

PROPERTY RIGHT ON OCCUPIED TERRITORIES OF GEORGIA

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Abstract

Depending on the nature of human rights law, every human being has inalienable and legally protected rights, protecting them from the pressure of Government and State. These rights also include Property right. Property right is one of the oldest and most important rights, protected by the international laws about human rights. Property right on the one hand, assigns an individual or group of persons to own, use, dispose of and comply with the court rules on his property, so that it does not infringe the rights of third persons. On the other hand, Property is the institution, which is the fundamental for the state in economic. The right to property is the right which leads to the possibility of providing adequate standard of living. Accordingly, the legal title of the property has a high cost. Universally recognized human rights, including Property right is also recognized and guaranteed in Georgia, in particular, with respect to property rights should be noted that these rights are recognized and guaranteed by the supreme law of the country (Georgian Constitution, Article 21). However, Georgian has a number of problems with property rights on its occupied territories. The present work is about Property rights and its protection mechanisms on occupied territories of Georgia.

Keywords: Property, occupied, territories

1. Right to property

Given the essence of the human rights law, every person possesses integral and legally protected rights that protect him/her from the pressure of state and government. Right to property belongs to the mentioned rights. Right to property is one of the ancient and important rights of human rights law.

Right to property has been recognized by a number of international documents. For instance, Article 17 of the Universal Declaration of Human Rights guarantees every human's right to own property both alone and in association with others and at the same time it prohibits deprivation of property¹. Article 1 of Protocol No 1 to the European Convention on Human Rights guarantees Right to property, particularly "Every physical or legal person is entitled to the peaceful enjoyment of his possessions".² From the explanation it is clear that Article one of Protocol No 1 protects physical, as well as legal persons from the state's arbitrary interference in the possession of their property³. It is important to note that obligation to respect the Right to Property protected under Article 1 of the Protocol No 1 unites two obligations - negative and positive. Integral subject of the given notion is the protection of a person from unfair intervention of the state in the process of free enjoyment of the property by the person (negative obligation)⁴, as well as positive obligation, when the state is responsible to protect the person from unlawful intervention of other person - to create corresponding environment for enjoyment of the mentioned right.

Right to property has also been recognized and ensured under the supreme law of Georgia - the Constitution. Particularly, in accordance with Article 21 of the Constitution of Georgia - "Property and the right to inherit is recognized and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible"⁵. The mentioned wording clarifies that the right to property, except of those restrictions directly established by the law, is guaranteed by the State of Georgia

¹ Universal Declaration on Human Rights, Article 17, Part 1;2.

² Article 1 of additional Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

³ Gric A.; Mataga Z.; Longar M.; Vilfan A. – The right to property under the European Convention on Human Rights (Human rights handbooks N10) – Council of Europe 2007, p.6 .

Note: Article 1 of Protocol No 1 is the only article of the convention which directly mentions "legal entities".

⁴ Gric A.; Mataga Z.; Longar M.; Vilfan A. – The right to property under the European Convention on Human Rights (Human rights handbooks N10) – Council of Europe 2007, p.9.

⁵ Constitution of Georgia Article 21 – N786, 24/08/1995.

for every person on whole territory of the country. Despite this, unfortunately today Georgia faces the reality, when on some parts of the country's territory, positive obligation cannot be fulfilled and protection of the right to property is a problematic issue. The present work discusses the topic of "Right to Property" on occupied territories of Georgia.

2. Occupied territories of Georgia

Despite active efforts of international community, "occupation" still remains a sore point even today. State of Georgia has been facing the mentioned problem for years, as Russia has occupied considerable part of Georgian territories, particularly Abkhazia and South Ossetia.



2.1. Abkhazia

Abkhazia is an autonomous region and part of Georgia. There are 1 zone and 5 districts in the composition of the autonomous republic of Abkhazia: Gagra zone; Gudauta district; Sokhumi district; Gulripsha district; Ochamchire district; Gali district⁶. Occupation of Abkhazia takes its start from the year of 1993, particularly on 27/09/1993 with the support of Russia's armed forces, North Caucasian confederates and hired fighters, town of Sokhumi was occupied by Abkhazian separatists.

On 30/09/1993 with the support of Russian military resources and hired troops, the separatists occupied the whole territory of Abkhazia. At the same time, massacre of Georgian population by the occupants took place; Abkhazia was left by almost whole Georgian population, as a result more than 350 thousand people were forced to flee their homes and become refugees in their own homeland; The ethnic cleansing of Georgian population took place, which was confirmed by the OSCE Summit resolutions of 1994 in Budapest, 1996 in Lisbon and 1999 in Istanbul⁷. Even today Abkhazia and correspondingly its cities of Sokhumi, Gagra, Gudauta, Akhali Atoni, Ochamchire, Tkvarcheli and Gali are still occupied⁸.

2.2. Tskhinvali region / South Ossetia

Tskhinvali region / South Ossetia is a conventional name of the region covering territory of autonomous district of South Ossetia of former SSR of Georgia. As a result of the Georgian-Ossetian conflict launched in 1989, Supreme Council of Georgia abolished status of district for South Ossetia in December of 1990. In response to this, the then president of Soviet Union Mikheil Gorbachov issued an order on restoration of Autonomous district of South Ossetia encouraging Ossetian separatists with that. The latter were supported

⁶ http://abkhazia.gov.ge/index.php?lang_id=GEO&sec_id=41 .

⁷ http://abkhazia.gov.ge/index.php?lang_id=GEO&sec_id=44 .

⁸ http://abkhazia.gov.ge/index.php?lang_id=GEO&sec_id=45 .

by Soviet armed forces dislocated on the district territory⁹.

In August 2008, as a result of Russian-Georgia war, legal situation in conflict regions has changed substantially. Pre-war, fictitious peaceful operation (actually masked Russian occupation) was ceased and Russia started open occupation of Abkhazia and Tskhinvali region, only this time masked as pseudo recognition of their independence. In the same year, the law of the Parliament of Georgia on Occupied Territories recognized both regions as territories occupied by Russia¹⁰.

Starting from August 2008 till now the whole territory of the region has been controlled by Russian occupation army. In addition it should be noted that, the so-called "Republic of South Ossetia" is self-declared republic, located on the territory internationally recognized as the part of Georgia.

3. Legal mechanisms of protecting the right to property on occupied territories of Georgia

Since 1991 Georgia has enacted Universal Declaration on Human Rights, while in 1999 Parliament of Georgia ratified the Convention for the Protection of Human Rights and Fundamental Freedoms¹¹ and its Protocol No 1 in 2001¹².

The resolution on ratification of the Protocol No 1 defined that Article One of Protocol No 1 does not apply to the persons who have or will have the IDP¹³ status until elimination of the circumstances which have become a precondition for assignment of the latter status. Though as by the time of ratification it was impossible to fully protect the right to property of the persons with IDP status - until restoration of territorial integrity of the country, Georgia took obligation to guarantee enjoyment of property right to the belongings existing on the places of permanent residence of IDPs. In addition, with the resolution on ratification Georgia declared that due to the situation in Abkhazia and Tskhinvali region the Government of Georgia lacks the opportunity to take the obligation of respect and protection of the notions of the Convention and its additional Protocols. Therefore, until restoration of jurisdiction of Georgia in Abkhazia and Tskhinvali region, Georgia declined all responsibility for violations of the requirements of Protocol No 1 by the bodies of self-declared, unlawful government on the mentioned territories.

Despite the fact that Georgia has declined the responsibility for protection of the rights defined under the Convention and Protocol No 1 to the Convention on occupied territories, it has still established legislation norms, which regulate issues of property right on the mentioned territories.

Let's discuss legal texts operating in the country with regard to right to property on occupied territories, particularly: Law of Georgia on Occupied Territories; Law of Georgia on IDPs from occupied territories of Georgia" and Decree of the President of Georgia on rule of pre-registration of real estate existing on occupied territories of Georgia.

3.1. Law of Georgia on Occupied territories

The law has been enacted in 2008 and it has direct reference that Georgia is a sovereign, united and indivisible state and presence of armed forces of other state on Georgian territory, without explicit and voluntarily declared consent of the state of Georgia, is an unlawful military occupation of the territory of sovereign state in accordance with the Hague regulations of 1907, Geneva Convention IV of 1949 and norms of international customary law. According to the law, occupied territories are Autonomous Republic of Abkhazia and Tskhinvali region (territory of former South Ossetia Autonomous District)¹⁴. On August 12, 2008, based on cease-fire agreement the effect of this law also applies to the territories of village Peveri of Sachkhere district, as well as Kurta, Eredvi and Azhara municipalities and Akhagori municipality.¹⁵

Law of Georgia on Occupied territories establishes that for the entire length of the validity of this Law the Occupied Territories shall be subject to Special Rule and Special Legal Regime, including limitations on free migration in the Occupied Territories, the economic activities and real estate transactions as provided for in this Law and other activities provided for in this Law¹⁶.

⁹ Songulashvili A. – Is "South Ossetia" in Georgia?!- Tbilisi 2009.

¹⁰ Report of the Government of Autonomous Republic of Abkhazia 2009-2012. http://abkhazia.gov.ge/index.php?lang_id=GEO&sec_id=92&info_id=1033.

¹¹ Resolution of the Parliament of Georgia on ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms; N1940, 12/05/1999.

¹² Resolution of the Parliament of Georgia on ratification of Protocol No1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms; N1243, 27/12/2001.

¹³ Internally displaced person.

¹⁴ Law of Georgia on Occupied territories, Article 2, paragraphs "a", "b"; N431, 23/10/2008.

¹⁵ Same, Article 10, Paragraph 2 - N431, 23/10/2008.

¹⁶ Same, Article 3 - N431, 23/10/2008.

It is important to note that according to the same law, Any authorized body (official person) shall be deemed illegal if it is not formed (appointed/elected) under the legislation of Georgia and/or if it actually performs legislative, executive or judicial functions or any other activities that belong to the sphere of authority of the national government or local self-government bodies of Georgia. Any act issued by such authorities shall be deemed invalid and shall not lead to any legal consequences except for the cases when the given act is used for the purpose of issuing Status-Neutral Identification Card or/and Status-Neutral Travel Document according to the rule established under Georgian legislation¹⁷.

According to the law, Citizens of foreign countries shall be prohibited to enter the Occupied Territories from "any other directions" - including Russia - except the ones specified by the law and "shall be punishable under the Criminal Law of Georgia"¹⁸. Though in extraordinary cases special permission to enter the Occupied Territories, in compliance with the rules stipulated in the relevant normative document of the Georgian Government, can be granted if doing so serves the protection of the state interests of Georgia, promotion of peaceful conflict resolution, de-occupation, confidence building or humanitarian purposes.¹⁹

Any economic activity (entrepreneurial or non entrepreneurial), regardless whether or not it is implemented for receiving profit, income or compensation is prohibited on occupied territories. The mentioned prohibition does not apply to persons delivering immediate humanitarian assistance in the Occupied Territories in order to ensure the right to life of the population, in particular, by providing the population with food, medication and emergency supplies.

Though persons conducting such activity shall be responsible to notify the Government of Georgia regarding the time of commencement and completion of the relevant activity to be implemented/already implemented in the Occupied Territories, as well as submit information on the assistance rendered to the population.²⁰

3.1.1. Right to property

It is important to note that pursuant to law of Georgia on Occupied territories, the right to property is regulated by Georgian legislation. At the same time, any transaction related to real estate property and concluded in violation of the requirements of Georgian legislation shall be deemed void from the moment of conclusion and shall not give rise to any legal consequences²¹.

The law makes direct reference to the occupant, to the state responsible for the human rights violations on the mentioned territories and imposes responsibility on Russian federation for the facts of human rights violations, as being the state exercising military occupation, frames of which are defined in accordance with international norms and principles²². Based on the mentioned formulation, it is clear that each person with the right to property on occupied territory that cannot be realized - is entitled to address International Court of Human Rights and request corresponding compensation for the violation of the mentioned right.

3.2. Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia

The Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia determines the legal status of an IDP, grounds and rules for granting, terminating, cancelling and restoring of an IDP status, legal, economic and social guarantees of IDPs and rights and obligations²³. A citizen of Georgia or a stateless person with a status residing in Georgia shall be considered as an IDP, if he/she was forced to leave his/her permanent place of residence because of threat to his/her or his/her family member's life, health or freedom caused by the occupation of the territory by a foreign state, aggression, armed conflict, mass violence and/or massive human rights violations and/or he/she cannot return to his/her permanent

¹⁷ Same, Article 8, Paragraphs 1 and 2 - N431, 23/10/2008.

¹⁸ Same, Article 4, paragraph 2 - N431, 23/10/2008.

¹⁹ Same, Article 4, Paragraph 3 - N431, 23/10/2008.

²⁰ Same, Article 6 - N431, 23/10/2008.

²¹ Same, Article 5, paragraphs 1 and 2 - N431, 23/10/2008.

²² Same, Article 7, paragraphs 1 and 3 - N431, 23/10/2008.

"In compliance with international law, in the Occupied Territory the Russian Federation shall be responsible for violation of internationally recognized human rights stipulated in the Constitution of Georgia."

"Responsibility of the Russian Federation, being the state exercising the military occupation, to reimburse moral and material damages inflicted in the Occupied Territories upon citizens of Georgia, persons without citizenship, and citizens of foreign countries who entered the territory of Georgia and moved to the Occupied Territory based on the required permission, shall be determined in compliance with norms and principles under international law."

²³ Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia, Article 2 – N 1982-II, 06/02/2014.

place of residence due to the abovementioned reasons²⁴.

Separate Article is dedicated in the mentioned law to the issues of protecting right to property on permanent place of residence of IDPs, particularly:

- The State recognizes the IDPs' right to restitution, which is hereditary, on the real estate they left in the places of permanent residence;
- The State shall take all possible measures to protect the property owned and/or possessed by an IDP in the places of permanent residence which he/she had to leave due to reasons as referred to in the Law, from robbery, destruction, arbitrary and unlawful use and appropriation;
- After elimination of circumstances as referred to in the law, in case when IDP returns to his/her place of permanent residence, the State shall take all possible measures to ensure that the real estate which an IDP had lawfully owned and/or possessed before displacement and were forced to leave, is returned to a lawful owner and possessor.

The above mentioned rights shall be maintained in the cases when durable housing is provided to IDPs as well²⁵.

If an IDP returns to the place of permanent resident after elimination of the reasons determined under the Law of Georgia on Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia, the Ministry and other state institutions within their competence guarantee to implement all the necessary activities to ensure that private property, including house and attributed land plot, are returned to an IDP or his/her lawful heir in the condition they exist at the time of return. Also when possible, rebuild the destroyed house and ensure its return to IDP,²⁶

3.3. Decree of the President of Georgia on rule of pre-registration of real estate existing on occupied territories of Georgia²⁷.

According to the Presidential Decree, for the purposes of establishing guarantees for the protection of the Right to property of Internally Displaced Persons – Persecuted from the Occupied Territories of Georgia recognized under international law and Article 21 of the Constitution of Georgia, the rule of pre-registration of real estate existing on occupied territories of Georgia has been approved.

In accordance with the established rule, the procedures of registering real estate on occupied territories of Georgia have been defined for the purpose of recognizing right to property on real estate; The authority to pre-registration of real estate was granted to corresponding registration service of the Legal Entity of Public Law - National Agency of Public Register functioning under the Ministry of Justice of Georgia.

National Agency of Public Register, after pre-registration of the right to property on real estate issues extract from Public register, a document proving pre-registration. At the same time, pre-registration of real estate in public register is the basis for registration of the mentioned property at Public register, after full restoration of Georgia's jurisdiction on occupied territories. Unfortunately there is no any pre-registration in Public Registry of real estate existing on occupied territories of Georgia²⁸. However, according to the information of Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia, currently the declaration about the real estate situated on the occupied territories of Georgia, is completed by 68 058 family²⁹.

| N | Territory | Quantity |
|----|---------------|----------|
| 1. | Gagra | 5 354 |
| 2. | Guaduta | 1 424 |
| 3. | Sokhumi | 19 881 |
| 4. | Ochamchire | 8 690 |
| 5. | Gali | 18 877 |
| 6. | Tkvarcheli | 992 |
| 7. | Gulrifshi | 8 582 |
| 8. | Tskhinvali | 3 981 |
| 9. | Kodori valley | 277 |

²⁴ Same, Article 6, 1 paragraph - N 1982-III, 06/02/2014.

²⁵ Same, Article 15, 1,2,3,4 paragraphs - N 1982-II, 06/02/2014.

²⁶ Same, Article 18, Paragraph 2, subparagraph „c“ - N 1982-II, 06/02/2014.

²⁷ N326, 21/06/2011.

²⁸ National Agency of Public Register, letter N257125; 09/12/2014.

²⁹ Ministry of internally displaced persons from the occupied territories, accommodation and refugees of Georgia, letter N06-06/35231; 10/12/2014.

4. Right violated on occupied territories

Illegitimate governments existing on occupied territories created "legislation", that legalized confiscation of the property "abandoned" by IDP population and transferred it to de-facto government. It is prohibited for the IDPs or refugees to use the property abandoned on occupied territories³⁰.

As it has been mentioned above, the Right to property is one of the fundamental human rights that also applies to IDPs and refugees. The right to property of IDPs is also discussed in the UN Guiding Principles on Internal Displacement. According to Article 21 of the mentioned document IDPs shall not be "arbitrarily deprived of property or possessions". Part 3 of the same Article states that "Property or possessions left behind by internally displaced persons should be protected against destruction, and arbitrary and illegal appropriation, occupation or use."

The Right to Property of internally displaced persons is also approved by the so-called Pinheiro Principles. The document adopted in 2005 by the Human Rights Sub-committee of the UN unites legal, procedural, institutional and technical mechanisms of property restitution of refugees and internally displaced persons.

According to the Second Principle of Pinheiro, "All refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated."

International Humanitarian Law also approves right to property on occupied territories, according to which occupation force is obliged to protect and respect private property, as well as municipal property that is granted the status of private property for the occupation purposes³¹.

On June 29, 2011, General Assembly of the UN has adopted third resolution since 2008 regarding the status of IDPs from Abkhazia and Tskhinvali region/South Ossetia. The resolution calls all to respect right to property of IDPs and refrain from purchasing property existing in the legal ownership of IDPs. Despite this, in the course of 2011, gross and constant policy of violating right to property was ongoing on occupied territories of Georgia - Abkhazia and Tskhinvali region / South Ossetia.³²

In the course of 2011, the special instruction of the so-called president of Abkhazia adopted in 2006 regarding alienation/confiscation of "abandoned" property became the basis for illegal appropriation of the houses belonging to IDPs in Abkhazia. According to it if the owner of the abandoned house does not appear in the course of 15 years, it automatically becomes municipal property. The mentioned "statutory act" unequivocally attacks right to property of IDPs, as the majority of abandoned houses in Abkhazia belong to the persons, who were forced to abandon own homes and who over the years lacked the opportunity to return to own home³³.

According to the report, the right to property of indigenous population of occupied territories is violated by occupation forces of Russia as well. The houses of IDPs are inhabited by Chechen workmen with their families working at infrastructural projects of Russian occupation forces. De facto government of Abkhazia promises them to legalize this property in the future. It is noteworthy that in 2011, the process of marking the so-called Abkhazia-Samegrelo conditional border with wires started by Russian military forces inflicted damage to the population residing across the border, as the nut trees, land plots, yards of Gali population were cut-off due to this fact. Nuts and corn are the main source of income for the local population and this has become a heavy burden for them and many have lost any source of income at all³⁴.

The authors of the report reckon that sanctioning destruction, demolition, appropriation and alienation of the property of IDPs by the de facto governments of Abkhazia and Tskhinvali region/South Ossetia is part of ethnic cleansing policy ongoing since 1990ies. While in 2008, dislocating Russian occupation troops in these regions had negative impact on human rights in these regions, as this encouraged and strengthened policy of ethnic discrimination³⁵.

5. Conclusion

All the above mentioned unequivocally indicates that Georgia is making efforts to ensure protection of right to property of IDPs on a legislative level. According to the law, right of restitution is guaranteed for all IDPs. Moreover, the right can be inherited, that implies that regardless of time elapsed, when occupied territories are freed from armed forces and grip of occupant state, heir of each IDP will be authorized to restore right to property on real estate forcibly abandoned by his/her ancestors. It is also noteworthy that currently each IDP is entitled to use international mechanisms against Russia and demand restoration of violated right

³⁰ Coalition for Justice - 2011 report on Human Rights violations on occupied territories of Georgia".

³¹ Same.

³² Same.

³³ Same.

³⁴ Same.

³⁵ Same.

through addressing international court.

Analysis shows that the Russian Federation actively violates the right to property of Georgian citizens, while depriving them of the opportunity to be present and enjoy the right to property guaranteed by the law on real estate, which is located in the occupied territories. After illegal occupation of Georgian territories, the illegal alienation of real estate takes place in these areas. The mentioned also creates problems for illegitimate owners, if occupied territories are freed and the issue of returning real estate to their legal owners on mentioned territories is raised.

Finally, in my opinion it is important to continue active support of the international community and address the root of the problem and stop the occupation, which inevitably leads to the possibility for the country to ensure protection of human rights, and right to property among others on its occupied territories.

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