pc/29031?download=true>.

21 March 2014 to contribute to reducing tensions and fostering peace and stability throughout Ukraine²⁸⁷ has both, a clear mandate for human rights monitoring and a solid presence in DPR and LPR controlled territory. The SMM, which was established right after Crimea's illegal annexation by Russia and before the military escalation in Donbass is mandated to "establish and report facts in response to specific incidents and reports of incidents, including those concerning alleged violations of fundamental OSCE principles and commitments" and to "monitor and support respect for human rights and fundamental freedoms". The SMM has established offices in Donetsk and Luhansk and has deployed 600 out of its 700 civilian monitors to the government and rebel controlled areas in Eastern Ukraine.²⁸⁸ However, with the military escalation of the conflict in the Donbass after May 2014 and even more after the Minsk agreements in September 2014, the SMM has developed rapidly into a civilian peacekeeping operation with a very strong focus on monitoring the ceasefire and reporting on violations of the Minsk agreements.

Respectively, the human rights related monitoring and reporting of the SMM in the Donbass refers mainly to incidents involving civilian casualties and potential violations of international humanitarian law, such as indiscriminate shelling of civilian residential areas or firing from such areas. Other than incidents related to cease-fire violations, the SMM has not looked into single human rights related cases. However, it has offered analytical reports on a range of human rights related issues. In February 2017, the SMM has issued for instance a report on the hardships for conflict affected civilians.²⁸⁹ Previous, so-called thematic reports touching on issues related to human rights in DPR and LPR include reports on access to water²⁹⁰ and access to justice in these areas²⁹¹ and the situation of formerly state-financed institutions, which deals, inter alia, with the

²⁸⁷ *Deployment of an OSCE Special Monitoring Mission to Ukraine – Decision No.1117.*

²⁸⁸ <http://www.osce.org/ukraine-smm/116879?download=true>

²⁸⁹ OSCE Special Monitoring Mission, 'Hardship for conflict-affected civilians in Eastern Ukraine', *Thematic Report*, OSCE, February 2017, <http://www.osce.org/ukraine-smm/300276?download=true>, (accessed 22 May 2017).

²⁹⁰ OSCE Special Monitoring Mission, 'Access to Water in conflict-affected areas in Donetsk and Luhansk Regions Thematic Report', *Thematic Report*, OSCE, September 2015, <http://www.osce.org/ukraine-smm/183151?download=true>, (accessed 28 May 2017).

²⁹¹ OSCE Special Monitoring Mission, 'Access to Justice in Ukraine', *Thematic Report*, OSCE, December 2015, <http://www.osce.org/ukraine-smm/212311?download=true>, (accessed 16 May 2017).

situation of penitentiaries, orphanages or medical institutions.²⁹²

The SMM has further facilitated the exchange of civilians and fighters held by the respective other side as captives or prisoners and in July 2014 has crucially facilitated access of international investigators to the crash site of MH 17. While the SMMs human rights monitoring structure is weak as compared to its structure of the monitoring of ceasefire violations, the work of the SMM in human rights monitoring and reporting is still relevant and even crucial as the SMM has access to decision makers and de facto authorities. Moreover, no other international organization has such a large and spread out presence in DPR and LPR, in particular in the so-called grey zones between the front lines and other neuralgic hotspots along the line of conflict.

5.4. COUNCIL OF EUROPE MECHANISMS

At the regional level, Georgia, Moldova and Ukraine are members of the Council of Europe (CoE). They all ratified the European Convention on Human Rights, the European Convention for the Prevention of Torture, Inhuman and Degrading Treatment or Punishment, and are subjects to the jurisdiction of the European Court of Human Rights.

On 4th May 2016, the Committee of Ministers' Deputies of the CoE made a decision in which reiterated the "unequivocal support" of the CoE member States for Georgia's sovereignty and territorial integrity within its internationally recognized borders, stating that Russian Federation measures in Abkhazia, undermine international efforts in strengthening security and stability in the region are violating Georgia's sovereignty.²⁹³ It also expressed serious concern on the deterioration of human rights situation in Abkhazia, and called on de fact authorities to guarantee the right to education, including in Georgian native language, to allow the return of IDP's, remove the restrictions of the freedom of movement across the administrative boundary lines and prevent arbitrary detention of persons, and to stop discrimination. Neither the Commissioner for Human

²⁹² OSCE Special Monitoring Mission, 'Findings on formerly state-financed institutions in the Donetsk and Luhansk Regions', *Thematic Report*, OSCE, March 2015, <http://www.osce.org/ukraine-smm/148326?download=true>, (accessed 16 May 2017).

²⁹³ *Council of Europe Decision, The Council of Europe and the conflict in Georgia, 1255th meeting*, paragraph 1.

Rights of the Council of Europe, nor the Secretariat delegation in charge of preparing the Secretary General's consolidated reports have been granted access to Abkhazia.

The Committee of Ministers also interfered in 2005, adopting a note on the Moldovan schools using Latin script in Transnistria and keeping the situation under review.²⁹⁴

5.4.1. COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

Commissioner for Human Rights (CHR) represents an independent and impartial non-judicial institution, with the mandate to promote awareness, assist member states in the implementation of human rights standards and cooperate with other human rights monitoring mechanisms of the UN, OSCE, EU, and human rights NGOs²⁹⁵ since 1999.²⁹⁶ The visits of the CHR are viable, as they aim to monitor and evaluate the human rights situation, followed by reports, recommendations, or submitting written material for the ECtHR or take part in the hearings as a third party.²⁹⁷

The observations and reports of the Commissioner's visits on January 2014 and November 2015 to Georgia, are focused mainly on human rights abuses in justice systems, tolerance and non-discrimination and the situation of ethnic and religious minorities in Georgia, in the Autonomous Republic of Adjara. He also stated the major human rights abuses should be addressed as a matter of priority by the authorities, putting the duty on Georgian leadership.

The CHR visited Transnistria in 2012, meeting de facto leadership and authorities and talking about the protection of the right of the people living in the region, such as the issue of the Latin-script schools, prisoners' situation, vulnerable groups' rights, etc.²⁹⁸.

²⁹⁴ Moldova Org, 'Council of Europe's committee of ministers condemns Transnistrian separatist authorities' actions', *Moldova Org*, 20 October 2005, <http://www.moldova.org/en/council-of-europes-committee-of-ministers-condemns-transnistrian-separatist-authorities-actions-5618-eng/>, (accessed 19 June 2017).

²⁹⁵ *Resolution (99) 50 on the Council of Europe Commissioner for Human Rights*, 7 May 1999, Council of Europe, Available from: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805e305a.

²⁹⁶ Council of Europe, *Commissioner for Human Rights Mandate*, <https://www.coe.int/en/web/commissioner/mandate>, (accessed 15 May 2017).

²⁹⁷ *ibid.*

²⁹⁸ Council of Europe Commissioner for Human Rights, 'Sustained efforts needed to ensure effective protection of human rights of the persons living in the Transnistrian region', *Council of Europe Press*, 18

Moldova has been also visited in 2013, however the report of the visit does not specify issues related human rights in Transnistria.²⁹⁹

5.4.2. *EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN AND DEGRADING TREATMENT OR PUNISHMENT (CPT)*

The CPT has been set up under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989), based on the provisions of Article 3 of the European Convention on Human Rights which states that: “No one shall be subjected to torture or to inhuman or degrading treatment or punishment”. It represents a preventive mechanism for protecting persons deprived of liberty against torture and other forms of ill-treatment, thus complementing the judicial work of the European Court of Human Rights, carrying out periodic visits (once every four years) and ad-hoc visits (when necessary) to its Member States.³⁰⁰ Georgia, Ukraine and Moldova are all members of the Council of Europe, thus have all ratified this Convention correspondingly in 2000, 1997 and 1997.

CPT has carried out 7 visits in Georgia, out of which 1 ad-hoc visit in Abkhazia in 2009;³⁰¹ 14 visits in Moldova, out of which 4 ad-hoc visits in Transnistria in 2000, 2003, 2004, 2006;³⁰² and 13 visits in Ukraine including some detention institutions in Luhansk, however without any visits to Donetsk.³⁰³ It raises issues in its reports to the concerned States, followed by responses. The cooperation with the states is usually confidential, however if a State refuses to cooperate or improve the situation, the statement might be made public.

In pursuance of Art. 7 of the European Convention for the Prevention of Torture and

January 2012, <http://www.coe.int/en/web/commissioner/-/sustained-efforts-needed-to-ensure-effective-protection-of-human-rights-of-the-persons-living-in-the-transnistrian-region>, (accessed 17 June 2017).

²⁹⁹ N. Muižnieks, *Report by the Commissioner for Human Rights of the Council of Europe, Following his Visit to the Republic of Moldova from 4 to 7 March 2013*, Council of Europe, Strasbourg, 30 September 2013, <https://rm.coe.int/16806db749>, (accessed 11 July 2017).

³⁰⁰ *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* 1987, Art.7.

³⁰¹ Council of Europe, *CPT Georgia*, <http://www.coe.int/en/web/cpt/georgia>, (accessed 6 May 2017).

³⁰² Council of Europe, *CPT Republic of Moldova*, <http://www.coe.int/en/web/cpt/republic-of-moldova>, (accessed 7 May 2017).

³⁰³ Council of Europe, *CPT Ukraine*, <http://www.coe.int/en/web/cpt/ukraine>, (accessed 8 May 2017).

Inhuman or Degrading Treatment or Punishment, a delegation of the CPT visited Abkhazia, Georgia, from 27 April to 4 May 2009.³⁰⁴ CPT visited Dranda Prison, which is the sole establishment for sentenced prisoners in Abkhazia; temporary detention facilities at Gali, Sukhumi, Tkvarcheli and of the Security Service; two Police Stations; Dranda Psychiatric Hospital and Sukhumi military garrison detention facility. There have been detected infringement of persons deprived of liberty rights, cases of ill-treatment from police officers, as well as between prisoners and lack of liability related to the alleged ill-treatments, and the existence of power structures of intimidation or extortion.³⁰⁵ Institutions are not providing proper conditions of detention and facilities, access to health care services is mostly restricted, there is a high number of illegal pre-trial – detentions and death penalty has not been yet abolished.³⁰⁶ The CPT has planned another visit to Georgia in 2018, however no information if that includes Abkhazia as well.

The same types of visits to police and prison establishments have been performed in Transnistria in 2000, 2003, 2006 and 2010. In the latter, the CPT has not been guaranteed the right to interview in private prisoners, which contradicts one of the fundamental characteristics of the preventive mechanism embodied by the CPT. Nevertheless, the delegation visited Penitentiary Nr. 8 and 12 in Bender, under the authority of the Moldovan Ministry of Justice but are located in an area controlled by the Transnistrian de facto authorities.³⁰⁷ The issue is problematic as de facto municipal authorities from Transnistria cut the establishment's access to water and electricity, and to the city's sewage disposal system³⁰⁸, placing prisoner's physical integrity at risk, which is unacceptable and "could be described as amounting to inhuman and degrading

³⁰⁴ CPT, *Report on the visit to the region of Abkhazia, Georgia, carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 27 April to 4 May 2009*.

³⁰⁵ *ibid.*, p.6.

³⁰⁶ *ibid.*, pp.45-57.

³⁰⁷ Council of Europe, 'Council of Europe anti-torture Committee interrupts visit to the Transnistrian region of Moldova', *Council of Europe News*, 2010, <http://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-interrupts-visit-to-the-transnistrian-region-of-moldo-1>.

³⁰⁸ *Rapport au Gouvernement de la Moldova relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants (CPT) en Moldova du 21 au 27 juillet 2010*, [Report to the Government of Moldova on the visit of the CPT in Moldova between 21 and 27 July 2010], CPT/Inf (2011) 8, Strasbourg, 3 March 2011, p.7, <https://rm.coe.int/16806975c8>, (accessed 18 July 2017).

treatment”.³⁰⁹ CPT also delivered the conclusions of the World Health Organization (WHO) independent expert that the prison conditions posed health risk also for the local community, exposing them to infectious tuberculosis.

CPT had been repeatedly calling on the municipal authorities of Bender to resume running water and electricity supplies immediately and unconditionally, as well as to break the deadlock situation, however Transnistrian authorities never responded to this request. Additionally, both parties keep their standing point, on the one side separatist local authorities insisting on a complete evacuation of the establishment, and on the other side the Moldovan authorities insisting on keeping it.

The CPT has also insisted on the Moldovan authorities to develop an effective negotiation strategy with the de facto Transnistrian authorities to solve the issues, however the Moldovan authorities are unable to find a solution other than constantly monitoring by the competent bodies of the Republic of Moldova.³¹⁰ However, it has to be mentioned that the establishment will be emptied in the next ten years, once all the current detainees had served their sentences, as Transnistrian authorities are refusing to transfer the prisoners.³¹¹ Unfortunately, the CPT had declared that the arguments heard were “unconvincing”, condemned the parties for staying in the “stage of stiege”³¹² and that the issue was above all of a political nature with none of the parties able to assume responsibilities in seeking a solution.

Moldovan authorities have the fundamental obligations to protect prisoners from inhuman and degrading treatment, and if the deadlock situation persists, the responsibility requires the relocation of prisoners to another facility, thus declaring that the reason of “overcrowding in other Moldovan penitentiary establishments” as a result of relocation, is “unconvincing”.³¹³ However, the Moldovan Government stated in its response to the report is that it considers that “at the moment the situation is under control and there are

³⁰⁹ CPT, *Report to the Government of the Republic of Moldova on the visit to Prison Establishment No. 8 in Bender carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on 18 March 2006*, CPT/Inf (2008) 38, Strasbourg, 4 December 2008, p.9, <https://rm.coe.int/16806975a4>, (accessed 16 July 2017).

³¹¹ *ibid.*, p.6.

³¹² *ibid.*, p.11.

³¹³ *ibid.*

no reasons for relocation of the detainees to other penitentiaries” and “are constantly seeking for any efficient solutions directed at amelioration of the situation existing in Penitentiary Institution Nr. 8 from Bender”.³¹⁴

Considering Ukraine, the CPT has carried out 13 visits. In its 2009 the CPT had visited Leninskyi District Division of Internal Affairs in Lugansk, Zhovtnevyi District Division of Internal Affairs and Municipal Militia Sub-Division No. 1 (MVM-1) in Luhansk, Temporary holding facilities (ITT) in Luhansk, Reception and Distribution Centre for vagrants Luhansk, and Colony Nr.60 in Lozivske, a maximum-security establishment located in the Luhansk region. Overall, the CPT has had free access in these institutions, and the following had been concluded: discovering non- standard items capable of being used for inflicting ill-treatment,³¹⁵ inaccuracies and lack of precision on exact timings of detentions (monitoring), improper detention conditions, overcrowded cells or dormitories, shortages of running water and electricity supplies, lack of outdoor activities.³¹⁶

The monitoring and reporting of human rights violations carried out by UN, OSCE and CoE are important and vital instruments for understanding the situation of human rights in self-proclaimed entities. However, all of them, without exception, have still encounter difficulties in accessing these territories. Even if the reports of international organizations might have little effects on Abkhazia, Transnistria, LPR or DPR, as these are not parties of international conventions, they serve as important material for human rights defenders in order to advocate the human rights abuses in their communities and for international community. The biggest challenge is bringing the perpetrators from these regions to justice, which is extremely difficult. However, the ECtHR is having tools for justice in frozen conflicts, analysed in detail in Chapter 5.5.

³¹⁴ *ibid.*, p.4.

³¹⁵ CPT, *Report to the Ukrainian Government on the visit to Ukraine carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 21 September 2009*, CPT/Inf (2011) 29, Strasbourg, 23 November 2011, p.12, <https://rm.coe.int/1680698430>, (accessed 18 July 2017).

³¹⁶ *ibid.*, p.25.

5.5. EUROPEAN COURT OF HUMAN RIGHTS – A SOLUTION FOR PROTECTION OF HUMAN RIGHTS VIOLATIONS IN FROZEN CONFLICTS?

The Ministry of Foreign Affairs of Georgia appealed many times to international community to continue calling on the Russian Federation to bear responsibility for human rights violations on the occupied regions of Georgia. However, keeping Russia accountable for human rights violations in Abkhazia, it has to be proven that Russian forces are violating internationally recognized human rights and the laws of war. To what extent can Russia be kept responsible for the actions of its armed forces which are deployed? It cannot be stated that Georgia lacks responsibility, however to which extent is Russia responsible for its support in armed conflicts and frozen conflicts, which led to committing human rights abuses.

It has been argued that the pattern of the conflict in Abkhazia is very similar to the abuses elsewhere in conflicts in the former Soviet republics, some of which have not yet broken out into open war,³¹⁷ or to “frozen conflicts”. Russian forces are still based in Transnistria and Abkhazia, and now fully present in LPR and DPR.³¹⁸

This subchapter will deal with analysis and importance of ECtHR case law in keeping liable perpetrators of human rights abuses in frozen conflicts.

5.5.1. *LIABILITY THROUGH ILAȘCU AND OTHERS v MOLDOVA AND RUSSIA* *CASE'S LENSES*

5.5.1.1. CASE SUMMARY

The case of *Ilașcu and Others v. Moldova and Russia* has been lodged in April 1999, by four Moldovan citizens, Ilie Ilașcu, Alexandru Leșco, Andrei Ivanțoc and Tudor Petrov-Popa while being detained by unrecognized Transnistrian authorities starting 1992.³¹⁹ The applicants have been arrested without warrants, in their homes in Tiraspol

³¹⁷ Human Rights Watch Arms Project and HRW Helsinki, ‘Georgia/Abkhazia: Violations of the law of war and Russia’s role in the conflict’, *Human Rights Watch Report*, p.10.

³¹⁹ *Ilașcu and others v. Moldova and Russia*, p.1.

between 2 and 4 June 1992 by persons in uniform, some wearing the 14th Army of the USSR insignias. They have been taken to Tiraspol police headquarters, interrogated, beaten regularly and severely, detained without food and ill-treated. After their arrest, they have been taken by to the 14th Army garrison in vehicles with Russian markings, and allegedly tortured. Russian Government has acknowledged their short detention on the premises of the 14th Army by providing the cells, however claiming that the persons had done nothing illegal. At Tiraspol garrison, they have been subjected to mock executions, threatened with rape, beaten during night interrogations, no access to sanitary and food, limited outdoor exercises, no contact with families, and no access to lawyers. They have been transferred to Tiraspol police headquarters in 1992 by 14th Army soldiers for one to six months, until their trial began, accompanied by beatings, hallucinogenic drug administration, and with access to lawyer several months after their arrest. On 21 April 1993, they were brought before the “Supreme Court of the Moldavian Republic of Transnistria” and later the year they were found guilty of committing offences against national security, murder with aim to spread terror, use of illegal ammunitions, destruction of property, and sentenced Mr. Ilaşcu to death and confiscated his property. The other three applicants have been sentenced to 12 to 15 years of imprisonment. The conviction has been declared unlawful by Moldovan authorities on the ground of being pronounced by an unconstitutional court and ordered an investigation, however it came to nothing. In 1994 the Supreme Court of Moldova set a warrant and ordered the release of applicants, however the Transnistrian authorities did not respond to the judgement.

After the conviction Mr. Ilaşcu has been transferred to Hlinaia Prison, and later to Tiraspol Prison no.2 in solitary confinement, without allowing to speak to other prisoners, insufficient food, without natural light and heating, months without washing, and the others to Tiraspol Prison no.2, all have had being subject to ill-treatment

Mr. Ilaşcu has been released on 5 May 2001 by being “handed over” by Transnistrian Security to Moldovan Security Services. His transfer document stated as follows: “The prisoner Ilaşcu, who has been sentenced to death, is transferred to the competent organs of the Republic of Moldova.” Allegedly, after handing over the document it has been declared that the sentence remained valid and would be enforced if Mr Ilaşcu returned to

Transnistria.³²⁰ However, the other three applicants were still detained in Tiraspol.

The applicants claimed to the ECtHR that they have been unlawfully detained and convicted by a Transnistrian court, the right to fair trial has not been respected, sentenced to death, deprived of possessions, inadequate detention conditions, and subjected to ill-treatment. They also argued that Moldovan authorities failed to take appropriate measures and have been responsible for the infringement of their rights and that Russian Federation has a shared responsibility since Transnistria is under de facto Russian control of the Russian troops with its military equipment and supporting the separatist regime. Additionally, both States obstructed their right of individual application to the ECtHR.

5.5.1.2. THE ROLE OF HUMAN RIGHTS MONITORING MECHANISMS AS
IMPORTANT DOCUMENTARY EVIDENCE IN *ILAȘCU AND OTHERS v*
MOLDOVA AND RUSSIA CASE

The Court has relied on written observations of the parties, witness hearings and documentary evidence, establishing the facts during and after the armed conflict, economic, political and other relations between Transnistria, Russian Federation and Moldova. In order to ascertain relevant facts for determining whether Moldova and/or Russian Federation are responsible for the alleged violations, the Court carried out an on-the-spot investigation to determine the relations between Transnistria, Moldova and the Russian Federation, as well as to take evidence from forty-three witnesses and assess the applicants' conditions of detention.

However, the fact that the Court took into consideration the documents from international organisations such as the OSCE, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Parliamentary Assembly of the Council of Europe, the Council of Europe's Commissioner for Human Rights and the Governing Council of the Inter-Parliamentary Union,³²¹ shows the relevance and key role of international human rights monitoring mechanisms in the

³²⁰ *ibid.*, p.56.

³²¹ *ibid.*, p. 5.

process of justice.

The 1994 report written at the request of the OSCE's ODIHR, following a fact-finding visit to Transnistria was of relevant importance as it analysed the applicants' trial before the Transnistrian Supreme Court. It concluded that there have been serious infringements, such as: the defendants' rights, such as no lawyer during the first two months after their arrest, and continued by very limited access; the right to be tried by an impartial tribunal; and the right to the conviction or sentence being reviewed by a higher tribunal according to law, as the trial had been conducted according to an exceptional procedure, denying the right to an appeal. The report stated that 'criminal charges of terrorism against the applicant would be considered merely free speech issues in modern democracies' and described the trial as 'a political event from the beginning to the end'.³²²

The Council of Europe's Commissioner for Human Rights asked separatist authorities for the allowance to visit Ilie Ilașcu in prison in 2000, to check his detention conditions, however, he has been refused on the ground of lack of necessary authorization.

In the same year, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) produced its report following its visit to Transnistria, where it drew attention to severe overcrowding, expressed its concern on solitary confinement practices for long periods, or inadequate or total absence treatment for sick prisoners, including Ilașcu group members, and the conditions of detention deplorable. The CPT confirmed that Ilașcu group was kept in solitary confinement, which 'could amount to inhuman and degrading treatment' and reported accounts of beatings.³²³

In conclusion, it is particularly important to realize the role of human rights monitoring mechanisms in the efforts of the ECtHR efforts in justice process.

5.5.1.3. THE COMPLEX ISSUE OF JURISDICTION - MOLDOVA AND RUSSIAN FEDERATION HELD ACCOUNTABLE FOR HUMAN RIGHTS VIOLATIONS IN TRANSNISTRIA

In 2001 the Court held the questions whether the responsibility and jurisdiction of

³²² *ibid.*, p.58.

³²³ *ibid.*, p.59.

Moldova and the Russian Federation might be engaged under the ECHR, further referred to as Convention.³²⁴

Discussing the jurisdiction, the Moldovan Government argued that the applicants did not come within *de facto* jurisdiction of Moldova, therefore it would be incompatible *ratione personae* with the provisions of the ECHR, as Art.1 sets that Contracting Parties agree to secure the rights and freedoms of everyone within their jurisdiction. As Moldova is not in effective control of part of its territory, it could not exercise territorial jurisdiction and sovereignty since at least the end of 1991, which excludes its responsibility with regard to acts committed on Transnistrian territory. Moldovans also argued that for the Convention to be applicable, it had to be possible for the State to confer and secure the rights set forth in Convention, and that was impossible. However, all the attempts of cooperation between Moldovan and Transnistrian authorities have been taken only as part of negotiations for Transnistrian conflict settlement.³²⁵ And any means at their disposal to enforce applicants' rights would have endangered Moldova's economic and political situation.

On the other side, Russian Federation Government argued that Transnistrian territory is an integral part of the Republic of Moldova, therefore the only legitimate government responsible for the act committed on that territory is Moldova. The 14th Army did not engage in armed conflict, it only stationed as peacekeeping according to agreements signed between Moldova and Russia. However, when illegal armed actions have been committed against 14th Army soldiers, they had been obliged to defend themselves. Moreover, the ulterior withdrawal of its military forces has not been possible as Transnistrian authorities opposed and because of technical considerations.³²⁶

The ECtHR established that the 14th Army had intervened actively in the Transnistrian conflict, directly and indirectly,³²⁷ thus leaving Moldovan army in a position of inferiority, which prevented Moldova from regaining control over Transnistria.³²⁸

³²⁴ *ibid.*, p.3.

³²⁵ *ibid.*, p.70.

³²⁶ *ibid.*, p.71.

³²⁷ *ibid.*, p.16.

³²⁸ *ibid.*, p.17.

Both Moldova and Russian Federation have ratified the ECHR, which entered into force on 12 September 1997 and on 5 May 1998 respectively. Art.1 of the Convention establishes that ‘The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined’ in Convention. Without this condition, it is impossible to hold Contracting States responsible for the acts or omissions imputable to them.³²⁹

According to the Court, jurisdiction is not only mainly territorial, but it is also presumed to be exercised throughout the State's territory. However, this presumption may be limited by ‘preventing a State to exercise authority in part of its territory’ as a result of ‘military occupation by the armed forces of another State, which effectively controls the territory concerned, acts of war or rebellion, or the acts of a foreign State supporting the installation of a separatist State within the territory of the State concerned’, as it happens in the case of Transnistria.³³⁰

In order to conclude these situations, the Court must examine the objective facts which are limiting the effective exercise of a State's authority over its territory, and on the other the State's own conduct. The obligations of the State, in this case Moldova, remain even where the exercise of authority is limited in part of its territory. It includes the duty to refrain from interfering with the enjoyment of the rights and freedoms guaranteed, as well as its positive obligations as to take appropriate steps and measures to ensure respect for those rights and freedoms within its territory.

Also, the ‘acts of Contracting States performed outside their territories and which produce effects there, may also amount exercising their jurisdiction as well’.³³¹ The State is responsible on territories where it exercises effective control (directly or through its armed forces, or through a subordinate local administration) of an area outside its national territory, as a consequence of lawful or unlawful military action.

Also, an important aspect is that whether a Contracting State exercises control over an area outside its national territory, its responsibility is extended to the acts of the local administration which survives there by virtue of its military and other support, which was

³²⁹ *ibid.*, p.73.

³³⁰ *ibid.*, p. 73.

³³¹ *ibid.*, p.73.

the case of Russian Federation. When a Contracting State is recognizing and accepting the acts of self-proclaimed authorities which are not recognized by the international community, on the rights of individuals within its jurisdiction, it is considered that the Contracting State's responsibility under the Convention, according to International Law Commission and international law principles.³³²

The point of not being able to exercise the authority over part of its territory has not been disputed. The Court noted that Moldova was not in control of Transnistria and also its declaration during the ratification of the ECHR that there is a lack of control over this territory. However, the Court agreed that even in the absence of effective control over Transnistria, Moldova still has the obligation to take positive steps under Art. 1 of the ECHR. It should have taken diplomatic, economic, judicial or other measures available in order to secure the applicants' right which are guaranteed by the Convention, especially of absolute rights as right to life and prohibition of torture set in Art.2 and Art.3. Positive obligations have been considered in this case those measures that Moldova took to re-establish its control over Transnistria, and those measures to ensure the respect of applicants' rights, including attempts to secure their release.

It has to be stated that even if a State is prevented to exercise its authority over its whole territory by a de facto situation, such as when a separatist regime is set up or a temporary subject to a local authority sustained by rebel forces, whether or not accompanied by military occupation by another State, it does not cease the State to have jurisdiction within the meaning of Art. 1 of the Convention.

In this particular case, the ECtHR considered that Moldova's positive obligations were closely related to the relations between Moldova and the Russian Federation, and between Transnistria and the Russian Federation. The ECtHR considered Moldova's positive obligations before ratification date only for comparative purposes, but assessed the efforts made by Moldova after 12 September 1997.

The Court concluded that Moldova failed to fulfil its positive obligations, therefore responsible with regard to the acts complained of which occurred after May 2001.

Analysing Russian Federation responsibility, the Court divided the analysis to prior

³³² *ibid.*, p.74.

and after its ratification of Convention.

Prior to ratification, the 14th Army stationed in Transnistria, fought with and on behalf of the Transnistria separatist forces, transferred weapons, Russian Federation leaders supported separatist authorities by political declarations, thus contributing to the creation of a separatist regime on a part of Moldovan territory. Moreover, even after the ceasefire agreement in 1992 it continued to provide military, economic and political support, enabling the separatist regime to survive and gain autonomy. The applicants were detained on 14th Army premises and guarded by 14th Army troops, subjected to interrogations and to treatment contrary to Art. 3 of the Convention, and also handed over to an illegal and unconstitutional regime. Thus, the applicants come within Russian Federation jurisdiction, however the Convention has not been ratified at that time by Russia.

At the time and after the ratification, Russian army still stationed on Moldovan territory with weapon stocks, Transnistria acquired its arsenal, signed with Transnistria financial support agreements, provided military, economic and political support, thus proving its effective authority, or at least under decisive influence of Russian Federation.

The ECtHR decided that there is a continuous and uninterrupted link of responsibility on the part of the Russian Federation, as it supported the regime beyond 5 May 1998. It did not bring about the applicants' situation by its agents and it did not act to prevent the alleged violations.

In conclusion, the Court found Russia responsible, and acts complained of by the applicants come within the "jurisdiction" of the Russian Federation in line Art. 1 of the ECHR.

As a result, both States have been held accountable for violation of applicants' human rights. Art. 3, prohibition of torture, has been imputable only to Russian Federation, as Mr. Ilașcu was released in May 2001 and it is only from that date onwards that Moldova's responsibility was engaged. However, for the rest of applicants, both Russian Federation and Moldova have violated Art.3, as being subjected to inhuman and degrading treatment, first from the date of its ratification of Convention and the second from May 2001 onwards.

Concerning Art.5 in relation to lawfulness of the detention and the court, the Court

mentioned that in certain circumstances, a court which is belonging to a judicial system of an unrecognized entity may be regarded as a tribunal, however only provided that it is operating on a constitutional and legal basis and compatible with the Convention, in order to enable the individuals to enjoy the rights set in the Convention. It is not enough to comply with domestic law, as the latter has to be in conformity with the Convention as well. Therefore, the Court found that the case cannot be regarded as lawful detention and in accordance with procedures prescribed by law. The violation of Art.5 has been imputable to Russian Federation only for Mr. Ilașcu and both Russian Federation and Moldova for the others.

In the same line, Art.8, the right to respect for private life and correspondence fell under Art.34, the right of individual application to the Court, and breached by the Russian Federation and Moldova.³³³ Moreover, the Court held that the respondent States have to take all the necessary measures to put an end to arbitrary detention which were still imprisoned and secure their release.³³⁴

The Court jurisdiction conclusions have set important key points for this particular case, which might be considered for other cases brought before by people whose rights are violated in self-proclaimed entities, developed in Chapter 5.5.1.4.

5.5.1.4. THE IMPORTANCE AND IMPACT OF ILAȘCU AND OTHERS v MOLDOVA AND RUSSIA ON HUMAN RIGHTS PROTECTION IN ABKHAZIA AND DONBASS REGION

In the case of *Ilașcu and Others v. Moldova and Russia*, it has been the first time when ECHR found Russian Federation liable for acts committed by separatist forces by contributing militarily, economically and politically to the creation of a separatist regime within the territory of another State. By supporting the regime, it contributed not only to the survival of the regime but also to all Moldovan and international efforts to resolve the Transnistrian conflict. In other terms, that could be interpreted as well as keeping this self-proclaimed entity in a state of a frozen conflict. However, the decision of the ECtHR

³³³ *ibid.*, pp. 80-112.

³³⁴ *ibid.*, pp.114-117.

is clearly making responsible Russia for the judgments of the Transnistrian courts, which are functioning unlawful and do not correspond to international judicial standards and functioning to international principles set in the Convention.

This case has been followed by the *Catan and Others v. Moldova and Russia*,³³⁵ where 18 children studying in Evrica School, registered under Moldovan Ministry of Education and using Latin script, situated on the Transnistrian territory and 13 parents. The building has been transferred to Transnistrian authorities in 2004, therefore the students and teachers took upon themselves to guard the school. Since then the school has been vandalized and parents threatened by de facto police. Notwithstanding the school registered as a foreign institution of private education with the intervention of OSCE, the school has been transferred to a rent building under control of Transnistria, and continuously under attack and intimidated. The applicants have been followed by other two cases of schools using Latin script and Moldovan curriculum, complaining about forcible closure of their schools by Transnistrian authorities, intimidation. The Court established that Russian Government have not persuaded the Court conclusions reached in *Ilașcu* judgment, confirmed by the continued Russian military presence and armaments in Transnistria, which sends a strong signal to Transnistrian leaders, Moldovan Government and international observers its continuous military support for the separatists. Moreover, the separatists are dependent on “free or highly subsidised gas supplies, pensions and other financial aid from Russia”.³³⁶ Thus, the Court held Russia responsible for violating the right to education set under Art.2 of the First Protocol of the ECHR.

These served as ground for other cases on acts committed in Transnistria, such as *Mozer v. the Republic of Moldova and Russia*,³³⁷ *Vardanean v. the Republic of Moldova and Russia*³³⁸, *Apcov v. Moldova and Russia*³³⁹ and *Soyma v. Moldova, Russia and*

³³⁵ *Catan and Others v. Moldova and Russia*, Judgment, European Court of Human Rights, Strasbourg, 19 October 2012. Available from: [http://hudoc.echr.coe.int/eng#{"fulltext":\["catan"\],"languageisocode":\["ENG"\],"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-114082"\]}](http://hudoc.echr.coe.int/eng#{).

³³⁶ *ibid*, para. 121.

³³⁷ http://www.echr.coe.int/Documents/CP_Russia_ENG.pdf

³³⁸ [http://hudoc.echr.coe.int/eng#{"itemid":\["001-173802"\]}](http://hudoc.echr.coe.int/eng#{)

³³⁹ [http://hudoc.echr.coe.int/eng#{"itemid":\["001-173798"\]}](http://hudoc.echr.coe.int/eng#{)

*Ukraine*³⁴⁰, holding Russian Federation responsible for Transnistrian authorities' actions and assigning it to pay the corresponding fines.

In its functionality, the case of Transnistria is very similar to Abkhazia, DPR and LPR, where Russian Federation is playing a key role with its military, financial and legislative support as described thoroughly in Chapter 3 of the thesis. The rulings of the ECHR are of great importance for human rights violations on separatist territories of Georgia and Ukraine. Consequently, it may keep Georgia and Ukraine obliged honouring its positive obligations and Russian Federation for its support for separatist regimes. Akin Moldova, Georgia and Ukraine have both ratified the ECHR in 1999 and 1998, under which states could be held liable.

The ECtHR has received a group of cases concerning the events in Abkhazia which are still pending, such as: *Mamassakhlissi v. Georgia and Russia*, when the applicant has been suspected of terrorism and detained in Abkhazia; *Mekhuzla v. Georgia, Sanaia v. Georgia* and *Dvalia and Goguia v. Georgia*, where people complained of being deprived of houses and private life as a result of the armed conflict in Abkhazia between 1992 and 1993.³⁴¹ Georgia admits its difficulties in ensuring human rights in Abkhazia, however it repeats publicly that Russian Federation have to be kept responsible for human rights violations in Abkhazia.

In case of Ukraine, on 5 June 2015, the Government declared that it would derogate from certain obligations under ECHR and ICCPR with respect to respect of the rights to liberty and security, fair trial, effective remedy, respect for private and family life and freedom of movement for Donbass region. However, this is not a solution, as it may facilitate incommunicado or secret detention, torture, ill-treatment, disappearances or executions, as mentioned by the Special Rapporteur on extrajudicial, summary or arbitrary executions.³⁴²

By 2017, the ECtHR received 3,500 complaints related to Russian-Ukrainian conflict

³⁴⁰ [http://hudoc.echr.coe.int/eng#{"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-173797"\]}](http://hudoc.echr.coe.int/eng#{)

³⁴¹ Georgia, Press Country Profile, European Court of Human Rights, July 2017, p.6, http://www.echr.coe.int/Documents/CP_Georgia_ENG.pdf

³⁴² http://www.rulac.org/assets/downloads/SRESAE_Ukraine_2016.pdf

pending before the Court, alongside with three inter-state applications,³⁴³ and perhaps the number will rise considering the number of people illegally detained and arrested, shillings and other human rights violations in LPR and DPR. The case of *Lisnyy and Others v. Ukraine and Russia* has been brought to the ECtHR. The case concerned the shelling of applicants' home in Donetsk and Luhansk region, during the hostilities in Eastern Ukraine from the beginning of April 2014. However, the Court has declared the applications inadmissible, due to lack of evidence as a final decision.³⁴⁴

It can be concluded that ECtHR examines each case individually. However, considering that the decisions of the ECtHR can be used to substantiate the decisions of other similar cases, such as the successful mentioned cases in Transnistria, there is high probability and hope that ECtHR will make justice to people who suffer human rights violations also in the self-proclaimed entities of Abkhazia, LPR and DPR.

5.5.1.5. THE QUICK TURN OF RUSSIAN FEDERATION IN REGARD TO ECtHR JUDGMENTS

The uncertainty and difficulties encountered in reaching these territories and in monitoring the situation on the ground for years and years, keeps these entities in “black holes” for ensuring international human rights and freedoms.

Notwithstanding the international efforts in monitoring and the role of ECtHR in making justice for people living in these “black holes”, there is a high necessity of Russian Federation cooperation.

Bearing in mind the important role of Russia in all case studies presented in the thesis, its strategical influence on self-proclaimed entities and its increased role in keeping these entities in a frozen conflict status, it is considerably important to make sure the rights of the people living in these areas are protected. However, there is a high probability of Russian Federation not honouring its obligations, considering that on 14 July 2015 the

³⁴³ “European Court of Human Rights ruled Russia responsible for actions of Transnistria”, 6 June 2017, Euromaidan Press,

³⁴⁴ Ukraine and Russia: Court rejects complaints against shelling of Donetsk and Lugansk region homes, 29 July 2016, Council of Europe, <http://www.humanrightseurope.org/2016/07/ukraine-and-russia-court-rejects-complaints-against-shelling-of-donetsk-and-lugansk-region-homes/>

Constitutional Court of Russia drafted a bill deciding that the decisions taken by the ECtHR must be executed according to Russian Constitution.³⁴⁵ The text explicitly states the following: that the Convention cannot take priority of the Constitution, notwithstanding Russian Constitution and ECHR are both protecting human rights therefore not in collision; however, if any conflict between the two documents arise and ECtHR decisions contradict the Constitution, then Russia will not comply with the ECtHR judgments.³⁴⁶ The bill has been officially adopted by Russia's Parliament and signed by the President in December 2015, thus allowing the Constitutional Court to review or not execute the rulings of ECtHR if they contradict Russian Constitution. Such a decision is undermining the right to an effective remedy for hundreds of claimants who rely on ECtHR. The ECtHR is a key international institution for human rights, particularly for people living in frozen conflict areas, where national mechanisms for human rights monitoring and protection are not put in place or effective, yet so indispensable.

Notwithstanding Russian Federation Constitutional Court decision, in present conditions of armed conflict ongoing in Ukraine, would another court be able to make justice or even prevent LPR and DPR transform into of frozen conflict without following the destiny of Abkhazia or Transnistria? Indeed, the situation on Ukraine is on a preliminary examination on International Criminal Court (ICC), despite the fact that Ukraine is not a party to the Rome Statute, it accepted ICC's jurisdiction over the alleged crimes committed since 21 November 2013 onward with no end date.³⁴⁷ It concerns crimes allegedly committed in the context of armed hostilities in Crimea, as well as Eastern Ukraine, referring to LPR and DPR, which are self-proclaimed entities unrecognized neither by Russian Federation, nor by international community. In its preliminary analysis, the Office of the Prosecutor (OTP) noted that the intense battles from Donetsk in August 2014 and January to February 2015 has been attributed to alleged corresponding influxes of troops, vehicles and weaponry from the Russian Federation to

³⁴⁵ Конституционный Суд РФ провозгласил Постановление по делу о применимости решений ЕСПЧ на территории РФ, [Constitutional Court of Russian Federation on execution of ECHR decisions on the territory of Russian Federation], 14 July 2016, Constitutional Court of Russian Federation, <http://www.ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3244>, (accessed 26 July 2017).

³⁴⁶ *ibid.*

³⁴⁷ International Criminal Court, The Office of the Prosecutor, *Report on Preliminary Examinations Activities 2016*.

reinforce the positions of the armed groups, sufficient to be parties of a non-international armed conflict. In parallel, the reported shelling between Ukrainian and Russian armed forces suggest the existence of an international armed conflict, which would entail the application of Rome Statute.³⁴⁸ Noting it is a preliminary examination, it is a long way to go until justice can be done. However, that means that more than 800 incidents including killings, arbitrary detentions, disappearances, torture and ill-treatment, sexual and gender-based crimes³⁴⁹ in self-proclaimed entities from Eastern Ukraine would be brought to justice.

No matter which international mechanism is applied for human rights violations in self-proclaimed entities, they must be made use of, with the support and efforts of all international community. The self-proclaimed entities must be guided by the agreed international human rights standards. No matter where people live, the principle that every human being must be able to enjoy human rights should have the highest priority.

6. CONCLUSION

Notwithstanding the debatable issue of “frozen conflicts”, LPR and DPR, alongside with Abkhazia and Transnistria, this paper demonstrated that they are treated as such. They are presenting similarities not only as diplomatic “dead-lock” situations, and ethnicity as reason of stagnation of political settlements, but also represent “black holes” human rights monitoring and protection mechanisms. The strong influence of the biggest “stakeholder” state in these entities, Russian Federation, poses huge problematics in respecting, protecting and fulfilling human rights, and undermines rules of law in the enclaves of Abkhazia, Transnistria, LPR and DPR. However, beyond who recognizes their *sui juris* existence and who is maintaining their survival for more than 25 years, human rights violations are happening on grand scales under political, economic and military protection of Russia. Encouraging separatist regimes for a decade led to the establishment of another two separatist regimes in the 21st Century Europe.

³⁴⁸ *ibid.*, pp.36-38.

³⁴⁹ *ibid.*, pp.39-40.

Despite the continued high-level involvements of the leaders and international monitoring mechanisms, these entities continue to violate under *de facto* laws fundamental human rights, such as: right to life, right to liberty and security, freedom from torture and ill-treatment, freedom of movement, right to education, freedom of expression, principle of equality and non-discrimination, etc. There is a high difficulty in assessing how many human rights violations occur in these entities due to lack of access on their territories of international monitoring mechanism and restrictions imposed by *de facto* border controls and autocratic systems installed. Notwithstanding there are many vital tools and instruments developed to defend human rights, such as those developed by the UN, CoE, OSCE and other international organizations, these can be hardly applied in self-proclaimed entities because firstly, the *de facto* entities are unrecognized, meaning they cannot be part of them, and secondly, because of the difficulties in accessing these territories. However, international monitoring mechanisms serve as important material for human rights advocacy at the local level, as well as for the international community, and for bringing the perpetrators from secessionist regions to justice.

The ECtHR has delivered the key judgment in case of *Ilașcu and Others v. Moldova and Russia*, which has been considered for following human rights violation cases in secessionist entities. For the first time, the ECtHR clarified jurisdictional issues for human rights violations in self-proclaimed entities, finding the Russian Federation liable for acts committed by separatist forces by contributing militarily, economically and politically to the creation of a separatist regime within the territory of another State. By supporting the regime, Russia contributed not only to the survival of the regime but also impeded all national and international efforts to resolve “frozen conflicts”. By holding Russia legally responsible for human right violations in a *de facto* entity, the ECtHR has considerably increased the impact of a crucial human rights protection mechanism in Europe, the ECHR.

Despite of attempts from running away from responsibility, every human being must be able to enjoy human rights no matter where they live, and international monitoring and protection mechanisms are key in keeping perpetrators accountable.

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ABSTRACT

This thesis looks into the question on how can international mechanisms provide effective human rights protection to people living in *de facto* entities, created in the context of frozen conflicts. Analyzing the evolution of separatist entities of Abkhazia, the Donetsk and Luhansk Peoples' Republics and Transnistria and their *de facto* legislation concerning human rights, the thesis looks further into the human rights situation in these entities and the efforts of international mechanisms to provide effective human rights protection under special conditions of frozen conflicts. The thesis comes to the conclusion that the effectiveness of these international mechanisms is considerably limited by two factors. Firstly, these *de facto* entities are not part of international organizations due to their lack of international recognition, whereas mother – states are at the same time not able to protect the human rights of their citizens there. Secondly, the self-proclaimed entities, with the support of the Russian Federation, effectively limit access to their territories. The thesis argues that international mechanisms still make an important contribution and draws special attention to the judgment of the ECtHR in *Ilașcu case*, through which the Court, by holding Russia responsible for human right violations in a *de facto* entity, has considerably increased the impact of a crucial human rights protection instrument, the ECHR.

ZUSAMMENFASSUNG

Diese Magisterarbeit geht der Frage nach, wie internationale Mechanismen effektiven Menschenrechtsschutz für Menschen erbringen können, die in *de facto* Entitäten leben, welche im Zusammenhang mit eingefrorenen Konflikten entstanden sind. Die Analyse der Entstehung der *de facto* Entitäten Abchasien, Donetsker und Luhansker Volksrepubliken sowie Transnistrien sowie der *de facto* Gesetzgebung zu Menschenrechten in diesen Gebieten wird gefolgt von der Untersuchung der Menschenrechtssituation dort sowie der Bemühungen internationaler Mechanismen zur Beobachtung und zum Schutz von Menschenrechten unter den besonderen Bedingungen eingefrorener Konflikte. Die Arbeit kommt zu dem Schluss, dass die Effektivität dieser internationalen Mechanismen durch zwei Faktoren erheblich beschränkt wird. Erstens sind die entsprechenden *de facto* Entitäten aufgrund ihrer fehlenden internationalen Anerkennung nicht Teil internationaler Organisationen während die betroffenen Staaten gleichzeitig nicht in der Lage sind, die Menschenrechte ihrer Bürgerinnen und Bürger dort zu schützen. Zweitens, beschränken die *de facto* Entitäten mit der Unterstützung der Russischen Föderation effektive den Zugang internationaler Mechanismen zu diesen Gebieten. Die Arbeit legt allerdings auch dar, dass die internationalen Mechanismen dennoch einen wichtigen Beitrag leisten. Die Arbeit hebt dabei die *Ilașcu* -Entscheidung des EuGH hervor, durch welche der Gerichtshof, indem er die Russische Föderation für Menschenrechtsverletzungen in einer *de facto* Entität verantwortlich macht, die Wirkung eines wichtigen Instruments entscheidend erhöht hat, der EMRK.