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HUMAN RIGHTS IN TERRITORIES BEYOND EFFECTIVE CONTROL: EUROPEAN COURT OF HUMAN RIGHTS TOWARDS *DE FACTO* STATES IN THE POST-SOVIET SPACE

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Abstract. ***The aim of the paper is to analyse the human rights situation in de facto states in the post-Soviet space, based on the decision-making of the European Court of Human Rights. The object of the analysis is the interstate complaint Georgia v. Russian Federation (II) and three individual complaints: Ilaşcu and others v. Moldova and Russia, Chiragov and others v. Armenia, Mamasakhlisi and others v. Georgia. It will discuss the attribution of responsibility to the state that exercises effective control over the de facto state. It will also point out the recent development following the expulsion of the Russian Federation from the Council of Europe and the dissolution of the de facto Republic of Nagorno-Karabakh***[23].

Keywords: *de facto states, human rights, post-Soviet space, Abkhazia, South Ossetia, Nagorno-Karabakh, Transnistria*

Introduction

De facto states, often also referred to as unrecognized states, quasi-states, para-states, pseudo-states, separatist states, or, in legal literature, *de facto* regimes (Frowein, 2012: 1052), constitute a contemporary challenge for the international community. According to N. Caspersen and G. Stansfield, a *de facto* state is an entity independent in practice from the parent state, exercising control over a defined territory to which it lays claim, including the capital city. Such an entity has existed for at least two years and has attained only limited international recognition (Caspersen and Stansfield, 2011). A. Czyż, on the other hand, emphasizes that *de facto* states are "political entities possessing all the attributes of statehood—namely, population, territory, and government—but lacking international recognition of their statehood status" (Czyż, 2021: 98).

In this article, the term *de facto state* is used to denote a geopolitical unit that: first, has emerged as a result of secession; second, exercises effective control over its territory and demonstrates a certain degree of stability (excluding temporary control over territory during armed conflict—*insurgencies* and *belligerencies*); third, has not been recognized by the majority of the international community (by no UN member state or by only a handful of individual states); and fourth, is capable of performing most internal and external functions, including the provision of public services (Sieniawski 2024a).

In the post-Soviet space, four separatist entities emerged in the early 1990s: Abkhazia and South Ossetia on the territory of Georgia, Nagorno-Karabakh on the territory

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of Azerbaijan and Transnistria on the territory of Moldova. The first two were recognized by the Russian Federation and several other states maintaining friendly relations with Russia, such as Nauru, Nicaragua, Syria, and Venezuela. Nagorno-Karabakh and Transnistria, however, have not been recognized by any UN member state. In September 2023, Azerbaijan launched a military operation through which it regained full control over the territory of Nagorno-Karabakh. These developments illustrate that the dynamics of the emergence and dissolution of unrecognized states are subject to rapid change.

The aim of this article is to analyse the human rights situation in the territories of unrecognized states, with particular reference to Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria. These entities have been selected because all of them are located in the post-Soviet space. They belong to the so-called first generation of unrecognized states, which emerged in the 1990s, thus allowing for an examination of their functioning over the course of three decades. The following research questions are posed: How is responsibility for human rights violations shaped in unrecognized states? What challenges exist regarding the protection of human rights in the unrecognized states in the post-Soviet space? To address these questions, the legal analysis method and the comparative method have been employed. The study examines judgments of the European Court of Human Rights (hereinafter ECtHR or the Court) concerning an inter-state application under Article 33 of the European Convention on Human Rights (hereinafter ECHR or the Convention) — *Georgia v. Russia (II)* — as well as three individual applications under Article 34 ECHR — *Chiragov and Others v. Armenia*, *Mamasakhlisi and Others v. Georgia* and *Ilaşcu and Others v. Moldova and Russia*.

Moldova has been a member of the Council of Europe since 1995, Georgia joined in 1999, while Armenia and Azerbaijan became members in 2001. The Russian Federation was a member of the Council of Europe from 1996 until 2022. According to Article 1 of the ECHR, "the High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention" (Convention for the Protection…, 1950). From Article 1 it follows that there is a presumption that a state exercises jurisdiction over the entirety of its territory. However, under specific circumstances, a state may find itself unable to exercise jurisdiction over part of its territory — for example, in cases where a portion of its territory is occupied by another state, where an armed conflict is ongoing, or where a separatist regime has been established (Schabas, 2015).

In *Loizidou v. Turkey*, the Court observed that "the responsibility of a Contracting Party may also arise when, as a consequence of military action—whether lawful or unlawful—it exercises effective control of an area outside its national territory. The obligation to secure, in such an area, the rights and freedoms set out in the Convention derives from the fact of such control whether it be exercised directly, through its armed forces, or through a subordinate local administration" (Case of Loizidou…, 1995: § 62). From this it follows that a state exercising effective control over part of another state's territory has the obligation to secure in that territory the rights and freedoms guaranteed by the Convention and bears responsibility for violations of the Convention, including in situations where the *de facto* authorities of unrecognized states are subject to its effective control (Karakaş and Bakırcı, 2018). The purpose of this arrangement is to avoid situations in

which individuals residing in disputed territories would otherwise be deprived of the protection of the rights enshrined in the Convention (Case of Cyprus v. Turkey, 2001).

In the case of *Chiragov and Others v. Armenia*, the applicants claimed that until 1992 they had resided in the Lachin District, located in the territory of Nagorno-Karabakh. As a result of military operations, they were forced to abandon their homes and property, and subsequently, due to the occupation of Nagorno-Karabakh by Armenia, they were deprived of the possibility of returning and of access to their property.

In the inter-state application *Georgia v. Russia*, Georgia alleged that the Russian Federation had violated its obligations under Article 2 (right to life), Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), and Article 13 (right to an effective remedy) of the ECHR, as well as Article 1 and Article 2 of Protocol No. 1 (protection of property and right to education) and Article 2 of Protocol No. 4 (freedom of movement). Georgia further requested that the Court declare that the violations of the Convention fell within the jurisdiction of the Russian Federation, since Russia exercised control over the areas where the violations occurred, and that these violations constituted an administrative practice.

Unrecognized States and Responsibility for Human Rights Violations

Abkhazia and South Ossetia are *de facto* states, regarded by the majority of the international community as integral parts of Georgia. Abkhazia is a region located in the northern part of Georgia, on the Black Sea coast. During the existence of the Soviet Union, Abkhazia held the status of an autonomous republic within Georgia. As a result of the ethnic policies of the Tsarist Empire and later the Soviet Union, the ethnic composition of Abkhazia underwent significant changes. Whereas in 1886 Abkhazians constituted 85 per cent of the population of Abkhazia compared to 5.8 per cent Georgians, by 1926 this ratio had declined to 26.4 per cent Abkhazians compared to 31.8 per cent Georgians, and by 1959 to 15.9 per cent Abkhazians compared to nearly 41 per cent Georgians (Cornell, 2001). Toward the end of the 1980s, ethnic tensions with Georgians intensified; Georgians—who constituted the majority of Abkhazia's population—demanded changes in the representation of ethnic groups in the Supreme Council of Abkhazia (Coppieters, 2004). In 1990, the Council adopted a declaration of Abkhazia's sovereignty. In 1992, an armed conflict broke out, which ended in September 1993 with the expulsion of Georgian forces beyond the Inguri River, which constitutes the boundary. Since that time, Georgia has not exercised effective control over the region of Abkhazia.

South Ossetia is a region of Georgia located in the northern part of the country. Since 1922, it had the status of an autonomous oblast within the Georgian Soviet Socialist Republic. As a result of political and ethnic tensions, an armed conflict broke out in September 1991, and in December 1991 South Ossetia declared independence. A ceasefire was signed in June 1992 through the mediation of the Russian Federation. In August 2008, the Russo-Georgian war erupted, after which the Russian Federation recognized the independence of Abkhazia and South Ossetia. In October 2008, the Georgian parliament adopted the Law on Occupied Territories, designating Abkhazia and South Ossetia as territories temporarily occupied by the Russian Federation.

Nagorno-Karabakh, during the existence of the Soviet Union, constituted an autonomous oblast within the Azerbaijani Soviet Socialist Republic. In August 1991, Azerbaijan declared independence from the Soviet Union, and the following month, in September of the same year, the Nagorno-Karabakh Autonomous Oblast declared independence from Azerbaijan. In 1992, military units supported by Armenia took control over the former autonomous oblast as well as the adjoining buffer zone. Until the outbreak of armed conflict in 2020, the Republic of Nagorno-Karabakh existed as a *de facto* state, which was not recognized by any UN member state. In 2023, Azerbaijan carried out a military operation that resulted in the dissolution of the governing structures of Nagorno-Karabakh and the collapse of this quasi-state.

Transnistria is a region of Moldova located on the left bank of the Dniester River. According to the 2015 census conducted by the *de facto* authorities, it had a population of 475,000 people, of whom 29.1 per cent were Russians, 28.6 per cent Moldovans, and 22.9 per cent Ukrainians (Перепись населения…, 2015). The region unilaterally declared independence in 1991, followed by an armed conflict that lasted until July 1992.

An essential issue in determining responsibility for human rights violations is identifying the state that exercises effective control over the aforementioned quasi-states and thus bears responsibility for human rights violations. In the case of *Ilaşcu and Others v. Moldova and Russia*, the Court observed that "the exercise of jurisdiction is a necessary condition for a Contracting State to be held responsible for acts or omissions imputable to it which give rise to an allegation of the infringement of rights and freedoms set forth in the Convention" (Case of Ilaşcu…, 2004: § 311). To determine whether a Contracting State exercises extraterritorial jurisdiction and effective control over the territory of another state, the Court assesses the military presence in the given area. Additional indicators may include economic or political support for the local administrative authorities of the territory (Case of Chiragov…, 2015).

The parent state, which does not exercise effective control over part of its own territory, has a positive obligation to "endeavour, with all the legal and diplomatic means available to it *vis-à-vis* foreign States and international organisations, to continue to guarantee the enjoyment of the rights and freedoms defined in the Convention" (Case of Ilaşcu…, 2004: § 333). From this, it follows that the parent state not only has a positive obligation to restore effective control over the lost territory, but also to take all legal steps necessary to ensure the protection of the rights of the population residing in such territory.

Taking into account the economic situation in the territories of the analysed unrecognized states, it should be noted that all four received significant support from a third state. In Abkhazia, around 3,500 Russian soldiers and 1,500 members of the Federal Security Service were stationed in 2013 (Kopeček, 2020: 159), compared to approximately 3,000–4,000 Russian soldiers in South Ossetia in 2011 (Российские базы…, 2011). In the case of Abkhazia, direct financial assistance from the Russian Federation in 2013 amounted to about 70 per cent of the budget (Abkhazia: The Long Road…, 2013), while, according to the International Crisis Group, in the case of South Ossetia, Russia's direct financial assistance in 2010 amounted to nearly 99 per cent of the budget (South Ossetia: The Burden…, 2010). Both *de facto* states use the Russian ruble as their official cur-

rency. In Transnistria, the Russian Government confirmed the presence of around 2,000 soldiers in 2004 (Case of Ilaşcu…, 2004). In addition, the Russian Federation provided various forms of support to the Transnistrian *de facto* regime, including budgetary aid, provision of pensions and gas subsidies.

In the case of *Georgia v. Russia*, the Court observed that "the Russian Federation exercised effective control, within the meaning of the Court's case law, over South Ossetia, Abkhazia and the 'buffer zone' from 12 August to 10 October 2008, the date of the official withdrawal of Russian troops. Even after that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation, on whom their survival depends […], indicate that there was continued 'effective control' over South Ossetia and Abkhazia" (Case of Georgia v. Russia, 2021: § 174). From this judgment of the Court, it follows that the Russian Federation exercised extraterritorial jurisdiction over the territories of Abkhazia and South Ossetia and bore responsibility for violations of the Convention in these territories.

In the case of Nagorno-Karabakh, Armenia provided loans and financial assistance to the unrecognized Republic of Nagorno-Karabakh, whose official currency was the Armenian dram. The Court noted that the Republic of Nagorno-Karabakh would not have been able to sustain itself economically without significant support from Armenia (Case of Chiragov…, 2015). According to a report by the International Crisis Group, in 2005 the armed forces of Nagorno-Karabakh consisted of 8,500 Armenians from Nagorno-Karabakh and 10,000 from Armenia (Nagorno-Karabakh…, 2015). With regard to Nagorno-Karabakh, the Court observed that "from the early days of the Nagorno-Karabakh conflict, Armenia has had a significant and decisive influence over the 'NKR' [Republic of Nagorno-Karabakh – author's note], [and] that the two entities are highly integrated in virtually all important matters and that this situation persists to this day" (Case of Chiragov…, 2015: § 186). Consequently, Armenia exercised extraterritorial jurisdiction over part of the territory belonging to Azerbaijan and bore responsibility for violations of the Convention in the territory of Nagorno-Karabakh.

Freedom of Movement and the Right to Respect for Property

One of the main problems for the population living in unrecognized states is movement within the territory of the parent state. For people displaced as a result of armed conflict, issues related to returning to previously inhabited territories remain problematic. According to Article 132 of Customary International Humanitarian Law, developed by the International Committee of the Red Cross, internally displaced persons have "the right to voluntary and safe return to their homes or places of residence as soon as the reasons for their displacement cease to exist" (Henckaerts and Doswald-Beck, 2005: 468).

Before the outbreak of the armed conflict in Abkhazia, the region was inhabited by 507,000 people, whereas after its end, the population of Abkhazia decreased to 214,000. Approximately 250,000 ethnic Georgians were expelled from Abkhazia. A portion of them, about 60,000 people, returned to the Gali District in the eastern part of Abkhazia after the end of the military actions. However, about 200,000 internally displaced persons from Abkhazia have remained on the territory of proper Georgia for thirty years, without the possibility of returning to Abkhazia and without access to their property,

which has often been destroyed or unlawfully taken over by the population that remained in Abkhazia.

The population of South Ossetia in 1989 was 101,000, of which 66.2 per cent were Ossetians and 29 per cent were Georgians. As a result of the armed conflict in 1991, around 30,000 ethnic Georgians left the territory of South Ossetia (Olszewski, 2021: 168). The Russo-Georgian war in 2008 caused approximately 15,000 people to be displaced from South Ossetia (Report of the Representative…, 2009). According to the *de facto* authorities, by 2016 the region was inhabited by only 53,000 people, of whom almost 90 per cent were Ossetians and 7.4 per cent were Georgians. The Georgian population that remained in South Ossetia, primarily in the Akhalgori region, faced numerous problems related to crossing the contact line, such as detentions or refusals to cross the administrative line (*de facto* border). The *de facto* authorities also implement a policy of "borderisation," that is, constructing border barriers such as barbed wire or razor wire, along with monitoring systems, in order to prevent the local population from crossing the administrative line (Signs of Borderisation, 2017).

The inability of the Georgian population to return to South Ossetia results not only from the closure of the administrative line but also from the fact that the homes of ethnic Georgians were destroyed after the armed conflict and the withdrawal of Georgian armed forces from South Ossetia in 2008. Human Rights Watch reports that South Ossetian forces "over a period of weeks deliberately and systematically destroyed ethnic Georgian villages in South Ossetia that had been administered by the Georgian government" (Human Rights Watch…, 2009: 3).

In the case of *Georgia v. Russia*, the Court noted that the administrative practice of preventing the return of ethnic Georgian residents of Abkhazia and South Ossetia is inconsistent with Article 2 of Additional Protocol No. 4. The Court also stated that "the *de facto* South Ossetian and Abkhazian authorities, and the Russian Federation, which has 'effective control' over those regions, have a duty to enable inhabitants of Georgian origin to return to their respective homes, pursuant to their obligations under the Convention" (Case of Georgia v. Russia, 2021: § 298).

According to the 1989 census, Nagorno-Karabakh was inhabited by approximately 145,000 people, of whom 77 per cent were Armenians and nearly 22 per cent were Azerbaijanis (Всесоюзная перепись населения…, 2013). As a result of armed actions, the Azerbaijani population was expelled not only from the territory of the former Nagorno-Karabakh Autonomous Oblast but also from seven adjacent regions, which were taken over by separatist armed forces and transformed into a buffer zone. According to estimates, around 600,000 Azerbaijanis were displaced from the territories controlled by Armenian forces (Zürcher, 2007). Internally displaced persons of Azerbaijani nationality had no possibility of returning to their homes.

In the case of *Chiragov and Others v. Armenia*, the applicants claimed that as a result of Armenia's occupation of the territories of Nagorno-Karabakh, they were deprived of the possibility to return to their homes and to enjoy their property, which was located in the Lachin District. The Court found that "the applicants were forced to leave Lachin when the district came under military attack in May 1992. [...] They have continuously been denied access to their property and have thereby lost control over it and any pos-

sibility to use and enjoy it" (Case of Chiragov…, 2015: §§ 193-196). The reason the applicants left the Lachin District in 1992 was not a legal act, but the coercion to flee caused by the actions of Armenian armed forces. In practice, Azerbaijani citizens faced restricted access to the territory of Armenia, including territories that were under Armenian occupation. Armenia did not establish an effective mechanism to protect the rights of Azerbaijani citizens in the occupied territories.

Other Human Rights Violations and Further Developments

In cases concerning the human rights situation in the territories of Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria, the ECtHR also found violations of other rights enshrined in the Convention. In the case of the interstate complaint of *Georgia v. Russia*, the Court noted that the Russian Federation is responsible for violations of the Convention that occurred in the territories of Abkhazia and South Ossetia after 12 August 2008, in particular Article 2 (right to life), Article 3 (prohibition of torture), Article 8 (right to respect for private and family life), and Article 1 of Protocol No. 1 to the Convention (right to respect for property).

Reports by international organizations and NGOs focused on human rights frequently highlight, above all, arrests near the administrative border, enforced disappearances, difficulties in obtaining citizenship from *de facto* states, and violations of the rights of ethnic minorities, such as the right to education in one's native language (teaching in Georgian was abolished in Abkhazia and South Ossetia), limited access to healthcare, and the inability to exercise certain political rights (Hammarberg and Grono, 2017).

In the case of the individual complaint *Mamasakhlisi and Others v. Georgia and Russia*, the Court found violations of Article 3 (prohibition of torture), Article 5 (right to liberty and security), and Article 6 of the Convention (right to a fair trial) by the Russian Federation, which exercised effective control over Abkhazia. The applicants were arrested in the territory of Abkhazia and subsequently subjected to torture by Abkhaz security services. While in detention, the applicants were treated inhumanely, denied adequate medical care, and intimidated with the threat of the death penalty during interrogations (Case of Mamasakhlisi…, 2019).

The situation in Nagorno-Karabakh, which had been under Armenian occupation since 1992, changed radically as a result of the so-called Second Karabakh War in 2020, when Azerbaijan regained control over approximately 75 per cent of Nagorno-Karabakh (Askerov and Ibadoghlu, 2023: 262), although the areas around Khankendi (Stepanakert) remained under Armenian control. Based on the Trilateral Statement on the ceasefire of 9 November 2020, a Russian peacekeeping contingent was deployed to the Nagorno-Karabakh region, positioned along the contact line between Azerbaijani and Armenian forces, as well as in the Lachin Corridor, for a period of five years with the possibility of automatic extension for another five years if the Statement is not terminated by any of the parties. According to paragraph 6 of the Trilateral Statement, the Lachin Corridor "shall remain under the control of the peacekeeping armed forces of the Russian Federation" (Statement by President…, 2020).

This means that effective control over the Lachin Corridor, until it was taken over by the Azerbaijani Armed Forces, was exercised by the Russian Federation, which there-

by bore responsibility for any potential violations of the Convention. In December 2022, the ECtHR obligated the Azerbaijani authorities to ensure the safe passage through the Lachin Corridor for critically ill persons requiring medical care in Armenia, as well as for others stranded on the road without shelter or means of subsistence, since from June 2022 the Lachin Corridor had been blocked by "Azerbaijani environmental activists" (Interim measures…, 2022).

As a result of the military operation carried out by Azerbaijan in September 2023 and the takeover of the entire territory of Nagorno-Karabakh by Azerbaijani forces, the authorities of Nagorno-Karabakh announced the decision to dissolve this *de facto* state as of 1 January 2024 (Nagorno-Karabakh will 'cease to exist'…, 2023). Fearing for their personal safety, almost the entire ethnic Armenian population residing in Nagorno-Karabakh left the region (PACE calls on Azerbaijan…, 2023), while questions regarding their possible return remain unclear. It would be advisable for the Azerbaijani authorities to adopt specific security guarantees for the Armenian population wishing to return to their homes.

However, one can expect an influx of individual complaints or an interstate complaint to the ECtHR against Azerbaijan concerning the protection of the rights and freedoms of persons who left Nagorno-Karabakh in the autumn of 2023. Since the Russian Federation ceased to be a member of the Council of Europe, the ECtHR has jurisdiction only over those violations of the Convention that occurred before 16 September 2022. This has serious implications for the protection of human rights in the territories of unrecognized states over which the Russian Federation exercises effective control.

In the case *Ilaşcu and Others v. Moldova and Russia*, the Court found violations of Article 3 (prohibition of torture) as well as Article 5 (right to liberty and security) of the Convention. The applicants claimed that they were subject to torture, inhumane or degrading treatment or punishment while being detained by the Transnistrian security forces. Moreover, they argued that their detainment constituted a deprivation of liberty and security. The Court concluded that "the death sentence imposed on the applicant coupled with the conditions he was living in and the treatment he suffered during his detention […] were particularly serious and cruel and must accordingly be considered acts of torture" (Ilaşcu and Others…, 2004: § 440).

Table 1. Overview of De Facto States in the post-Soviet space

***De facto* state**	**Years of existence**	**Occupied state**	**Occupying power**	**EctHR Case**
Abkhazia	1992 - present	Georgia	Russian Federation	Georgia v. Russia (II); Mamasakhlisi and Others v. Georgia and Russia
South Ossetia	1991 - present	Georgia	Russian Federation	Georgia v. Russia (II)
Nagorno-Karabakh	1991 - 2023	Azerbaijan	Armenia	Chiragov and Others v. Armenia
Transnistria	1991 - present	Moldova	Russian Federation	Ilaşcu and Others v. Moldova and Russia

Conclusion

This article has analysed the human rights situation in the *de facto* states in the post-Soviet space—Abkhazia, South Ossetia, Nagorno-Karabakh and Transnistria. The functioning of these geopolitical entities is possible only due to external support from a third state. According to the ECtHR, third states have a "significant and decisive influence" on *de facto* regimes.

When a parent state loses effective control over part of its territory as a result of occupation, armed conflict, or the establishment of a separatist regime, the population living in that territory may be deprived of effective mechanisms for protecting the rights guaranteed by the Convention. On the one hand, to avoid a gap in the protection system, the parent state has not only the obligation to restore control over the lost territory but also to take all legal and diplomatic measures *vis-à-vis* foreign states and international organizations to ensure continued enjoyment of the rights and freedoms under the Convention. On the other hand, the Court assigns responsibility to the state that exercises effective control over the *de facto* authorities.

In Abkhazia, South Ossetia and Transnistria, the Russian Federation exercises effective control over the *de facto* regimes. In Nagorno-Karabakh, effective control was exercised by Armenia until 2023. These states are therefore responsible for violations of the Convention in the territories of these separatist entities. In Nagorno-Karabakh, responsibility could also fall on the Russian Federation for violations committed by the Russian peacekeeping contingent, which was deployed to the region under the trilateral ceasefire statement of 9 November 2020.

In the cases analysed, the Court found numerous human rights violations, primarily concerning the right to liberty and security, the right to respect for private and family life, and the right to respect for property. Since the Russian Federation ceased to be a member of the Council of Europe, the ECtHR can only examine cases concerning violations that occurred before 16 September 2022, which may result in a deterioration of human rights protection for the population living in these territories.

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