LEGAL ANALYSIS OF THE PROCESS OF PROPERTY RESTITUTION AND CITIZENSHIP RESTORATION TO ETHNIC OSSETIANS AFFECTED FROM THE CONFLICT

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INTRODUCTION

Human Rights Center implemented the project **Dialogue over the Common Problems of the Georgian and Ossetian Peoples** aiming at promoting the protection of property and citizenship rights of ethnic Ossetian citizens in Georgia and identifying the deficiencies in Georgian legislation and practice related to the exercise of these rights.

The target group of the project was ethnically Ossetian citizens of Georgia who were affected by the political and ethnic conflicts of the 90s of the last century. Lawyers of HRC and invited experts were actively working and studying the issues of restoration of violated rights of ethnic Ossetian citizens who had emigrated during the armed conflict of 1989-1992 and later period. The work of the lawyers was related to granting citizenship to the target group and recovering their property. The Expert Group has studied national legislation, public information released from state institutions, international experience and has developed recommendations taking into account the trends revealed during the proceedings of specific cases.

The present Report outlines two significant problems related to the process of granting Georgian citizenship to ethnic Ossetians and to the failure to enforce the Law *on Property Restitution and Compensations of the Persons Affected in the Territory of Georgia from the Conflict held in the Former South Ossetian Autonomous District*, adopted by the Parliament of Georgia in 2006.

As part of the project, HRC has studied individual cases and has reacted to them. Citizens were given legal consultations related to citizenship. In providing the legal aid, often lawyers were not able to appeal in the court the decision of the Agency in the part of the issue of granting the citizenship due to the fact the deadline for appeal prescribed by law had been expired in most of the cases. Further, a trend was evident that in most cases ethnic Ossetian citizens wishing to restore legal ties with Georgia had in most instances filed applications with wrong claims that from the outset excluded the possibility of being granted by the Agency as a positive response to citizenship. Another identified problem was linked to the failure by President's Administration and the State Services Development Agency to process segregated data of how many ethnic Ossetians have addressed them with the request to obtain Georgian citizenship.

As for the issue of property restitution and compensations, the practice of legal aid and relevant proceedings showed that in most cases the documents

related to the property could not be found or have been destroyed. Due to the lack of documents, it was hard for citizens to apply to the court.

Under the Law passed by the Parliament in 2006, the Commission on Compensations and Restitution had to be established. This requirement of the Law has not become operative since the Commission per sue has not been established. In order to find out the detailed information, HRC approached the administration of the Government of Georgia and requested the explanation of the reasons the Commission was not created, but HRC did not receive any response from the Government. Furthermore, the State has virtually no definite information about how many ethnic Ossetians have abandoned their real estate due to the harassment caused by the conflict.

To the problems mentioned in the current Report speaks also the Special Report by the Public Defender of Georgia from 2015 titled Migration and Issues Facing Georgia's Ossetian Community.[1] The research conducted by the Public Defender revealed that some legislative changes and correct practice on the part of administrative bodies would be critically necessary for the restitution of the rights of ethnic Ossetians and the mentioned efforts would promote the fair restoration of the rights of ethnic Ossetian citizens who emigrated in the 90s and the reconciliation process in general.

THE CONFLICT OF 1989-1992 AND OUR TIME

As a result of the armed conflict and ethnic tensions on the territory of Georgia in 1989-1992[2], the ethnic Ossetian population living in Georgia faced many challenges and obstacles. Because of the persecution on ethnic grounds, approximately 70,000 ethnic Ossetians had to abandon real estates and find refuge abroad mainly in Russia. Before the conflict in the 90s, 164,055 Ossetians lived in Georgia following the census of 1989, among them 65,232 were living in the Autonomous District of South Ossetia and 98,823 in the rest of Georgia. There were Ossetians living in Tbilisi (33,318), Tskhinvali (31,537), Shida Kartli (32,050), Kakheti (12,441), Mtskheta-Mtianeti (10,309), Rustavi (5,613) and so on. According to the 2002 census, 38,028 ethnic Ossetian population lives in the territory controlled by Georgia, including: Tbilisi - 10,268, Shida Kartli - 13,383,

[1] See Report of the Public Defender - https://www.ombudsman.ge/geo/190307023420angarishebi/saqartveloshi-mcxovrebi-osuri-temis-migracia-da-moqalaqeobastan-dakavshirebuli-calkeuli-problemebi

[2] Human Rights Watch, the Bloodshed in Caucasus: Violations of Human Rights and Humanitarian Law during the South Ossetian conflict, 1992

Kakheti - 6,109, Mtskheta-Mtianeti - 3,977 and Rustavi - 1,410[3]. Due to the severe socio-economic situation, migration continues. According to the latest data, 14,385 ethnic Ossetian citizens live in Georgia[4].

Artificial barriers created as a result of the conflict led to the breakup of the ties of blood among the ethnic Ossetian population remaining in Georgia along with many other problems. At the same time, the Ossetians remaining in Georgia are an integral part of the Ossetian society and also are part of the Georgian society. That is why they perceive with pain the gap between the societies.

Part of the Ossetian citizens who have emigrated express their desire to protect property rights through legal means and return to Georgia. One of the cases[5] studied within the Project revealed that as soon as an ethnic Ossetian has taken legal steps in terms of protection of property rights, after having left Georgia temporarily, he/she got on the black list and was denied entrance to Georgia. Unfortunately, this is not a single example. Such cases increase the feeling of injustice among the Ossetian population and exacerbate the challenges existing in terms of the security of the country.

Besides the restoration of property rights, ethnic Ossetian citizens emphasize as the main issue the problem of granting or retaining Georgian citizenship. These people, in turn, can be divided into two categories:

1. Those who during the conflict left the territory controlled by Georgia. Such individuals do not have and never had a passport of an independent Georgia.
2. Those who have a passport of a citizen of Georgia and at the same time possess the citizenship of another country, the latter being of great importance due to the existing socio-economic background.

The representatives of both categories have a strong emotional bond with Georgia. They perceive Georgia as a homeland and want to link their future with Georgia and for this purpose, they approach the State Services Development Agency.

[3]The results of the first National census of 2002 of the population of Georgia, volume I, State Department of Statistics of Georgia, http://census.ge/files/2002/geo/I%20tomi.pdf have seen 14.01.2022

[4] 2014 census results, National Statistics Office of Georgia; http://census.ge/ge/results/census1/demo is 14.01.2022

[5]Human Rights Center. Cases of RK and NB.

From the cases of citizenship retention studied by HRC,[6] we see a gross violation of the amended Article 53 (1) of the Ordinance N 2 [7]of the Commission on the Issues of Citizenship, according to which former citizens of Georgia who have lost Georgian citizenship due to the acquisition of the citizenship of another country may apply to the Agency before December 31, 2022, and request Georgian citizenship by way of restoration. Despite the wording of the Ordinance, beneficiaries of HRC were denied in their claims exactly because of applying too late and failing to notify the Agency about acquiring the citizenship of another country.

A compulsory testing component in granting citizenship by way of exception is another challenge that implies passing the exam in the Georgian language, history, and law. Though displaced Ossetians know the Georgian language fluently, it is difficult for them to reveal the knowledge. Getting insufficient points in the testing is the basis for refusing citizenship[8].

INFORMATION RECEIVED FROM PUBLIC INSTITUTIONS

To ascertain some issues and to obtain necessary certificates needed for the proceedings, during the implementation of the Project, HRC requested public information from several municipalities of Kakheti. The responses received vary and it seems that municipalities have different approaches and practices of collecting and maintaining statistics.

According to the response received from the Mayor's Office of Telavi Municipality, 250 persons left the village of Jugaani of Telavi Municipality due to the armed conflict between the Georgian and Ossetian population in the former South Ossetian Autonomous District and other regions of Georgia during 1989-1992 and beyond. The property in the village of Jughaani of Telavi Municipality was never abandoned by ethnic Ossetians. They periodically come to see their homes. At the same time, nobody addressed the Mayor's Office or Sakrebulo (City Council) of Telavi Municipality for the restitution of property. Ethnic Ossetian citizens who arrive periodically to Georgia do not have residence permits.

[6] Human Rights Center: cases of MK and NC.

[7] On making amendments to the Ordinance N 2 of the Commission on the Issues of Citizenship from September 4, 2018 approving the Regulation on Hearing and Resolving the Issues of Georgian Citizenship https://www.matsne.gov.ge/ka/document/view/5177824?publication=0 Seen on: January 26, 2022

[8] HRC, the case of BB.

According to the response received from Dedoplistskaro Municipality, the Mayor's Office there has no information about how many Ossetian citizens left their property in the municipality during 1989-1992 and later period. No Ossetian citizen has applied to the Mayor's Office of the Municipality to recover their property. The Mayor's Office does not have information about how many ethnic Ossetians have residence permits. Unlike Telavi Municipality, the Mayor's Office of Dedoplistskaro does not process the information concerning these issues. Consequently, in their response letter delivering the requested information, the administrative body advised HRC to refer to the State Services Development Agency.

According to the information received from the Mayor's Office of Akhmeta Municipality, in 1989-1992 (and not only in this period) the migration of ethnic Ossetian population from Akhmeta Municipality mainly to Vladikavkaz, Russia, had a regular character. Most of them voluntarily sold houses they owned, but the part of them who still own houses regularly visit Georgia up to these days. In Akhmeta Municipality (namely in villages: Kutsakhta, Koreti, Tsinubani, Dumasturi, Kvemo Khalatsani, Chachkhriala, Sabue, Argokhi, Pichkhovani, Akhalsheni, Kojori, the fields of Akhshani, Arashenda) lived a total of 823 ethnic Ossetian families, from which 471 families sold residential houses and left the municipality. Currently, 352 families live in the municipality.

According to the Mayor's Office of Sagarejo Municipality, the administrative body has no information about how many Ossetian citizens left their property in Sagarejo Municipality during the conflict of 1989-1992 or later period. The same letter informs us that up to the date no ethnic Ossetian citizen (Georgian citizens or those who have Russian citizenship or residence permit) has approached the Mayor's Office of Sagarejo Municipality claiming the recovery/restitution of the property.

HRC requested public information from the South Ossetian Administration as to how many ethnic Ossetians left Georgia and private property in 1989-1992. One of the questions was: has anyone approached the Administration claiming the restitution. According to the response letter, the Administration of South Ossetia does not maintain such statistics. The same letter informs us that no person or family has approached the Administration claiming the residence permit and recovery/restitution of the property.

HRC addressed also the Administration of the President of Georgia to obtain the information on how many ethnic Ossetians and Russian citizens requested Georgian citizenship and how many from these requests were granted. Further, HRC requested information on how many requests on establishing citizenship were granted and how many were rejected. According to the response letter from the President's Administration, such information is not processed within the Administration. As for the information related to the establishment of citizenship under Article 30^1 of the Organic Law on Citizenship of Georgia, the President's Administration indicated that the administrative proceedings of this issue are within the competence of the State Services Development Agency.

The State Services Development Agency informed HRC that the data on individuals in the electronic base are not processed with ethnicity signs. Within the Project, an additional meeting was held with the representatives of the State Services Development Agency discussing the issues of the state approach to granting/retaining citizenship to ethnic Ossetians affected by the conflict. According to the information obtained, the State does not carry out an exceptional policy against persons affected by the conflict and so the State hears the applications about granting or retaining the citizenship to such individuals under a standard procedure following the Law *on Georgian Citizenship*.

POSSIBILITIES OF RESTORING GEORGIAN CITIZENSHIP TO ETHNIC OSSETIAN POPULATION

As a result of the conflict in Tskhinvali Region in the 90s of the last century, a significant portion of the ethnic Ossetian population living in the rest of Georgia had to leave their homes and be displaced outside Georgia[9]. Most of them moved to the Russian Federation - to the Republic of North Ossetia, where a large part of them received Russian citizenship. Because of this, they lost their citizenship ties with Georgia but maintained an emotional connection as well as relations with close relatives remaining in Georgia. Nowadays part of them is willing to be citizens of Georgia again. They are trying to use the relevant legal mechanisms to get Georgian citizenship, but in this process, they are faced with different obstacles.

[9] Special Report of the Public Defender of Georgia from 2015 on Migration and Citizenship Issues Facing Georgia's Ossetian Community.

The current chapter of the Report reviews the barriers existing in the legislation and practice creating problems in the process of granting citizenship to the ethnic Ossetian population displaced from Georgia.

The Georgian legislation regulates in detail the grounds and procedures for granting citizenship. The law provides for the possibility of acquiring citizenship by birth or through naturalization[10]. The Law distinguishes the following forms of acquiring citizenship through naturalization:

- Granting Georgian citizenship under the regular procedure;
- Granting Georgian citizenship under the simplified procedure;
- Granting Georgian citizenship by way of exception;
- Granting Georgian citizenship by way of restoration [11].

In the cases where there is a negative opinion issued by relevant authority denying Georgian citizenship to a person through the naturalization as it stems from the interests of Georgian state security and/or public security, the final say on granting the citizenship shall be with the President of Georgia. In such cases, the decision of the President of Georgia must be justified[12].

For the purposes of the current Report, in order to determine the exact number of ethnic Ossetian population displaced from Georgia, HRC has approached relevant state authorities requesting some public information, but in response, the state authorities stated they do not have such data. Therefore, by the time of drafting the Report, the data could not be specified as to how many persons had to leave the territory of Georgia and what is their citizenship status at the time being. Despite this, based on the practice of legal aid conducted by HRC, as well as various unofficial sources, it is possible to say that most of them live in the Russian Federation and have received citizenship from the Russian Federation. In the absence of Georgian citizenship, they have lost legal ties with Georgia and can not enjoy a number of rights.

Based on the analysis of the Georgian legislation, in the case where an ethnic Ossetian having been displaced from Georgia has received citizenship of another country, decides to acquire Georgian citizenship in parallel with the citizenship of another country, he/she has the opportunity to be granted Georgian citizenship by way of exception.

[10] Constitution of Georgia, Article 32(2).
[11] Organic Law of Georgia on Georgian Citizenship, Article 9 (3).
[12] Ibid, Article 16.

To do so, he/she shall apply (in person or through a representative) to the authorized body which is the State Services Development Agency[13]. The authorized body shall hear the issue of citizenship through the Commission[14].

After receiving the application, the State Services Development Agency shall apply in 3 days to the Chief Prosecutor's Office of Georgia, the Ministry of Internal Affairs of Georgia, the State Security Service of Georgia, and the Georgian Intelligence Service to identify the grounds for refusing the citizenship through naturalization. In order to retrieve information impeding the renunciation of citizenship, the Agency shall apply to the Ministry of Finance of Georgia and the Ministry of Interior of Georgia. In order to identify the grounds for refusing the retention of Georgian citizenship, the Agency shall apply to the State Security Service of Georgia and the Intelligence Service of Georgia. When the Agency hears the issue of granting Georgian citizenship by way of exception, the Agency shall apply to the Ministry of Economy and Sustainable Development of Georgia or any other competent body as mentioned by the applicant able to prove the fact of investments carried out by the applicant in Georgia[15].

In granting the citizenship by way of exception, in order to assess the issue of state interests, the Commission shall *inter alia* take into account the following circumstances:

1. The citizen of another country perceives Georgia as his/her homeland and he/she or his/her ancestor: A) is a person who lives in occupied territories of Georgia or is displaced from these territories; B) is a person who has emigrated at different times due to political opinions or severe socio-economic conditions;
2. A citizen of another country is making or has made investments in Georgia significantly contributing to the development of the Georgian economy;

[13] Article 2 (a) of Ordinance N 2 of the Commission on the Issues of Citizenship from September 4, 2018 approving the Regulation on Hearing and Resolving the Issues of Georgian Citizenship: The Authorized Body means the State Services Development Agency which is a legal entity under public law and operated under the Ministry of Justice of Georgia, further the territorial offices of the Agency, diplomatic representation and consular offices of Georgia acting abroad or Georgian sections established in the diplomatic representations of the third States.

[14] Organic Law of Georgia on Georgian Citizenship, Article 24 (1).

[15] Decree N 2 of the Commission on the Issues of Citizenship from September 4, 2018 approving the Regulation on Hearing and Resolving the Issues of Georgian Citizenship, Article 17.

3. A citizen of another country is successful in sports, science, and/or arts and wishes to continue his/her career in the name of Georgia.

When making a decision, the Commission may *inter alia* consider the following: Biographical data allowing to assess the citizen of another country, as well as to assess his/her ties with the State of Georgia; further, specific occupation or activities and/or other circumstances or factors that may have significance for assessing in positive or negative terms the availability of special merits of the citizen of another country towards Georgia and/or so assessing the availability of state interests for granting him/her the Georgian citizenship.

In order to assess the expediency of granting Georgian citizenship by way of exception, the Commission may invite a citizen of another country for an interview to establish significant facts. In case of necessity, the interview may be conducted by telephone or means of electronic communication. Further, to establish significant facts, the Commission may invite other persons for an interview, request documents and information from different institutions or organizations, and also demand from the citizenship seeker to furnish such documents[16].

OUTCOMES OF INDIVIDUAL CASES

Some of the individual cases processed by HRC within the Project create the perceptions about the attitude and approaches of the State towards the Ossetians who seek to obtain citizenship:

NT: Born in Georgia, went to school and university in Georgia. In 1990, NT had to move to the Russian Federation, to Vladikavkaz. Presently, relatives of NT live in Georgia and NT wishes to return to his homeland. In the city of Rustavi NT owns the apartment inherited from the father. In 2018 NT first applied to acquire citizenship by way of exception but was rejected. In September 2021, NT applied a second time, and after having been interviewed NT acquired dual citizenship.

BB: Born in Georgia. In 1999, along with the parents, BB had to move to the Russian Federation. BB went to school and university in Vladikavkaz. Currently, BB works at the insurance company. BB speaks Georgian fluently but has difficulties in reading and writing. BB has close relatives in Georgia and has real estate in Batumi inherited from the mother. BB first applied to

[16] Ibid, Article 33.

acquire citizenship by way of exception, but due to insufficient scores received in the compulsory examination, BB was subject to a negative opinion that became the basis for the refusal of dual citizenship.

MK: Born in Georgia. She went to school in Tbilisi. In 1990 MK was enrolled at Tbilisi State University. From the second year of studies, MK had to transfer the documents to Vladikavkaz where MK completed the studies and returned to Georgia. MK's parents are citizens of Georgia. MK owns real estate in Georgia. In 2013, MK moved to Russia for employment where still resides. In 2016 MK received Russian citizenship. In 2021 MK was in Georgia and applied for retaining citizenship. MK was waiting for a long time before her case was resolved, but because of the necessity had to leave for Russia temporarily. Because of this, MK could not appear for the interview, and instead, the agent of MK was there. Despite the exceptions available in the law, the opinion on retaining citizenship was negative because MK has not informed Georgian authorities in advance before acquiring the citizenship of another country.

MC: MC was born in Tbilisi, during the events of the 90s MC moved with her parents to Vladikavkaz, where the parents received Russian citizenship. Because of her minority, MC could not acquire citizenship. Afterward, the family returned to Tbilisi, but after the War of 2008, MC moved again to the Russian Federation where they received Russian citizenship. When in the final grade at school, MC took documents to Akhalgori District, the territory not under the control of Georgia. Afterward, MC was enrolled at a university in Moscow and later at the Technical University of Georgia. MC unlawfully holds double citizenship. When MC learned about the citizenship initiative, MC decided to submit an application hoping to retain the citizenship of both countries but was refused. MC is married to a Georgian citizen. MC has a minor child who is a citizen of Georgia and MC sees her own future life in Georgia.

NJ: NJ was born in Georgia and went to school in Kareli. NJ received higher education in Tskhinvali. Currently, NJ lives in Kareli. NJ's family members are citizens of Georgia. NJ does not have a passport proving Georgian citizenship. However, he was rejected to acquire Georgian citizenship by way of exception. NJ claims that since having been educated in Tskhinvali, NJ was exerted to psychological pressure at all the interviews.

LP: After 2008, LP received citizenship from another country (Russia), however LP never renounced the citizenship of Georgia. In fact, at this stage LP has double citizenship. Stemming from the existing practice, LP is afraid to

apply for Georgian citizenship as he has grounds to expect that would be rejected.

CHALLENGES TO THE PROTECTION OF PROPERTY RIGHTS IN THE GEORGIAN-CONTROLLED TERRITORY

The majority of the population who had to be displaced from Georgia as a result of the events of 1989-92 was fully involved in local socio-economic relations and had private property. After leaving the permanent residence, they have obstacles both in terms of physically possessing their property and in terms of registration.

The case-law of the European Court of Human Rights is familiar with the formal[17] confiscation of property and de facto expropriation/seizure.

Formal deprivation takes place when by a normative legal act or action the owner has been deprived the ownership over the property and the official status of the owner. Meanwhile, the de facto expropriation takes place when the owner is not formally deprived of the property rights, but his/her ability to use the property rights is restricted to the extent that he/she does not possess and dispose of the property, and cannot benefit from the property.

In practice, against the ethnic Ossetian population, there are both formal as well as de facto deprivation of property. Unfortunately, the situation of this population is not considered as cases needing a special regulation and, as a rule, the persons have to undergo standard procedures provided for by the Georgian legislation to protect their property, which is related to many challenges due to the situation of the population.

♦ PROPERTY RIGHTS UNDER THE GEORGIAN LEGISLATION

Protection of property rights is a fundamental aspect of the realization of human rights. According to the Constitution of Georgia, property, and inheritance rights are recognized and secured[18]. Property is the legal good of the highest rank, which forms the basis of the system of private property envisaged by the Constitution. The property is an unconditionally protected value, regardless of the price of the property and of the social burden it

[17]In the English language, the epithet 'formal' is used as a synonym for the definition of 'official'.
[18] Article 19(1) of the Constitution of Georgia.

carries[19]. Protection of property rights is the best expression of realization of human rights and represents a fundamental aspect of the realization of rights. According to the interpretation rendered by the Constitutional Georgia, the function of property rights is to ensure that private property is lost as a means to lead one's life independently. This is a constitutional right that represents an integral part of the guarantee of freedom regulated by basic rights. Moreover, property rights are an important aspect of ensuring personal freedom[20].

♦ REGISTRATION OF TITLE ON IMMOVABLE PROPERTY

According to the Civil Code of Georgia, immovable things include land parcels along with minerals under the parcels, plants originating on the ground, as well as buildings and structures that are firmly attached to the land[21]. To purchase an immovable thing, it is necessary to conclude a transaction in writing and register the title on the thing subject to the transaction[22].

Registration of property rights on real things and changes in the registration, further, encumbrances are registered in the Public Registry[23], the functions of which are carried out in Georgia by the National Agency of Public Registry[24].

The purpose of the Law of Georgia *on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law* is to recognize the property rights ('recognition of property rights'), to allow, through recognition of property rights, usage of state-owned land resources being in lawful possession (use), as well as state-owned land squatted by natural persons, legal entities under private law, or any other organizational structures provided for by law, and to facilitate land market development.

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[19] Judgment N 1/2/411 of the Constitutional Court of Georgia from December 19, 2008, Case 'Rusenergo Service LLC, Patara Kakhi LLC, Gogita JSC, Sole Enterprise 'Farmer' by Givi Abalaki and LLC Energy LLC versus the Parliament of Georgia and the Ministry of Energy of Georgia', II. para 23 (Judgment of the Great Chamber, para 190).

[20] Judgment N1/2/384 of the Constitutional Court of Georgia from July 2, 2007, case 'Citizens of Georgia: Davit Jimsheleishvili, Tariel Gvetadze and Neli Dalalishvili versus the Parliament of Georgia', II-5.

[21] Article 149 of the Civil Code of Georgia.

[22] Ibid, Article 183 (1).

[23] Ibid, Article 311 (1).

[24] Article 1 (1) of the Law of Georgia on the Public Registry.

Under Article 2 (a) of the same Law, lawfully possessed (used) land means a state-owned agricultural or non-agricultural parcel of land with or without fixed structures built upon it (built, under construction, or destroyed) for which a natural person or a legal entity under private law or any other organizational structure provided for by law had acquired the right to lawful possession (of parcels of land or structures) before this Law entered into force, as well as land squatted before October 4, 2004, and registered in a technical inventory archive.

The legislation determines the list of documents proving a lawful possession (right to use) of land[25].

At the same time, the legislator allowed that in the absence of documents listed in the relevant normative act, the fact of legitimate ownership of the land plot could be confirmed by 'other documents'[26].

Squatted land means a squatted state-owned agricultural or non-agricultural parcel of land with a residential house or a non-residential building, as well as a squatted parcel of land adjacent to the parcel of land, owned or lawfully possessed by an interested natural person before the enactment of the Law, as well as, a squatted parcel of land which at the moment of requesting recognition of the property right is not disposed of by the State[27]. The commissions for recognition of the property rights to squatted land existing under the executive bodies of respective municipalities shall be authorized to recognize the property rights to squatted land[28].

- **ESTABLISHED RESTRICTIONS ON CITIZENS OF FOREIGN COUNTRIES**

Georgian sources claim that 60,000 ethnic Ossetians were forced to leave South Ossetia and other parts of Georgia as a result of the conflict of 1989-1992, most of whom found shelter in North Ossetia[29]. Consequently, there is a high probability that the majority of them do not have Georgian citizenship. Therefore, current restrictions existing against aliens regarding agricultural

[25] Article 2 (1)(c) of Edict N 525 of the President of Georgia from September 15, 2007 approving the Procedure and Samples of Certificates for Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law.

[26] Judgment of the Supreme Court of Georgia of January 31, 2013, Case N ბს-22-22(კ-12)

[27] Article 2 (c) of the Law of Georgia on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law

[28] Article 4 (1) of the same Law.

[29] Report of the Independent International Fact-Finding Mission on the Conflict in Georgia, 2009, p. 139.

lands must have a substantial impact on the protection of their rights. In particular, by the amendments to the Constitution of Georgia introduced in 2018, the rights of ownership of agricultural lands were restricted for aliens. Moreover, to adopt an organic law to envisage the exceptions from the above restrictions, support of at least two-thirds of the full list of the Parliament was made necessary[30].

♦ CLAIMING PROPERTY BACK FROM ILLEGAL POSSESSION

The mechanisms for the protection of property rights are provided for by the Civil Code. In particular, an owner may, within the limits of legal or any other contractual restraints, freely possess and use any property (thing), exclude others from using the property, and administer it, unless doing so would violate the rights of neighbors or other third persons or unless such act constitutes an abuse of rights[31].

Further, the Civil Code provides for other remedies for the protection of property rights, such as filing a demand to recover the property from illegal possession or to make the disturber end the disturbance (prohibitory injunction)[32]. These demands shall be used in such cases when the claimant remains an owner in legal terms meaning he/she has a title on the thing, but the actual deprivation of the thing is exercised through de facto seizure or interference in the free possession and the right of use[33].

The owner shall put forward the demand to recover the real thing from illegal possession when the real thing is under the illegal possession and when the rights to possess and use the thing are violated. At such moments, the owner vindicates his/her property against the illegal possession by recovering the property. As for the limitation period of such demands, the Supreme Court of Georgia has interpreted in the number of judgments that the period of limitations does not apply to the vindicatory actions under Article 168 of the Civil Procedure Code[34].

[30] Article 19 (4) of the Constitution of Georgia.
[31] Article 170 (1) of the Civil Code.
[32] Under Article 172 of the Civil Code, an owner may recover a thing from its possessor, except if the possessor had the right to possess it.
[33] Judgment of April 28, 2015 (Case N ას-130-124-2013)
[34] Judgment of the Supreme Court of Georgia, case №ას-229-229-2018;

♦ THE PRIMACY OF INTERESTS OF A BONA FIDE PURCHASER

The Civil Code of Georgia provides guarantees for the protection of a bona fide purchaser. Considering the acquirer's interests, the transferor shall be deemed as the owner if he/she is registered with the Public Registry as such, except when the acquirer knew that the transferor was not the owner[35].

By attaching primacy to good faith, the legislator protects the civil-law transactions as a value and through this protects the respective interests of the participants of the transactions. The acquirer may not be demanded to know such facts that exceed (go beyond) the scope of his/her possibility. In evaluating the good faith, the most important is to assess the possibility by the purchaser to be aware of the facts and not the inquiries made by the purchaser towards the facts, so the subject of the evaluation shall be the awareness of the facts and not the targeted inquiries into the facts.

According to the current legislation, it would be impossible for the real owner to recover his/her apartment no matter how hard he/she tries. The property will remain with a bona fide purchaser. The dispute must be resolved in favor of the bona fide purchaser. The availability of the public registry exempts a bona fide purchaser from excessive responsibilities and risks[36].

♦ PROBLEMS RELATED TO THE REGISTRATION OF PROPERTY RIGHTS ON REAL ESTATES ABANDONED AS A RESULT OF THE CONFLICT

Concerning the cases involving the need to recover the property, the proceedings identified as the main problem that the **documents proving the ownership rights on the property** were not available at the relevant state agencies. Mainly the documents to be stored at technical inventory and record-keeping authorities as well as archives are meant here.

According to the current legislation, to register title on real estate, the person concerned shall submit to the National Agency of Public Registry the documents proving his/her property rights. Such documents are as follows: Information about rural households, lists of distribution of land parcels (implemented since 1993), acts of acceptance and delivery of land parcels, etc.

[35] The Civil Code, Article 185.

[36] The recommendations in the field of civil and administrative law as developed as a result of regular meetings of judges in the Supreme Court of Georgia and the uniform practice of the Supreme Court of Georgia on the matters of civil law. https://www.supremecourt.ge/files/upload-file/pdf/rekomenda-samoqadmin.pdf

There were different sorts of documents needed for registration of property rights on the real estate in the cities and settlements because the delivery of apartments was carried out through contracts and apartment certificates indicating the owners and family members and also the details of the real estate. HRC requested documents both by the details of owners as well as by the addresses of entire residential buildings. As it turned out, in the archive of Khashuri for instance are stored documents only for the years of 1980-2003. Whereas, the real estate documents issued to ethnic Ossetian citizens in the 70s of the last century are not stored in these agencies: they are either destroyed or lost.

Despite requesting the documents of various content and through various means, neither within the records on households nor at technical inventory and record-keeping authorities the **documents proving the ownership of the persons who left Georgia as a result of the conflict could be found.** Since these individuals left the country in the force major situation, they could not take this documentation with them. Those who managed to take some documents with them cannot prove the authenticity of the documents, as a copy of the document must be kept at the relevant state agencies.

It is rather difficult to identify the current addresses and actual owners of the abandoned properties so that it would be possible to retrieve the document according to the details of the property. The names and numbering of the streets have been altered. The owners do not have information about the actual possessors or newly registered data of their property. Yet, the identification of the owner has tremendous significance in case a court dispute is initiated so the respondent to be named against whom the lawful possessor (future owner) may have some claims.

The procedure for retrieving information from the National Archives is problematic. It is necessary, for the applicant to specify the specific details of the document proving the ownership: Date of issuance, issuing body, persons specified in the document. Based on the fact that ethnic Ossetians could not take the documents with them, they do not have the details the administrative body is asking for. Therefore, even if they exist, it is difficult to find the needed documents.

Under the conditions where the owner does not have the documents proving the ownership of the property rights, **the only alternative way remains to apply to the Recognition Commission** and register the title on a particular

immovable property based on the decision of the Commission. For this purpose, the law requires at least two witnesses (neighbors) who would confirm the property right of the applicant over the real estate. The Commission summons the witnesses and applicants to the session and questions them additionally. Ethnic Ossetians residing in the Russian Federation find it difficult to fulfill the procedural requirements as they have to enter Georgia. Yet, the other witnesses who could confirm the fact of living of the owners in particular immovable property are also refugees. Some other factors add to this hardly agreeable situation, namely the fact that Georgians have occupied real estates abandoned by Ossetians and some of the Georgians have registered the title on the property exactly through the Recognition Commission. In such cases, the Commission cannot determine the real owner of some of the real estates.

Even in the cases where the documents proving the property rights are obtained, the next **problem is the issue of determining the inheritance.** As a rule, the documents proving the property rights were issued to the parents (being eligible due to their age) of the persons interested at the moment in the registration of the title. Thus, the lawful possessors (owners) of the real estate left in Georgia in most of the cases were the parents of ethnic Ossetians now living in the Russian Federation and most of the parents are already dead. Consequently, it is necessary to determine the heirs, which is mainly to be done by the Court in the Russian Federation. In the case of several successors, they need to agree among themselves as to who would initiate legal proceedings in Georgia, as it would be rather difficult for them to be involved altogether in the proceedings. After determining the heirs, it is necessary to forward a certified version of the relevant documents to Georgia and translate them. These procedures involve a considerable amount of time and expenses, which in most cases does not worth the efforts as the prospects of recovering the property and the benefits in case of recovery are proportionally low as compared to the costs to be paid.

In most cases, the real estate left by refugees and internally displaced Ossetians has been registered by other persons and then resold several times. Here a **legal issue linked with the institution of bona fide purchaser arises.** According to the Civil Code of Georgia, the records of the Public Registry are considered to be authentic. If a person acquires a real thing from the owner specified in the public register, he/she shall be protected by the law and shall be deemed to be a bona fide purchaser even in the case when it turns out that the

seller was not a real owner. Under the Civil Code, the true owner may not sue the bona fide purchaser and may not claim the recovery of the real property. The only chance left to such owners is to claim damages from the transferor of the real estate or the National Agency of the Public Registry. In its turn, **the claim for damages is linked to long legal proceedings,** as primarily it is necessary to appeal against the legal acts and legal grounds for the registration (such as contracts, instruments, etc). As evidenced by the duration of legal proceedings in Georgia, the process may take 3-5 or more years. Only after this procedure establishes that there is a bona fide purchaser and the real owner will not be able to recover the real estate from the bona fide purchaser, the second long process of claiming damages shall commence, which can also last for 3-5 and more years. In sum, the procrastinated process of 6 to 10 years deprives the owner of the abandoned real property of motivations to proceed, while in the case of multiple heirs the motivation would be even miserable.

Where the above problems do not prevent the owner of the abandoned real estate to prove his/her ownership over the property to the court, **it still becomes necessary to have other contentious proceedings for the people living in the property to be evicted.** This process is also time-consuming. Even after the court judgment rules the eviction, the owner is still not able to evict those residing (having encroached) in the property as the eviction proceedings are suspended during the Covid pandemic. However, if not the reason for the pandemic, the eviction proceedings may be further delayed for another year due to the circumstances of the case (there is a sick person, minor, person with disabilities in the household, etc).

Another significant obstacle existing on the legislative (constitutional) level should be mentioned: **Foreign citizens may not own agricultural real property.** Ossetian refugees as a rule have only citizenship of the Russian Federation. Therefore, even if there is perfect documentation, they would not be able to register the title on parcels of agricultural land. Most of the Ossetians lived in rural areas before leaving Georgia and they face the problems of property rights registration.

In the conditions where Georgian citizens living in Georgia have difficulties with registering property rights on their real property, it is even more difficult and in most cases impossible to register property rights on real estates abandoned by displaced ethnic Ossetian during the conflict. Taking into consideration the complexity and duration of the legal proceedings related to the recovery of the destroyed documents and destroyed and/or several times

resold properties, it is advisable **to set up a restitution commission promptly and the active involvement of local self-government representatives to be taken into consideration when hearing such applications.** Further, specific criteria, procedures, and documents to be submitted must be determined based on which the restitution of the affected Ossetians should be carried out through recovery of the property where possible and where this is not possible through appropriate pecuniary compensations. Moreover, where the restrictions for foreign citizens to register property rights on agricultural land parcels are not lifted, ethnic Ossetians should be granted Georgian citizenship by the simplified procedure to have the possibility to recover the property lost as a result of the conflict.

THE LAW ON PROPERTY RESTITUTION AND COMPENSATIONS

The State of Georgia has recognized the violated rights of ethnic Ossetian citizens living in Georgia during the conflict in the former South Ossetian Autonomous District in 1990-92 and in December 2006, the Parliament adopted the Law on Property Restitution and Compensations to the Persons Affected from the Conflict in former South Ossetian Autonomous District (hereinafter referred to as 'the Law of Property Restitution and Compensations').

The introduction of the Law mentions that the State of Georgia acknowledges the severe consequences of the conflict in the former South Ossetian Autonomous District of 1989-1992 which caused a gross violation of the rights and freedoms of a significant part of the Georgian population and forced them to be displaced of their dwellings; Further, the State takes responsibility to restore rights of individuals affected from the conflict during 1989-1992 and later periods and align the rights to the standards recognized by international law.

Georgia undertook the obligation to adopt the Law on Property Restitution and Compensations when Georgia was becoming a member of the Council of Europe in 1999. Later, on January 5, 2006, the Report of the Committee on the Honouring of Obligations and Commitments by the Member States of the Council of Europe (Monitoring Committee) mentioned that Georgia had to

align the legislation that would regulate the issue of restoration of property and residence rights of those affected during the conflicts[37].

WHAT IS THE LAW ABOUT?

At the beginning of 1990, the ethnic Ossetian population living in different regions of Georgia had suffered harassment because of ethnopolitical conflict in the former Autonomous District of South Ossetia. They were attacked mainly by informal armed formations, including by, as eyewitnesses say, many residents of neighboring villages and districts. By threats and physical force, the ethnic Ossetians had to abandon their houses. There were facts of physical assaults. Several incidents had lethal outcomes. Moreover, citizens of Ossetian nationalities were dismissed from jobs on a large scale in the cities. Despite the lack of immediate evidence, it is hard to believe that such oppressions took place without support from the authorities. As a result, thousands of Ossetians left their permanent residence and moved to Russia (mainly North Ossetia), where collective centers of refugees from Georgia emerged.

According to preliminary data of the Ministry of Justice from 2006, there were approximately 60,000 Ossetian refugees in North Ossetia from Tskhinvali Region and other territories of Georgia. On the other hand, 12,000 Georgians left their homes in the conflict zone (Tskhinvali). According to data from North Ossetia from 2004, the number of registered Ossetians emigrated from Georgia was 19,025 persons. A survey conducted by a UNHCR partner organization in North Ossetia has shown that the vast majority of the population is not going to return to Georgia, which in their opinion is due to the impossibility of recovering their houses and property[38].

The Law on Property Restitution and Compensations provide for the issues procedures related to the restitution of property meaning the restoration of legal and property status of the persons affected by the conflict.

The Law is an attempt to create a mechanism for restoration of property rights of the victims, on the one hand, and on the other hand, the adoption of the Law was seen as a kind of peace initiative.

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[37] Implementation of Resolution 1415 (2005) on the honouring of obligations and commitments by Georgia. Report of the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee). Document N10779. January 5, 2006. (Co-rapporteurs: Mr Mátyás Eörsi, Hungary, and Mr Evgeni Kirilov, Bulgaria

[38] Migration and Citizenship Issues Facing Georgia's Ossetian Community: Special Report by the Public Defender, 2015

♦ THE PROCEDURE FOR STAFFING THE COMMISSION FOR RESTITUTION AND COMPENSATIONS

The declared aim of the Law is the property restitution of persons affected throughout the territory of Georgia as a result of the conflict in the former South Ossetian Autonomous District, ensuring them with adequate (replaceable) real property or compensations for the property damage[39].

Based on the goal, the Law envisages staffing the relevant Commission under the parity principle. The Commission consists of 9 members selected from the candidates presented by the Georgian and Ossetian sides parties to the conflict and the candidates nominated under the parity principle by the subject(s) of international law. The Georgian authorities shall appoint 3 members of the Commission nominated by the subject(s) of the International Law and these persons shall staff the Commission from the candidates nominated by the Georgian and Ossetian sides parties to the conflict through an open competition[40].

Moreover, the Law allows the total number of Commission members to be reduced to 6, provided the subjects of international law nominate only 2 candidates to the Commission[41].

The structure of the Commission tries to ensure tripartite representation. Under Article 10 (1) of the Law, the Commission shall elect the Chairperson from the members nominated by the subjects of international law, and the Chairperson shall have two deputies. At the same time, the Chairperson and the deputies of the Commission shall be the candidates nominated by the different parties[42].

Despite the declaration of the parity principle for staffing the Commission, the provisions regulating the competence of the sessions of the Commission fail to provide for the requirement to have the members appointed by all three actors attend the sessions and instead provides for that at least 6 members shall attend the session in order the Commission to be competent to make decisions[43], and therefore, the session of the Commission may be held with the

[39] Article 1 of the Law on Property Restitution and Compensations for those Affected by the Conflict in the Former South Ossetian Autonomous District.
[40] Article 9 of the same Law.
[41] Article 9 (4) of the same Law.
[42] Article 10 (3) of the same Law.
[43] In some cases 5 members. Article 16 (1) of the same Law.

participation of the members appointed by only two subjects. Furthermore, the majority of the votes attending the session shall be sufficient for the Commission to make decisions[44].

- **HEARING AND ENFORCING THE MATTERS OF PROPERTY RESTITUTION AND COMPENSATIONS**

The Commission on Restitution and Compensations in essence operates as a quasi-judicial authority. Therefore, according to the Law, an application submitted by displaced persons or those affected in property terms by the conflict shall serve as a basis for initiating the proceedings. Thus, the Commission has no authority to proactively examine some of the matters. The Commission shall examine specific cases in the manner established by the Law following the applications submitted by the authorized persons[45].

The Commission shall hear the cases under the procedure of formal administrative proceedings as provided for by the General Administrative Code of Georgia[46]. Further, the Law envisages a 6-month term for the entire proceedings while for the complicated procedures the term shall be a maximum of 9 months[47].

The Decision adopted by the Commission in favor of the applicant shall stipulate the grounds, conditions, and procedures for recovering the initial dwelling, ensuring the provision of an adequate (replaceable) dwelling, and paying compensations for the property damage[48]. It is essential that the Decision of the Commission shall enter into force immediately upon the public announcement[49] and the Commission itself shall issue a writ of execution, while only procedural violations of the Commission can be appealed to the Supreme Court[50].

Thus, the Commission as a quasi-judicial authority to some extent is integrated into the court system. At the same time, the Commission should have developed into a faster and more efficient body.

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[44] Article 16 (3) of the same Law.
[45] Article 24 of the same Law.
[46] Article 27 of the same Law.
[47] Article 27 (3)(4) of the same Law.
[48] Article 27 (7) of the same Law.
[49] In case of a standard dispute, parties usually have to go through three court instances in which due to the overburdening of the justice system the cases are not heard within the timeframe specified by the legislation.
[50] Article 28 (1)

In accordance with the Law, after the application of the lawful owner is granted, and where the real property physically is available, the applicant shall manage to recover the property regardless of the good faith of the current possessor (owner). If the property is owned by the State (municipality) or an owner in bad faith, the property shall be immediately recovered, and where there is a bona fide owner, the property shall be returned to the lawful owner provided the current owner is given an adequate real thing or paid adequate pecuniary compensation[51].

The Law is focused on the restitution of property or alternative housing while envisaging the pecuniary compensation after the former two is not feasible. Furthermore, where necessary, the costs for rehabilitation must be provided depending on the condition of the property[52]. The Decision shall be enforced and the costs of administration of the Commission shall be reimbursed from the funds accumulated to the Commission[53].

♦ PROBLEMS RELATED TO THE ENFORCEMENT OF THE LAW

The term 'Georgian and Ossetian sides' created some misunderstanding in the rules of staffing of the Commission. Did this mean that the Ossetian side could be represented by civil society? According to the authors of the draft Law, the Law meant the participation of the non-governmental sector and Tskhinvali de facto authorities in the work of the Commission.

There were two factors after the adoption of the Law holding the enactment of the Law as impossible:

1) Since the Restitution Commission had to be staffed by representatives of the Ossetian side, the involvement of the Tskhinvali de-facto authorities in the process was practically nonfeasible.
2) The restitution process was linked with considerable amounts of funds. However, neither at the time of the adoption of the Law nor afterward no financial inspection has taken place nor were there attempts of fundraising. After 2006, there was no penny envisaged in the Budget of the country for the above purposes.

[51]Article 29 (1)(2) of the same Law.

[52]Article 29 of the same Law.

[53] Article 33.3 of the Law states that the sources of filling the Commission's funds are as follows: the State Budget, grants, donations of the governments of other states, international and non-governmental organizations and / or private individuals, as well as disputed property surrendered by the State and mala fide owners.

Induced from the above statements, we may assume that the Parliament of Georgia has adopted the Law on Property Restitution and Compensations mainly out of the obligations undertaken against the Council of Europe and no government

REVIEW OF INTERNATIONAL PRACTICES RELATED TO RESTITUTION

To find out the problems and the existing experience of restitution, it is interesting to look into the situation in other post-conflict regions in this regard and understand what steps have been taken to solve these problems.

♦ Bosnia and Herzegovina

At the initial stage of regulating these issues in Bosnia and Herzegovina, *the Agreement for Peace in Bosnia-Herzegovina* i.e. the Dayton Agreement played a crucial role in defining in Annex N 7 the number of issues on the rights of the population, refugees, and IDPs affected by the war. The document sets out certain principles and guarantees:

- Right to return freely in homes/country of origin;
- Right to have restored property of which people were deprived;
- Right to return in safety, without risk of harassment, intimidation, persecution, or discrimination (particularly on account of their ethnic origin, religious belief, or political opinion);
- The obligation of the parties to prevent activities within their territories that would hinder or impede the safe and voluntary return of refugees and displaced persons;
- Take appropriate measures to build confidence;
- Free choice of place of residence;
- Creating favorable, positive conditions for return.

For the implementation of these rights, the Dayton Agreement has established the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC) in Bosnia and Herzegovina. The decisions of the Commission regarding the issues of property restitution for refugees and displaced persons had binding legal force. For the claims related to real property, the Commission used a computerized system, and local competent lawyers taking seat in the Commission in proportion to the national origin. International donor organizations supported the Commission's activities.

The commission worked individually on each claim. Within a month, thousands of decisions were made. After the Dayton Agreement, 250,000 refugees and IDPs returned to Bosnia to their permanent residence.

Even though the implementation of the Agreement was quite difficult and limited, Dayton Accords were important not only for the specific case of Bosnia but also for other post-conflict situations to improve the human rights situation. The UN High Commissioner for Refugees (Gluck) started the implementation of the programs to encourage and support the return process. CRPC developed procedures based on specific criteria. CRPC individually adopted a legal decision within 6 weeks after an application to return to the home of origin was filed by each refugee / displaced person. Under the Dayton Accords, the Commission's resolution was final and binding for the local government.

In sum, after 8 years of work, CRPC received and heard over 240,000 claims concerning 319,000 real properties; adopted more than 311,000 final decisions on property rights; database and integrated computer system on the real property were created; this process contributed to the enforcement of decisions and by the end of 2003, 92% of decisions had been enforced for specific cases.

The activities of CRPC are considered one of the most successful in the restitution of rights. The enormous international aid has played its role. By 2008, about half of the destroyed houses were rebuilt, while the rest were still not rehabilitated, mainly due to lack of funds.

- **Kosovo**

After the end of hostilities, a special UN representative in Kosovo was granted the authority to establish a special institution on property restitution issues. In 1999, a special document was adopted on the creation of the Housing and Property Directorate (HPD) and the Housing and Property Claims Commission (HPCC). Both institutions were ad hoc international institutions under the UN temporary administration in Kosovo.

The practice of property restitution and compensations envisaged the use of the mechanism of general courts, as well as the exceptional and additional mechanisms: HPD had the authority to receive and hear certain types of claims related to the violation of property rights taking place from 1989 to 1999.

By 2006, HPD / HPCC had already heard and resolved the majority of claims on property related to disputed dwelling. HPCC continued to work on a small number of cases.

HPD could solve the dispute through mediation. If the mediation was unsuccessful, HPD could pass the matter to HPCC authorized to find the final resolution for the matter. Further, HPCC could refer some part of the claim to general courts or administrative bodies.

Another mandate of HPD was to take inventory of abandoned private, state, and public dwellings HPCC was authorized to decide to use or rent the abandoned property for humanitarian purposes and to supervise the process. HPD / HPCC examined claims of natural persons. They were not hearing claims of legal persons.

- **South Africa**

The program of claims concerned the apartheid, racial segregation, and coercive measures lasting for decades in South Africa.

In 1993, the provisional Constitution of South Africa was approved, followed by democratic elections and the adoption of a new Constitution. A special program was soon designed one of the purposes of which was to assess the limited rights of landowners due to racial discrimination. The Parliament created a special Commission on claims related to property rights. The Commission was responsible for mediation and settlement of disputes, hearing the cases, preparing reports on unresolved claims, preparing special reports for the courts to submit additional evidence, restoring land ownership rights, granting alternative and state land ownership rights, and paying compensations. The Restitution Commission for land ownership was set up, and a court of land ownership claims was established.

In several years the Commission was transformed into the State Department of Land issues and became part of the executive power. This body was responsible for the claims related to restitution and land ownership reform. The institution could restore property rights, grant alternative property rights, financial compensations, or combine these various instruments.

The Commission also promoted re-distribution of land, restoration of trust, and reconciliation through the process of restitution and supported other initiatives.

- **Tajikistan**

Problems of restitution in Tajikistan emerged during internal conflicts which began in the yearly 90s have resulted in approximately 60,000 IDPs and

refugees moving to Afghanistan, and 500,000 fleeing to the capital Dushanbe or mountainous regions. The large number of homes that have been abandoned by these individuals have often been occupied by the representatives of the opposing group, creating an additional problem for restitution. To ensure the return of property to legitimate owners, the central government has adopted several normative acts. As a result, the main houses were seized of their illegal owners and returned to their legitimate owners. The reason for the relatively easy end of the conflict allegedly was the continuation of the legal system that has survived from the times of Communist rule in this country, where the operation of the legal system was maintained even during the conflicts.

The Government of Tajikistan initiated the law on the return of illegally occupied houses and the special resolution on the process of return of refugees and internally displaced persons of the Republic of Tajikistan to the places of permanent residence and on additional measures for their social and legal protection. These decisions made illegal possessors of the homes of refugees and internally displaced persons promptly abandon the houses. In a few months, virtually all such houses were released and local residents were allowed to return. Even though most of the illegal owners eventually left the places peacefully, active eviction was still needed in some instances. Such claims were fully granted by the courts.

- **Rwanda and Burundi**

There were no peace agreements concluded between Rwanda and Burundi, however, several guidelines developed by the United Nations and other organizations are useful to find out the practice of resolution of property and residence rights. Property disputes created obstacles in the avenue of return, reintegration, and development. Gluck (UNHCR) convinced the governments of both countries to emphasize in every statement that private property would be fully protected and any seizure of houses or land parcels would be brought to end after the return of legitimate owners. Further, the legislation regulated the strictly temporary nature of unlawful occupations of houses and provided that this would be for a limited period and must be allowed for a specified period and permitted by the authorized officials. Moreover, work began to ensure the ways for fair and prompt resolution of the property disputes.

- **Cyprus**

  - **The Annan Plan for Cyprus**

In Cyprus in 2004, UN Secretary-General Kofi Annan presented a special plan for the Greek and Turkish parts. The plan contained 6 points related to the Cypriot state arrangement. One chapter of the document concerned the issue of property rights and the relevant program for claims.

A considerable portion of the Plan concerned the creation of internal national structures with authorities to hear all issues related to the realization of property rights of those affected by the conflict.

Under the Plan, an independent body the Cyprus Property Board (CPB) was to be formed which would hear the appeals. CPB would have to work for ten years on the issues of restitution and compensations.

In the Referendum related to the Plan, the Turkish part supported the initiative by 64.9%, and the Greek part opposed by 75%. Other factors were added to this and unfortunately prevented the implementation of the Plan.

  - **Northern Cyprus**

In addition to Annan Plan, following the judgment of the European Court of Human Rights over *Xenides-Arestis v. Turkey*, the real property Commission was established in Northern Cyprus. The purpose of this initiative was to create an effective internal procedure for hearing the property claims abandoned because of the conflict in Northern Cyprus.

The Commission began to work on the part of Turkish authorities in 2006 hearing the claims about restitution, compensations, or replacement of property. The Commission is focused on granting the claims of legitimate owners. More than 7,000 applications were filed with the Commission and more than 1,200 decisions were rendered through the amicable resolution of the disputes. The Commission also paid compensations to the applicants.

THE EXISTING JUDICIAL SYSTEM OR QUASI-JUDICIAL BODY?

According to the international experience, two ways of legislative regulation are evident regarding the restitution law: One is within the judicial system, the other is the creation of a special quasi-judicial body – similar to the models found in Bosnia and Herzegovina and elsewhere.

Within the judicial system, the problem is that many courts show irregularities on similar sensitive issues or the applicable legislation makes it impossible to hear too many cases. At the same time, solving restitution issues through court procedures would be quite expensive for the population. The case-law of the courts is important for the matter of restitution. However, similar judgments may exist only at one side of the conflict at this point, and even this is a problematic issue in many places.

In Bosnia, the parties were implementing the Dayton Agreement, part of which was the creation of the Commission. The guarantor for the implementation of the Agreement was the International Community, NATO, the European Union, the UN. Similar guarantees do not exist in many conflict situations.

As for the creation of a special commission, the decision of such a commission may in some places be appealed to the court. Therefore, it is necessary to have clear guarantees so the work of the Commission is secured to the extent possible.

In the cases of protracted property disputes, a specific examination of cases for every affected person is required to find a substantial solution. Each affected individual, including returned refugees, IDPs, and secondary residents who live in contested homes, must have the right to testify before an independent and impartial court or other body where they would be heard.

Some aspects of the Tajikistan experience are close to the Georgian situation. One significant difference made it possible to make the problem solved in an easier, less painful manner: Tajikistan has not changed the legal system, unlike Georgia where the entire legal system has changed during the period when the local population became refugees and IDPs. Accordingly, the process of returning and the relevant legal status have not changed in the case of Tajikistan. In the case of Georgia, a more complex approach would be needed in terms of residence and property laws including the need for unitizing restorative justice (as a transitional legal system).

In any case, the practice reveals that it is more effective to create a commission for property claims for a short period, which would be available to all refugees, IDPs, and current owners of disputed dwellings and through which the right to effective remedy would be exercised.

In addition to residence and property problems, physical integration and protection, as well as economic, social, and other security issues affect the

return of refugees to their homes of origin. On both sides of the conflict, there are risks, threats, difficult economic and material situations, social problems, problems with school (education), employment, limited access to health care, etc. Lack of trust in the impartiality of the judiciary and the state is a serious problem everywhere. These factors prevent the return process. It is necessary to pay attention to these issues.

The creation of a new body, its availability, rapidness, and professionalism mean a lot. Such an independent commission will be able to receive claims, examine matters and render decisions with a binding force. Similar procedures were implemented in several countries. This mechanism provides justice and agility to the return process.

REPATRIATION OF PERSONS DISPLACED FROM GEORGIA IN THE 40S OF THE 20TH CENTURY

Another issue, which is interesting to discuss in terms of the Georgian experience, is the process of repatriation of persons displaced by the USSR from the Georgian SSR in the 40s of the XX century. Like the obligation to implement the restitution for refugees from 1989-91, Georgia when joining the Council of Europe in 1999 also took the obligation to repatriate the population deported from southern Georgia. To restore historical justice, to establish the principles of decent and voluntary return, and legal regulation of the repatriation process, in 2007, the Parliament of Georgia adopted *the Law on the Repatriation of Persons Involuntarily Displaced by the Former USSR from the Georgian SSR in the 1940s of the XX Century.* The Law defines a group of persons who have the right to receive the status of repatriate; documents that must be presented by those wishing repatriation; procedures and timeframe for hearing the applications for repatriation. After the adoption of the Law, the Government adopted several legal documents for the promotion and regulation of the repatriation process.

In 2014, the Government of Georgia approved by Decree N 1671 the State Strategy on the Repatriation of Involuntarily Displaced Persons by the former USSR from the Georgian SSR in the 40s of the XX Century.

Despite the availability of a proper legislative base and awareness of the State of the need for repatriation, there are many difficulties in various fields, requiring a complex approach.

The rights and needs of the people who are repatriated and wishing to be repatriated have been described in detail in the reports on human rights and freedoms in Georgia prepared by the Public Defender of Georgia[54]. A large part of the recommendations of the Public Defender concerning the studies of the Georgian language for repatriates and those wishing to be repatriated, the eradication of the negative perceptions, stereotypes, and phobias in the public, and some other issues have not yet been implemented.

THE SOUTH OSSETIAN ADMINISTRATION

One of the effective mechanisms for the enactment of the Law on Restitution and Compensations could have become the South Ossetian Administration.

On November 12, 2006, on the territory of the former South Ossetian Autonomous District, controlled by the Georgian authorities, illegitimate elections for the President of South Ossetia were held in which Dmitry Sanakoyev 'won' who was former Defense Minister of Tskhinvali de facto authorities and subsequently the Prime Minister. According to the campaign office of Dmitry Sanakoyev, Ossetians living in the uncontrolled territory were also actively involved in the elections as they were fed up with living under 'uncertain circumstances'. As Sanakoyev stated: "the status of the Republic of South Ossetia must be defined within united Georgia."

At the same time, on November 12, 2006, de facto separatist authorities also held illegitimate presidential elections in which Eduard Kokoity won. According to the information spread in the media, 41,737 voters participated in the alternative elections, while according to Tskhinvali authorities, 52,443 voters cast their votes in the elections.

After the elections, the South Ossetian alternative government started functioning in the village of Kurta with its Cabinet of Ministers and the President's Administration. A significant portion of key positions in the alternative government was held by ethnic Ossetian citizens, among whom were former high-ranking officials of the separatist government. The alternative government of Dmitry Sanakoyev was governed in their activities by the de

[54]see: The Report of the Public Defender of Georgia on the Situation of Protection of Human Rights and Freedoms in Georgia, 2015, p. 857.

facto South Ossetian Constitution and legislative acts. Also, they used the South Ossetian coat of arms and flag as official symbols.

Thus, after November 2006, a new political reality emerged in the region as a result of the establishment of two alternative governing centers in Tskhinvali and Kurta.

The Georgian authorities publicly denied the connection with Dmitry Sanakoyev and alleged alternative elections. However, they 'took the new reality into consideration' and 'had a dialogue' with the new illegitimate formation about the future of the region.

Soon afterward, the Georgian authorities decided to bring the alternative government within the framework of Georgian legislation and created a temporary administrative-territorial unit on the territory of former South Ossetia.

On April 13, 2007, the Parliament of Georgia adopted the Law on Creating Appropriate Conditions for the Peaceful Resolution of the Conflict in the Former South Ossetian Autonomous District which had to "determine the manner and rules for exercising temporary state authorities on the territory of the former South Ossetian Autonomous District until full restoration of Georgian jurisdiction on this territory."

Based on the Law, on May 8, 2007, the Parliament of Georgia adopted the Resolution *on the Creation of a Temporary Administrative-Territorial Unit on the Territory of the Former South Ossetian Autonomous District.* On May 10 of the same year, the Edict of the President of Georgia on the Creation, Procedures, and Scope of Activities of the Administration of the Temporary Administrative-Territorial Unit of the former South Ossetian Autonomous District stipulating that "the structure of the Administration and other issues related to the organization of the Administration shall be determined by the Regulations of the Administration to be approved by the Head of the Administration." Accordingly, Dmitry *Sanakoyev* established the administration of the temporary administrative-territorial unit titled the South Ossetian Administration. The political governing unit until today is called the South Ossetian Administration. As a result, the term 'South Ossetia' acquired legitimate grounds in Georgia.

The Georgian authorities instructed the Administration of Dmitry Sanakoyev to supervise the political, economic, social, and infrastructural issues of the region. The Administration had to discuss and negotiate the possible political status of the region.

According to Vano Khukhunaishvili, then the deputy Chairperson of the Committee on Regional Policy, Self-Government and Mountainous Regions of the Parliament, the Administration should be part of the state bodies of Georgia and their extension and not an independent formation. Besides the Georgian authorities, the Administration had no other source of legitimacy. As Khukhunaishvili stated, the Sanakoyev's Administration will have several main functions. In particular, taking the main role in the peaceful resolution of the conflict, such as the negotiations within the conflict zone with all stakeholders about the future status of the region, and cooperation with the state authorities of Georgia. It should be noted here that the function of the Administration is also to cooperate with international organizations in terms of conflict settlement, develop peace plans and projects for the conflict and ensure the involvement and participation of the population in the process. Building confidence among the population living in the conflict zone, protecting and developing Georgian and Ossetian languages, traditions, and cultural heritage. The Administration is also tasked with the implementation of the Law that deals with the property restitution and compensations of the persons affected by the conflict, and most importantly with the promotion of the return process of displaced persons to the conflict zone[55].

As evident from the statement by a senior official of the Parliament, the Administration was intended to be involved in the implementation of the Restitution Law. However, in reality, such tasks have not been assigned to the Administration up to date. Further problems stem from the fact that the South Ossetian Administration has no information on the claims for restoring property rights by ethnic Ossetian citizens and does not participate in the process of restitution.

By creating the Administration, the Georgian authorities assumed to gain trust among the Ossetian society and with the support of the community to be able to integrate the region with the rest of Georgia. Further, the activities of the Administration proved that there were not only separatist sentiments in the region but also a significant population loyal to Tbilisi with ethnic Ossetians among them. This approach has gained support from the full Georgian political spectrum as well as the international community. However, the process of integration of society divided by the conflict failed to go through the desired scenario and pace.

[55] A public discussion held at the Heinrich Boell Foundation on 18 April 2007 on the topic: New South Ossetia: the Peace Plan, Strategy, Perspective.

The creation of the South Ossetian Administration, on the one hand, has attracted a small part of the Ossetian population who expressed their desire for cooperation and employment, however, on the other hand, the cooperation with the South Ossetian Administration was perceived as an act of treason among a significant part of the Ossetian population living in Tskhinvali Region with such an ideology supported by active propaganda on the part of the separatist government. As a result, the alienation of the Ossetian population was further deepened. This was followed by blocking the roads and the Georgian and Ossetian populations of the region turned out to be isolated from each other.

The War of 2008 and the recognition of the independence of South Ossetia by Russia significantly undermined the very foundation of the South Ossetian Administration on which it was created. Georgia cannot control the territory (a temporary administrative-territorial unit created on the territory of the former South Ossetian Autonomous District) where the South Ossetian Administration was created for the exercise of state authorities.

After the August 2008 War, the South Ossetian Administration moved from Kurta to Tbilisi and is currently implementing educational, cultural, and health programs in the capital of Georgia.

CONCLUSIONS

The circumstances studied within the Project of HRC show that no government has ever implemented a rehabilitation, restoration of honor, dignity, and property rights of the ethnic Ossetian population affected by the conflict.

The displaced Ossetian population who has not raised political demands and has not participated in armed resistance, still hopes that the State will restore the rights and justice violated as a result of the conflicts.

The State must have the information about how many individuals left Georgia because of the armed conflict between the Georgian and Ossetian population in the former South Ossetian Autonomous District and other regions of Georgia during 1989-1992 and beyond. Moreover, after the relevant amendments are made to the Law on Restitution and Compensations, it is necessary that the Restitution Commission as envisaged by the Law begin working actively.

Under the requirement of the Law on Restitution and Compensations adopted in 2006, the Commission had to be established to hear the applications for restitution by the persons affected. Up to the date, the Commission has not been created and has not exercised the powers granted by the Law, and because of this, the citizens affected by the conflict are deprived of the efficient mechanism to recover their property or receive appropriate compensations.

Complete restoration of the rights of those affected by the conflict will be practically impossible without restoration of Georgian citizenship to them. Displaced ethnic Ossetian population who have received citizenship of another country is allowed by the Georgian legislation to acquire Georgian citizenship by way of exception under certain procedures and at the same time retain the citizenship of another country. The legislation does not provide for more flexible mechanisms that would take into account the special circumstances of leaving Georgia by this group and would grant them Georgian citizenship under a simplified procedure. In situations where this particular group requests citizenship under the general procedure, the primary basis for refusing them is the negative opinion provided by the State Security Service content of which is classified information. Because of such status, the opinion is not accessible to the persons the issue of whose citizenship is being heard. Consequently, the person is deprived of the possibility to confront and prove the contrary to the facts brought in the negative opinion. Under such regulations, there is a risk of arbitrariness in the acts of the Security Service and unsubstantiated, 'one size fits all' opinions negatively affecting the rights of the ethnic Ossetian population displaced from Georgia.

The President of Georgia may grant Georgian citizenship irrespective of the negative opinion where there is a proper justification, but as a rule, the President does not use these powers.

It is necessary to deem a state interest in granting citizenship to those affected by way of exception.

Unfortunately, as we see the current situation, it is not a state priority interest to restore rights and provide property restitution to those affected by the armed conflict between the Georgian and Ossetian population in the former South Ossetian Autonomous District and other regions of Georgia during 1989-1992 and beyond.

The authorities must understand that the real and effective implementation of the restitution process, satisfying the fair requirements of refugees and

people affected by the conflict is important not only for the formal implementation of the obligations taken before the Council of Europe but first and foremost for justice, building confidence between the people, and for reconciliation.

RECOMMENDATIONS

The Parliament of Georgia:

- To make changes to the Organic Law on Citizenship of Georgia and to determine flexible, simplified procedures for granting citizenship to the ethnic Ossetian population emigrated en masse from Georgia in the 90s.
- To introduce timely changes to the Law on Restitution and Compensations facilitating the creation of the Restitution Commission and its work;
- It is important to amend the Law on Restitution and Compensations in a way to instruct the Government of Georgia to proactively launch the inventory taking of the property abandoned by ethnic Ossetians. Moreover, it is necessary to create statistical data identifying what part of the property is in the state ownership and how many of the property has new possessors/owners.

The Government of Georgia:

- To make the Commission of Restitution and Compensations to be operable in time, and to set a list of specific criteria, procedures, and documents based on which the restitution of property to those affected will be carried out or relevant compensations paid.
- To simplify rules and procedures for obtaining documents related to property rights in state institutions for ethnic Ossetians affected by the conflict.
- To instruct the municipalities to process and maintain statistical data on how many individuals left Georgia and lost property because of the armed conflict between the Georgian and Ossetian population in the former South Ossetian Autonomous District and other regions of Georgia during 1989-1992 and beyond.
- It is necessary to consider as one of the priority issues in the Government's Action Plan the resolution of the matters of

compensation, restitution, and citizenship for the ethnic Ossetian population affected by the conflict. To instruct in this direction the Commission within the Ministry of Foreign Affairs of Georgia responsible for developing the state strategy for the peaceful resolution of the conflicts and de-occupation.

The President of Georgia

- To act within the powers granted by the legislation and irrespective of the negative opinions from the security service use the prerogatives for granting Georgian citizenship to those affected by the conflict after assessing the individual facts of the applicants.

The State Security Service:

- When preparing negative opinions of the State Security Service on granting citizenship to study and evaluate individual cases in full and objectively;

The State Services Development Agency:

- To instruct the representatives of the Agency to advise applicants on the issue of citizenship and in the case applications are filed on wrong grounds, assist the applicant to specify the request in a way that is not rejected by default.