



THE RESPECT FOR FUNDAMENTAL HUMAN RIGHTS DURING AND AFTER THE RUSSIAN-GEORGIAN WAR

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The normative and practical value of protecting civilians during armed conflicts and respecting the exercise of human rights and fundamental freedoms even in international armed conflicts is an undeniable one. Changing the forms and means used in armed struggles leads to violations of the provisions of international humanitarian law. The case-law of the European Court of Human Rights in the case of Georgia v. Russia has made a connection between the fundamental rights included in the Convention for the Protection of Human Rights and Fundamental Freedoms and the rights protected by the laws of armed conflicts, a decision of particular importance in the current security context in South-Eastern Europe.

Keywords: armed conflict; humanitarian law; ECHR; rights; civilians.

Developments in the field of arms and armaments technology, increasing both range and lethality, have changed the way armed conflicts are conducted. Global political developments have changed both in terms of the location of the armed fighting and the activity of the belligerents.

Armed actions are carried out around urban centres, which increases the number of collateral victims. The effect of wars on non-combatants comes in two forms. On one hand, civilians are injured or killed as a direct result of warfighting, regardless of whether the attack against them was accidental or intentional. On the other hand, there is another harm to civilians represented by the damage to their dignity as a result of violations of law and order, but also of international norms of humanitarian law such as sexual assaults or actions of violence on ethnic grounds.

Given the importance of protecting civilians during armed conflicts and of defending human rights during stability and peacekeeping operations, this article will outline the legal framework for the protection of human rights in relation to a case study according to which, both during an armed conflict and subsequently, during the occupation phase, there were violations of international conventions, sanctioned by the court responsible with ensuring the compliance with the human rights within Europe. From this perspective, the

Russia-Georgia war of 2008 led to human rights violations as decided by the European Court of Human Rights (ECHR).

The main documents in the international humanitarian field are the Hague Conventions on the Laws and Customs of War from 1899 and 1907 and the Geneva Conventions of 1949: Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention Relative to the Treatment of Prisoners of War; Convention Relative to the Protection of Civilian Persons in Times of War. These documents contain prohibitive clauses, unequivocally prohibiting reprisals against the victims of the state of war (civilian population, wounded and sick, prisoners of war or refugees).

Theoretical Considerations on the Protection of Human Rights and Fundamental Freedoms During International Armed Conflicts

International humanitarian law (IHL), as an expression of a balance between military necessity and humanity, provides important rules for the protection of civilians. The IHL states that for the purpose of the armed struggle to win the war against the enemy, the choice of the means and ways of war is not unrestricted. In this respect, "*the civilian population and civilian persons enjoy a general protection against the dangers arising from military operations*" (Legislativ Portal n.d., 25).

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IHL defines the governing principles for the conduct of belligerents in battle, among them: humanity, distinction, proportionality and caution. Military decision-makers must analyse all the information at their disposal before launching an attack in order to make a tactical decision on the means and methods used. Therefore, armed attacks must be non-discriminatory or proportionate to the intended purpose and all necessary precautions must be considered to minimize the damage that may occur to the civilian population. Furthermore, international rules on the conduct of armed conflicts impose an obligation to grant effective protection to civilians and private property, and, in all circumstances, non-combatants to be treated with dignity and respect for their rights.

Distinction between the civilian population and the combatants as well as between civilian and military objectives must be made at all times during armed conflicts. Consequently, civilians and civilian objectives must be protected against an intentional armed attack. Indiscriminate attacks are prohibited, including three types of attacks: attacks that do not directly target a military objective, attacks using methods or means of war that are not directed against a particular military objective, and attacks using a method or means of war with effects that are unlimited. The regulations of humanitarian law prohibit attacks that could cause accidental loss of life or injury among civilians and damage to private property.

For protecting the civilians during armed conflicts, we can identify several rules from the IHL norms, as follows:

- civil persons may not be the subject of an appeal unless they participate directly in hostilities;
- the person surrendering to the enemy will have his life saved;
- no person shall be subjected to physical or mental torture, corporal punishment or cruel or degrading treatment;
- the legal personality of each individual will be respected; private property is protected and cannot be the target of an armed attack, unless it is used for military action;
- the sick persons will be hospitalized and will be provided with the necessary care according to the medical condition;
- persons will be treated without discrimination on the basis of race, sex, nationality, language,

social class, property, public, philosophical or religious opinions or on another basis;

- retaliation is prohibited in camps with prisoners or war refugees.

Factual Aspects Regarding the Conduct of Reprisals in the Russia-Georgia War

The Russia-Georgia war of August 2008, although it lasted only several days, was one that changed the security context in the Black Sea region and created premises for emphasizing the importance of human rights re-enactment in times of military conflict.

The history of this confrontation stems from deep ethnic dissension between Georgians and the separatist population of South Ossetia and Abkhazia. Tensions in the region date back at least to 1920, when South Ossetia wanted to declare its independence, but gained the status of an autonomous region in the Soviet Georgia. Georgia's declaration of independence from the former Soviet Union and its disagreements with Russian-influenced South Ossetia led to the outbreak of hostilities between Georgia and South Ossetia in January 1991. As a result, a state of relative peace was established, and a ceasefire was agreed between the warring forces, which included the deployment of Russian peacekeepers in the area.

The international precedent on the formation of a state on the territory of another sovereign state through Kosovo's declaration of independence was used as an example for separatist groups in South Ossetia and Abkhazia. The external context that led to the escalation of hostilities in August 2008 was created by the decisions taken at the NATO Summit in Bucharest in April 2008, according to which Georgia and Ukraine, although not reaching the status of receiving the Membership Action Plan, were officially recognized as countries that could acquire the status of NATO Allies in the future.

Longstanding tensions escalated on the evening of 7 August 2008, when South Ossetia and Georgia accused each other of launching armed attacks and did not respond to calls for a ceasefire, but even intensified the bombing. Russia intervened in the conflict and launched airstrikes on Georgia, and by August 12, Russian troops occupied most of southern Ossetia and several

Georgian cities. Russian forces landed warships in the breakaway region of Abkhazia in Georgia and took up positions off the coast of Georgia from the Black Sea. Meanwhile, the bombing of Georgia's territory by Russian fighter jets continued, as well as the occupation of villages and the destruction of military bases, residential buildings and other critical infrastructure objectives.

Under the supervision of international bodies, the participants to the conflict (Georgia, South Ossetia, Abkhazia and the Russian Federation) signed, on 12 August 2008, a peace plan concluded directly under the aegis of the European Union (EU). This agreement included the obligation of the parties to refrain from the use of force, the total and immediate cessation of armed hostilities, and the provision of access for the civilian population to humanitarian aid. The Russian Federation recognized South Ossetia and Abkhazia as independent states in a decree signed by the President Dimitry Medvedev on August 26, 2008, a gesture condemned by the international community.

As a result of the fact that the Russian Federation did not take the committed measures, on 8 September 2008, a new agreement was concluded to implement the ceasefire agreement (the Sarkozy-Medvedev agreement) which provided for the obligation to withdraw Russian troops from the areas bordering Abkhazia and South Ossetia. On September 17, 2008, the Russian Federation signed friendship and cooperation agreements with South Ossetia and Abkhazia.

During the war *"looting, kidnappings, murders and other atrocities by the Russian army on the Georgian civilian population were reported. In these circumstances, Georgia sent a letter to the international community asking for its help and requesting its intervention to stop the atrocities and use of unconventional weapons, a fact also signalled by a human rights observer from the UN"* (Chifu, Oproiu and Bălăşoiu 2010, 49). These illegal actions continued even after the end of the armed conflict, the population being affected in terms of the free exercise of their rights, being found degrading acts on prisoners of war and disadvantaged people.

International and regional bodies had an active role in resolving the conflict and the financial, technical and humanitarian aid has supported

democracy in Georgia and has ensured the stability of the entire region. On 2 December 2008, the Council of EU took the decision to establish an independent international information mission on the conflict in Georgia, being *"for the first time in history that the European Union has decided to actively intervene in a serious armed conflict"* (Council of the EU 2009). The United Nations (UN) led the negotiations in Abkhazia, while the Organisation for Security and Cooperation in Europe (OSCE) was the main actor in the South Ossetia talks. EU has assumed an important role in its efforts as these organizations adopted a long-term perspective towards Georgia aiming at helping the development of the country.

According to reports by EU and UN observers, on the basis of data collected from the field and witness statements, armed attacks were reported aimed at the mass destruction of Georgian villages in South Ossetia and nearby regions. *"Actions to destroy private property that turned entire areas of Georgian population into ghost cities"* were carried out (OSCE 2008). International organizations as well as international media reported the execution of Georgian ethnics. In this regard, statements of the civilian population were processed, including the people rescued from the famous hostage camp in Tskhinvali. Moreover, it has been reported several cases of elderly people physically unable to flee from the aggressors, captured in large numbers and held hostage (later handed over in exchange for prisoners of war). Houses owned by ethnic Georgians were looted and set on fire, following a policy of ethnic cleansing of Georgians.

Procedural Phase of the War Between Russia and Georgia

Claiming that during the armed conflicts and subsequently violations of the rights of civilians of Georgian ethnicity were carried out by the armed forces of the Russian Federation, the Government of Georgia filed a complaint with ECHR (Application no. 38263/08) in which it claimed that there were flagrant violations of the laws and principles of war that caused serious harm to the population. The government argued that, on the basis of the available evidence, the actions of the Russian army are part of a repetitive pattern of acts and omissions incompatible with international conventions.



According to the application filed by Georgia, the following actions were reported that violate the civil rights during the armed conflicts:

- murder, ill-treatment, robberies and arson of dwellings by the Russian armed forces;
- the non-observance of the treatment of civilian prisoners and the legality of their detention, being detained acts of mistreatment and torture of several prisoners of war by Russian forces;
- violation of the free movement of displaced persons with regard to the return to their regions of origin of forced displaced Georgians;
- violation of the right to education with alleged looting and destruction of schools and public libraries by Russian troops and separatist authorities and intimidation of Georgian students and teachers;
- failure to comply with the obligation to investigate war crimes alleged to be committed by their nationals or armed forces.

Georgian authorities complained of systematic violations of population rights being invoked both the provisions of IHL and European Convention on Human Rights, as follows: art. 2 (right to life), art. 3 (prohibition of torture), art.5 (right to liberty) and art. 8 (right to private life), protocol 1 additional art. 1 (right to private property) and art. 2 (right to education).

In its response, the Russian Federation claimed that the military action was legitimate and in line with the provisions of the IHL and that Georgia's accusations were false and lacking in evidence. Moreover, the competence of the ECHR in relation to the IHL's provisions was challenged and considered that the Court's powers concern only the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Russia believes that the injury of civilians and the destruction of property are the result of the actions taken by the perpetrators in the two regions, and the responsibility lies with the governments of South Ossetia and Abkhazia.

Regarding the exception of lack of competence, the ECHR decided to divide the period of the conflict into an active phase of hostilities (8-12 August 2008) and subsequent events. One of the most significant and controversial findings of this judgment is that Russia had no jurisdiction over the territory on which the conflict took place during the war, and the acts committed during this period

do not fall under the jurisdiction of the ECHR. The Court has taken into account two reasons for jurisdiction here: effective control over the territory and authority over natural persons. In other words, in its analysis, the ECHR used "*both territorial and personal control as grounds for competence, finding no valid judicial basis for Russia's effective control over the territory of South Ossetia and Abkhazia during the hostilities phase. However, in this case, the European Court of Human Rights failed to establish jurisdiction over persons living in a territory that would otherwise be protected by the Convention*" (Dzehtsiarou 2021, 288).

In its decision from January 21st, 2021, the ECHR ruled that the events that took place during the active phase of hostilities (8-12 August 2008) did not fall within the competence of the Russian Federation and declares this part of the application inadmissible. The ECHR states that the events that took place after the cessation of hostilities (from the date of the ceasefire agreement 12 August 2008) were within the competence of the Russian Federation, so that, in relation to the evidence administered in the case, it is found that there was an administrative practice regarding the killing of civilians, the burning and looting of houses in Georgian villages in South Ossetia and the "buffer zone", the establishment of poor and unsuitable detention conditions for prisoners who have been exposed to humiliating treatment and who have caused them undeniable suffering and are classified as acts of torture. The ECHR also decides that Georgian citizens have been prevented from returning to South Ossetia or Abkhazia, an incapacity that falls within the competence of the Russian Federation (CEDO 2021).

The subject is of current relevance considering the security situation in the area caused by the attack on Ukraine by the Russian Federation starting with February 24, 2022, an ongoing armed conflict. Despite this decision of CEDO, which undoubtedly states that certain practices of war constitute serious violations of human rights, the monitoring missions of the war in Ukraine (ONU 2022), with duties to monitor the respect for the freedoms of civilians, established by the UN reported "*the serious deterioration of the human rights situation in the country, with thousands of civilians killed and wounded, the massive destruction of civilian infrastructure and housing,*

arbitrary detentions and cases of disappearances, torture and ill-treatment, but also sexual violence" (OHCHR 2022).

Conclusions

The protection of people's fundamental rights in times of conflict, crisis and war is done through the activity of regularization through legal instruments (treaties, conventions, resolutions of international organizations) of international humanitarian law as a branch of public international law. The customs of ancient wars have found expression in the texts of international conventions and resolutions of international security organizations forming international humanitarian law.

In full agreement with IHL regulations, the parties to the conflict must take precautions to avoid or minimize the effects of armed actions on civilians, having the obligation to do everything feasible to avoid collateral losses among civilians and damage to private property deemed in excess to the intended real and direct military advantage.

Compliance with rules of international law applicable to armed conflicts is an obligation incumbent to states and to combatants in the theatre of operations. The importance of protecting civilians and other non-combatants in time of war and following it is underlined by the ratification of legal treaties that delimit the rights of civilians in times of armed conflict, by political and media actions condemning acts that cause the suffering of non-combatants and by the active freezing carried out by international institutions on the legality of behaviour in battle. According to the provisions of the IHL, the exercise of the fundamental rights of non-combatants must also persist during armed conflicts.

The ECHR judgment in *Georgia v. Russia* delivered on January 21st, 2021 has a historical importance regarding the respect of DIU provisions. In the operative part of the ruling, the judges found Russia responsible for several violations of the Convention including illegal killing, torture, arbitrary detentions, looting and destruction of villages during the invasion of Abkhazia and South Ossetia in August 2008, the armed conflict and the occupation that followed. Detailed judgment contributes to the historical record of the conflict and its human cost.

Through the judgment in this case, ECHR has created a new rule in the European public order because until this decision, the court had supervised the application of the European Convention throughout the European area, judging the violations of human rights in the territorial area of the European Convention on Human Rights.

The settlement of the dispute by the European court is a success of recognizing the importance of human rights during and after the unfolding of an armed conflict, being an internationally recognized reparation of the abusive acts of the Russian Federation in carrying out special military operations. Of importance in the light of contemporary security events is the consideration that competence under the ECHR is closely linked to the concept of *control*, whether it is the authority and control of the State agent over natural persons or the effective control of a State over a territory. Therefore, military operations in the active phase of hostilities in an international armed conflict fall outside the jurisdiction of the attacking State and therefore do not fall within the competence of the ECHR, which is not in a position to find human rights violations, which can be protected only by the legal means of IHL.

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