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ASPECTS REGARDING THE APPLICATION OF THE NORMS OF INTERNATIONAL HUMANITARIAN LAW IN THE SETTLEMENT OF THE TRANSNISTRIA, ABKHAZIA AND SOUTH OSSETIA CONFLICTS

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The fact that an international legal regime, especially an expansive legal regime, can be considered to be applicable in the regions of Transnistria, Abkhazia and South Ossetia is all the more significant, given the status of the regions as de facto states without obligations and possibility to apply international standards and norms, leaving the population of the regions without any international legal protection. From our point of view, the regime of international humanitarian law would provide a certain level of protection for the population condemning war crimes, such as rape, murder and torture, protecting civilian assets, and initiating criminal prosecution of alleged offenders.

In all the cases in which the European Court found the extraterritorial jurisdiction and the foreign support of the separatist movements there were also revealed the violations of the rights protected by the Convention.

Keywords: *Transnistria, Abkhazia, South Ossetia, international humanitarian law, Russia Federation, war.*

UNELE ASPECTE ALE APLICĂRII STANDARDELOR DREPTULUYI UMANITAR INTERNAȚIONAL LA SOLUȚIONAREA CONFLICTELOR DIN TRANSNISTRIA, ABHAZIA ȘI OSETIA DE SUD

Articolul analizează regimurile juridice internaționale aplicate în soluționarea conflictelor teritoriale din Transnistria, Abhazia și Osetia de Sud. Faptul că un regim juridic internațional, în special un regim juridic expansiv, poate fi considerat a fi aplicabil în regiunile Transnistria, Abhazia și Osetia de Sud este cu atât mai semnificativ, având în vedere statutul regiunilor, deoarece de facto afirmă fără obligații și posibilități să aplice standarde și norme internaționale, lăsând populația regiunilor fără nicio protecție juridică internațională. Din punctul nostru de vedere, regimul dreptului umanitar internațional ar asigura un anumit nivel de protecție pentru populația care condamnă crimele de război, precum violul, omorul și tortura, protejarea bunurilor civile și inițierea urmăririi penale a presupușilor infractori.

Cuvinte-cheie: *Transnistria, Abhazia, Osetia de Sud, drept internațional umanitar, Federația Rusă, război.*

ASPECTS CONCERNANT L'APPLICATION DES NORMES DU DROIT INTERNATIONAL HUMANITAIRE DANS LE RÈGLEMENT DES CONFLITS DE TRANSNISTRIE, ABKHAZIE ET OSSÉTIE DU SUD

L'article analyse les régimes juridiques internationaux appliqués dans le règlement des conflits territoriaux en Transnistrie, en Abkhazie et en Ossétie du Sud. Le fait qu'un régime juridique international, en particulier d'un vaste régime juridique, peut être considéré comme applicable dans les régions de la Transnistrie, l'Abkhazie et de l'Ossétie du Sud est d'autant plus importante, compte tenu de l'état des régions, comme il efficacement les états sans que les obligations et les

possibilités d'appliquer les normes internationales et les normes, en laissant la population dans les régions sans aucune protection juridique internationale. À notre avis, le régime de droit international humanitaire assurerait un certain niveau de protection à la population condamnant les crimes de guerre, tels que le viol, le meurtre et la torture, la protection des biens civils et la poursuite des criminels présumés.

Mots-clés: *Transnistrie, Abkhazie, Ossétie du Sud, droit international humanitaire, Fédération de Russie, guerre.*

НЕКОТОРЫЕ АСПЕКТЫ ПРИМЕНЕНИЯ СТАНДАРТОВ МЕЖДУНАРОДНОГО ГУМАНИТАРНОГО ПРАВА В УРЕГУЛИРОВАНИИ КОНФЛИКТОВ В ПРИДНЕСТРОВЬЕ, АБХАЗИИ И ЮЖНОЙ ОСЕТИИ

В статье рассматриваются международно-правовые режимы, применяемые при урегулировании территориальных конфликтов в Приднестровье, Абхазии и Южной Осетии. Тот факт, что международно-правовой режим, в частности, расширяющийся правовой режим, может считаться применимым в таких регионах, как Приднестровье, Абхазия и Южня Осетия, тем более важен с учетом статуса регионов, поскольку этот статус де-факто заявляет об отсутствии обязательств и возможностей для применения международных стандартов и норм, оставляя жителей регионов без какой-либо международно-правовой защиты. С нашей точки зрения, режим международного гуманитарного права мог бы обеспечить определенный уровень защиты населения, осуждающего военные преступления, такие, например, как изнасилования, убийства и пытки, защиту гражданского имущества и инициирование уголовного преследования в отношении предполагаемых преступников.

Ключевые слова: *Приднестровье, Абхазия, Южная Осетия, международное гуманитарное право, Российская Федерация, война.*

The concept of international humanitarian law has a lot of substitutes, initially entering the language of law under the name of «Law of War» («Droit de la guerre», «Kriegsrrecht»), with two meanings: jus ad bellum, that designates the rules on the conditions under which a State may use the armed force and jus in bello, ie the set of rules applicable between the parties of the armed conflict [1, p.275].

With the creation of the International Committee of the Red Cross in 1863, which undertook the task of stimulating the codification of the rules of the protection of combatants and non-combatants, as well as of civilians, jus in bello divides into two branches - the Law of War and Humanitarian Law [1, p.322]. Coding conferences at the end of the nineteenth and early twentieth centuries enshrined the law of war in the formula «laws and customs of war». Subsequently, the last major codification of 1977 brought together the two branches - the Law of War and Humanitarian Law - into a new concept: «The International Humanitarian Law of Armed Conflicts,» which is the official name.

Taking into account that international humanitarian law applies only in times of armed conflict, we should clarify whether there is an armed conflict in the Transnistrian region. In that case, we rely on the Court of Appeal's definition of the International Criminal Tribunal for the former Yugoslavia (ICTY) on the Tadić case, which states that «an armed conflict exists whenever there is a use of armed force between states or durable violence between authorities and organized armed groups or between such groups within a state» [3].

Although, the Transnistrian conflict could be considered frozen since the hostilities ceased in 1992, the Tadic decision seems to include the conflict between the Republic of Moldova and Transnistria as an «armed conflict» because there was a prolonged armed conflict between governmental authority (Republic of Moldova) and an organized armed group (Transnistria), but a peaceful settlement has not been achieved yet.

Would this suggest that international humanitarian law should be applied in the Transnistrian region, as

Tadić defines, international humanitarian law also extends in peacetime? Besides the cessation of hostilities, will it be until the end of the peace or until a peaceful solution is achieved?

Although a number of initiatives bringing the peace to Transnistria were adopted, they have failed, and Russian troops are still present in the region in a capacity of peacekeepers. Transnistria came forward with an initiative to strengthen the statehood, whereas having no recognition from the international community and a little chance to obtain such recognition. In the case of the withdrawal of Russian peacekeeping troops, a military conflict can appear again. Therefore, we conclude that a situation of armed conflict has existed and continues to exist in the Transnistrian region and that international humanitarian law should apply.

In the following, it is necessary to determine the categorization of this conflict. If the involvement of the Russian Federation has any impact on this categorization, there is a need to understand the potential extent of the application of international humanitarian law in the region.

Underscore that that the USSR was a party of the Geneva Conventions of 1949 [4, p.23], including the Additional Protocols I and II of 1977 [5, p.210], and the Republic of Moldova was a party by succession, in accordance with the provisions of the Government Decision of the Republic of Moldova no.442 of 17.07.2015 for the approval of the Regulation on the mechanism for the conclusion, application, and termination of international treaties [6, p.192].

In recent years, there have been a number of calls for the modification of international humanitarian law by abandoning the division of international and non-international armed conflicts, but the respective classification is still in force [7, p.34]. Within this context, the question is whether the involvement of the Russian Federation has transformed the Transnistrian conflict into an international armed conflict, thus triggering the potential for the application of the entire corpus of international humanitarian law.

Moreover, it is important that a legal regime, and especially an expansive legal regime, is effectively applied in cases such as Transnistria, because, as this territory is a de facto state, there are no obligations and possibilities to apply the standards and international norms, leaving the population of Transnistria without international legal protection [8, p.63].

The regime of international humanitarian law offers a certain level of protection for the population, prosecuting alleged offenders for war crimes, such as rape, murder and torture, protecting civilian assets [9, p.118]. However, as mentioned above, the potential level of protection depends on the classification of the conflict.

Although, it is often claimed that the situation in Transnistria is used as an instrument of the Russian Federation's policy of «close vicinity» [10, p.15], there is a need of a detailed examination of the conflict to determine the extent of Russian Federation's involvement in the planning and managing of the Transnistrian governance. This issue, as well as the continued existence of the de facto state of Transnistria, was addressed by the European Court of Human Rights (ECHR) in the case of Ilascu and others vs. Moldova and the Russian Federation [11]. The court examined the issue in order to determine whether Russia's involvement in the conflict was sufficient to bring the conflict under Russia's jurisdiction. This case examined by the ECHR is the main source of information regarding the involvement of the Russian Federation in the Transnistrian conflict.

The court considered in its judgment that: "The Russian Federation is responsible for the illegal acts committed by the Transnistrian separatists, taking into account the political and military support granted to help in the establishment of the separatist regime and in the participation of Russian members of the armed forces in the fighting. Thus, the Russian authorities

contributed both militarily and politically to the creation of the separatist regime in the Transnistrian region, which is part of the territory of the Republic of Moldova." The court also noted that, even after the ceasefire agreement in July 1992, the Russian Federation continued to support the Transnistrian separatist regime militarily, politically and economically, «thus allowing them to survive, strengthen and obtain a certain amount of autonomy vis-à-vis Moldova". In this way, the ECHR established a strong link between the Russian Federation and the Tiraspol authorities, talking about o «decisive influence» and even about an «effective authority».

Specifics of international law application in the context of the territorial conflict in Abkhazia and South Ossetia

In the specialized literature, most authors considered that the disputed territories of Eastern Europe are the direct product of the former Soviet Union policy for the gradual change of state borders in order to thwart any possible separatist attempts and to ensure the unity of the USSR [12, p.65].

According to the Law of the USSR of April 3, 1990 "On the procedure for solving the problems regarding the exit of the Union Republics from the composition of the USSR" [13], the peoples of the autonomous republics and the autonomous entities had the right to decide independently whether to remain in the USSR, raising the issue of their legal status. Separate state entities within the USSR could only be considered new states if the interests of all the peoples of the USSR were taken into account and after the procedure that ensured each nation the right to choose state membership.

Without complying with the provisions of the USSR Law of April 3, 1990, the collapse of the Soviet Union led to the complex conflicts in the former Soviet republics, which have not yet been resolved and continue to provoke tensions between the Russian Federation and its neighbors. The examples are the conflicts in South Ossetia and Abkhazia that have degenerated into violent conflicts, ethnic cleansing and severe tensions between the Russian Federation and Georgia.

The self-proclamation of independence by South Ossetia and Abkhazia has sparked scientific debates on the applicability of the right to self-determination, including the right to secession [14, p.64]. Self-determination and secession are fundamental issues of public international law. In this case, some researchers (C. Walter, A.Ungern-Sternberg, etc.) mentioned that the right to self-determination and even to secession enjoyed by peoples and ethnic groups is in direct conflict with the sovereignty and territorial integrity of the states [15, p.293]. Other researchers have stated that the right of states to territorial integrity may not be absolute and unqualified, because "the development of international human rights law has limited the concept of state sovereignty in many respects" [16, p.21]. This approach introduces the idea of corrective secession. That is a set of conditions that could justify the secession of a people or ethnic group in its own state as a last resort measure [17, p.67].

The doctrine of secession a "last resort" has been used by many states that have recognized Kosovo. Similarly, the Russian Federation has taken the secession doctrine as a remedy to justify the recognition of the independence of South Ossetia and Abkhazia after the armed conflict with Georgia in 2008 [17, p.68]. Thus, South Ossetia and Abkhazia *de jure* remain part of Georgia, although Georgia does not have effective control over these self-proclaimed republics. A similar situation exists in the Republic of Moldova, in relation to the self-proclaimed Republic of Transnistria.

From the perspective of political science, these conflicts are labeled as "frozen conflicts" which means that although the military hostilities have ceased, solutions for resolving these conflicts have not been found [15, p.295]. From the point of view of international

law, "frozen conflicts" indicate competitive sovereignty over a certain territory and a possible collision of the different norms of international law, in which a group invokes the right to self-determination, while the mother state demands the respect of the territorial integrity of the states [18, p.35]. Therefore, as in the case of Transnistria, South Ossetia and Abkhazia claim that they have not only the right to self-determination, but also the right to secession, through territorial separation from Georgia. Both South Ossetia and Abkhazia base their claims on allegations of discrimination and massive human rights violations committed by Georgia, grounds that constitute the basis of the right to secession as a "last resort remedy".

South Ossetia declared independence from the Soviet Socialist Republic of Georgia in 1991. The Georgian government responded by abolishing the autonomy of South Ossetia and trying to regain control of the region by force. The escalation of the crisis led to the war in Ossetia in the period from 1991 to 1992 and to the battles of 2004 and 2008 respectively.

On November 10, 1989, the XII Session of the Council of People's Deputies from the South Ossetian Autonomous Region decided to transform this region into the Autonomous Republic of the Soviet Socialist Republic of Georgia. In response, the Presidium of the Supreme Soviet of the Socialist Soviet Republic of Georgia declared this decision unconstitutional [19, p.75].

One year later, on September 20, 1990, the Council of Deputies of South Ossetia adopted the Declaration of State Sovereignty, there was decided to form the Soviet Democratic Republic of South Ossetia in the composition of the USSR, and on November 28, 1990 the state entity was renamed in the Soviet Republic of South Ossetia. Accordingly, on December 11, 1990, the Supreme Council of the Republic of Georgia, chaired by Z. Gam-Sakhurdia, adopted the Law On the Abolition of the South Ossetian Autonomous Region [20, p.25].

From this point of view, in the legal doctrine of the Russian Federation, critical opinions were expressed [21, p.141], and namely, the adoption of the Law "On the Abolition of the South Ossetia Autonomous Region" was contradicted to the provisions of Art.3 of the USSR Law of April 26, 1990 regarding the delimitation of powers between the USSR and the subjects of the federation, which established that" the territory of a union, autonomous republics or an autonomous entity cannot be changed without their agreement" [22], and paragraph (2) of Article 6 of this law attributed it the exclusive jurisdiction of the Soviet Union "the admission in the USSR of the new Union republics, the approval of the formation of new autonomous republics and the approval of the changes in the statute of the existing autonomous republics, in the statute of the autonomous regions and autonomous districts".

After the collapse of the USSR (1991), the Supreme Council of South Ossetia appointed a referendum on the independence and accession of the region to the Russian Federation. During the referendum of January 19, 1992, the majority of the participants voted for independence and accession to Russia. Thus, on May 29, 1992, the Supreme Council of the Republic of South Ossetia proclaimed the independence and creation of an independent state - South Ossetia. In their turn, the Russian Federation immediately recognized the independence of South Ossetia, openly and publicly declaring its decision to support the de facto authorities of these territories politically, financially and militarily [23, p.299].

During the period of 1992 to 1996, South Ossetia formed its own state structures, in particular, the Ministry of Internal Affairs and the military departments. Although not recognized internationally, the republic had a Constitution and Parliament, and the presidential institution was formed in 1996. The first presidential election in South Ossetia was held on November 10, 1996 [24, p.168].

Contrary to all the peaceful settlement agreements of the Georgian-Ossetian conflict, on the night of August 8, 2008, there took place military conflicts between the Georgian and South Ossetian forces. Russian peacekeeping forces were also involved in the military conflict.

As a result of the negotiations between Georgia, the Russian Federation and the institutions of the European Union, six principles for the settlement of the conflict between Georgia and South Ossetia were approved: 1) non-use of military force; 2) final cessation of hostilities; 3) free access to humanitarian aid; 4) withdrawal of Georgia's armed forces from the conflict perimeter; 5) maintaining the peacekeeping armed forces of the Russian Federation on the outbreak of hostilities until the creation of international mechanisms; 6) initiating international discussions on the future status of South Ossetia and Abkhazia, as well as on the ways to ensure sustainable security in these regions.

On August 26, 2008, the President of the Russian Federation signed Decree No. 1261 "On the recognition of the Republic of South Ossetia". The Decree indicated that the recognition is based on the will of the people of South Ossetia. At the same time, the task of the Russian Ministry of Foreign Affairs was to arrange negotiations with the South Ossetian administration in order to establish diplomatic relations of cooperation and mutual assistance.

Although the rules of international law protect the territorial integrity of Georgia, there were states that did not take into account the international legal framework. Thus, on September 5, 2008, the Republic of Nicaragua recognized the independence of South Ossetia and became the first country in Latin America to manifest such a gesture. Later, on September 10, 2009, Venezuelan President Hugo Chavez announced that Venezuela recognizes the independence of South Ossetia and Abkhazia. In the same context, the leaders of states such as Armenia, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan condemned Georgia's actions in South Ossetia and supported the actions of the Russian Federation at the summit of the Collective Security Treaty Organization in Moscow.

On the other hand, on September 1, 2008, the European Union condemned the unilateral recognition of Abkhazia and South Ossetia by the Russian Federation, stating that this decision was unacceptable and urged all states not to recognize the independence of the self-proclaimed republics.

From the perspective of the scientific research we carry out, the military actions between the Georgian forces and those of South Ossetia need to be evaluated from the point of view of international law. Thus, Russian researchers came to the conclusion that Georgia's actions were illegal. As an argument, it was invoked that Georgia concluded an international agreement with the participation of South Ossetia and the Russian Federation in 1992 and 1994, according to which the parties committed to solve all the disputed issues exclusively through peaceful means, without using force or threatening to use it. Georgia, violating the agreement and international legal principles regarding the non-use of force and the threat of force, committed an act of aggression against South Ossetia [25, p.45].

Most Russian authors hold by the opinion that Georgia attacked South Ossetia and the Russian peacekeeping forces on August 8, 2008. It was mentioned that the Russian Federation was obliged to use its inherent right to self-defense, enshrined in Art. 51 of the UN Charter. The Russian side's use of force was intended to protect the Russian peacekeeping contingent from Georgia's illegal actions, which was performing its functions in South Ossetia in accordance with the provisions of an international mandate. Therefore, the Russian researchers considered that Georgia's intervention was an act of aggression, and the Russian Federation was entitled to self-defense. As regards South Ossetia, it has ensured its security on

the basis of the right to self-determination through the separation and formation of an independent state [26, p.54]. Georgia appealed to the principle of territorial integrity, while South Ossetia appealed to peoples' right to self-determination [27, p.93]. As a result of the armed attack on South Ossetia, Georgia violated the principles of international law, namely: prohibition of the use of force or threat of force, respect for human rights and fundamental freedoms, self-determination of the people [28, p.99].

According to the Declaration on the principles of international law on friendly relations and cooperation between states in accordance with the UN Charter, by virtue of the principle of equal rights and the self-determination of the people enshrined in the UN Charter, all peoples have the right to be freely established outside their political status and to exercises economic, social and cultural development and each state must respect this right in accordance with the provisions of the Charter. The forms of exercise of the right to self-determination by the people are the creation of a sovereign and independent state, the free accession or association with an independent state or the establishment of any other statute through the free determination as a people.

There can be distinguished the constitutive and declarative theories of state recognition in the doctrine of international law. According to the constitutive theory, the international juridical personality of a state depends on its recognition by other states. The declarative theory claims that a new state acquires legal personality due to the fact of its existence [29, p.87].

Article 1 of the Montevideo Convention on the Rights and Obligations of States of 1933 provides that a state, as a subject of international law, must have the following characteristics: resident population, territory, government, and ability to enter into relations with other states.

The doctrinal opinions of the Russian Federation indicate that South Ossetia fulfills all the criteria of statehood. The recognition of South Ossetia was based on the norms of international law and legally allowed the right of persons to self-determination to be realized in the form of the creation of a new independent state [30, p.59]. Moreover, the legitimate exercise of the right to self-determination by the people of South Ossetia and their own control of their territory confirms the international juridical personality, regardless of the recognition by other states [31, p.29].

In order to exercise international legal personality, recognition of a subject of international relations is sufficient.

From the perspective of Russian researcher R. Shepenko [14, p.63], recognizing the independence of South Ossetia and Abkhazia, the Russian Federation referred to Kosovo's precedent, even though the European Union does not recognize Kosovo's secession from Serbia as a precedent for other territories, considering this case to be exceptional and unique. However, the situation in South Ossetia is also unique, like any other case of the appearance of a new state on the international arena.

Abkhazia. Unlike South Ossetia, Abkhazia enjoyed autonomy within the Soviet Socialist Republic of Georgia during the Soviet Union. Despite this fact, there were ethnic conflicts between both jurisdictions. Ethnic tensions developed into the war of the 1992-1993 in Abkhazia and the de facto independence of Abkhazia [32, p.19]. Despite the 1994 ceasefire agreement and many years of negotiations, the dispute remains unresolved [33, p.335].

The point of reference for the Georgian conflict is the Report of the Independent International Conflict Information Mission in Georgia in September 2009 [34, p.11], led by Heidi Tagliavini. The report clarified that the Georgian government led by Mihail Saakashvili started the war on August 7, 2008, when Georgian forces attacked and captured Tskhinvali in South Ossetia, but stated that "a violent conflict was already in full swing in South Ossetia" and that the

Georgian offensive was not "adequate" in response to the pre-war attacks [35, p.7].

At this point, the status of the territories of South Ossetia and Abkhazia remains a contested issue. By the medium of the motion for a resolution based on the statement of the Vice-President of the Commission / High Representative of the European Union for Foreign Affairs and the security policy tabled in accordance with Rule 123 (2) of the Rules of Procedure regarding the occupied Georgian territories for ten years after the Russian invasion (2018/2741 (RSP)) [36], it was noted that the United Nations and most governments of the world consider these territories part of Georgia, while Russia and four other UN member states recognize the republics of South Ossetia and Abkhazia. As both republics are highly dependent on Russia from an economic, political and military point of view, a durable solution to the conflicts in this region can be found only if the right of the people of Abkhazia and South Ossetia to determine their future and to defend their national identity is guaranteed.

In international law, the legal framework for settling Georgia's territorial conflict is based on the Ceasefire Agreement of August 12, 2008 and the Implementation Agreement of September 8, 2008, mediated by the EU and signed by Georgia and the Russian Federation. Other international acts are: The Resolution of January 21, 2016 Association Agreements / Deep and Comprehensive Free Trade Areas with Georgia, Moldova and Ukraine; The Resolution of 13 December 2017 on the Annual Report on the implementation of the common foreign and security policy; The European Parliament recommendation of 15 November 2017 to the Council, the Commission and the EEAS on the Eastern Partnership, in the run-up to the November 2017 Summit.

Under the above-mentioned acts, the EU categorically upholds the sovereignty and territorial integrity of Georgia within its internationally recognized borders, and by the Motion for a Resolution submitted on the basis of the statement of the Vice-President of the Commission / High Representative of the European Union for Foreign Affairs and Security Policy, the EU firmly indicated that ten years after the outbreak of the Russian-Georgian conflict and Russia's invasion of Georgia, the Russian Federation continues its illegal occupation and tries to de facto annex the Georgian regions of Abkhazia and Tskhinval/South Ossetia, violating the international law and the rules-based international system. In addition, the EU indicated that after the ten years war between Russia and Georgia, the Russian Federation continues to violate its international obligations and refuses to implement the ceasefire agreement of 12 August 2008 mediated by EU.

Be it noted that in 2017, Russia and Georgia set up a joint committee headed by Russia's Deputy Foreign Minister and Georgia's special representative for relations with Russia. Starting with 2018, the economic relations and the interpersonal contacts with the Russian Federation intensified, the Russian state becoming the second trading partner of Georgia.

The concept of «separatist regime» and «jurisdiction» in the context of the case-law of the European Court of Human Rights

The separatist regimes or the de facto states, as they are called in the doctrine, appear as political entities that demand independence in relation to the state from which they were a part, but which are not recognized by the international community [37, p.113].

In the specialized literature, these formations are associated with incomplete secession processes, which resulted in political formations that have achieved de facto independence, but which do not enjoy international recognition [38, p. 1092]. Relevant examples of separatist regimes are: Transnistria, which de jure is part of the Republic of Moldova; Northern Cyprus,

being part of the territory of the state of Cyprus and recognized only by Turkey; Nagorno-Karabakh, which by law is an integral part of Azerbaijan, but was de facto constituted as a separatist territory, which tends towards unity with Armenia; two other separatist regimes are South Ossetia and Abkhazia, located in Georgia. Also, from 2014, in Ukraine, in the regions with separatist tendencies - Crimea, Lugansk, and Donetsk - the separatist movements have increased: Crimea has joined the Russian Federation, Donetsk People's Republic and Lugansk People's Republic claim about their independence in the armed conflict.

The European Court uses for these regimes the notion of "self-proclaimed republics" or "self-proclaimed authorities". For the first time, this terminology was widely used in the case of Ilascu and others against Russia and Moldova [39], being taken from the instrument of ratification deposited by the Republic of Moldova at the European Convention, which indicated the phrase "self-proclaimed Transnistrian Republic".

The respective terminology was also used in relation to the Republic of Cyprus, in cases that succeed the Ilașcu case and others vs. Moldova and Russia, for example - in case of Solomou vs. Turkey [40]. The expression "self-proclaimed republic" is also used in relation to Chechnya in the Sayd-Akhmed Zubayrayev Court judgment vs. Russia [41], mentioning the terms "Self-proclaimed Chechen Republic of Ichkeria" and "Government of the self-proclaimed Chechen Republic". The same phrase also designates Nagorno-Karabakh region in the case of Fatullayev vs. Azerbaijan [42], in which this region is nominated as "self-proclaimed, unrecognized Nagorno-Karabakh region".

The actuality of the problem of the separatist regimes consists in their legitimacy, in the role they play in the political, economic, social evolution of the state, but also of their impact on the respect of human rights [43]. In particular, we refer to the problem of respecting human rights through the application of the European Convention on the territories of the separatist regimes, but also to the support by other states of the separatist regimes, through military, economic, social and political means, which generate more uncertainties. In this case, it is relevant to determine the state that has jurisdiction over the territory controlled by a separatist regime and to what extent its international responsibility may be committed.

The European Court has analyzed each time the term "jurisdiction" from a territorial point of view. Thus, in Banković and Others vs. Belgium and 16 other States, the Court noted that "Article 1 of the Convention must be interpreted, first and foremost, within the meaning of the ordinary and essential notion of territorial jurisdiction, other meanings being exceptional and requiring a special justification" [44].

According to international law, "jurisdiction is an element of sovereignty and refers to judicial, legislative and administrative competence". However, the notion of jurisdiction has acquired in the jurisprudence of the European Court an autonomous dimension, which does not correspond to the definition conferred by general international law. Therefore, in the jurisprudence of the European Court, the purpose of the notion is to define the extent of the obligations of the contracting states, while in general international law, jurisdiction aims to limit the jurisdiction of the state, which results from the sovereignty they possess [45, p. 93]. In the case of the external support of the separatist regimes, the European Court approaches the notion of jurisdiction both from the point of view of its ordinary meaning - that of a territorial jurisdiction, as an element of statehood, and from the point of view of the notion of extraterritoriality, which refers to a situation, apparently, in which a state exercises jurisdiction in a certain region, without having territorial jurisdiction [46, p.39].

Evolution of ECtHR jurisprudence in cases of support of separatist regimes in the Republic of Moldova and Georgia

Emphasize that the ECtHR does not have the competence to define the notion of separatism. Moreover, the ECtHR cannot condemn independent and self-declared pseudo-states by the legitimate authorities as separatist regimes, however, the Court analyzes the circumstances, finds the influence of a member state of the Convention on the territory and condemns states for violations of the provisions of the convention.

The Court applies the Convention in circumstances of armed conflict whenever the states resort to armed forces in order to resolve a dispute between them, if there is prolonged armed violence between government authorities and organized armed groups or between such groups within a state. It stands to mention that the Court has examined many cases in which defendant states, members of the Convention, had one of the forms of support for separatist regimes, even though the defendant states were struggling with legal authoritarian regimes. In all cases, the Court did not state politically whether or not it supported the separatist regimes, but examined the circumstances under which a defendant state has or has no political, economic, administrative influence on the territory, so as to make itself responsible for committing violations on the territory of the respective state.

In this segment, the Court has also formed a case-law regarding the situation in Moldova with the separatist regime in Tiraspol. The court set out the reasoning in the case of Ilascu and others v. the Republic of Moldova and the Russian Federation; Ivanțoc I and II vs. the Republic of Moldova and the Russian Federation [47]; Catan and others vs. the Republic Moldova and the Russian Federation [48], the case of Mozer vs. the Republic Moldova and the Russian Federation [49], the case of Pisari v. The Republic Moldova.

The reference case is **Ilascu and others v. Moldova**, where the Court examined the jurisdiction of the Russian Federation over Transnistria and the Republic of Moldova over Transnistria. In the case of the Republic of Moldova, the Court found that it should determine whether the Republic of Moldova assumes responsibility on the basis of its obligation to refrain from unlawful acts or positive obligations entrusted to it in accordance with the Convention. The Court noted, first of all, that the Republic of Moldova has declared that it does not have control over the part of its national territory - namely the Transnistrian region. The Court recalled that in its decision on admissibility, it found that the declaration made by the Republic of Moldova in its instrument of ratification of the Convention on the subject of lack of control of the Moldovan legitimate authorities over the Transnistrian territory did not constitute a valid stipulation within the article 57 of the Convention.

At the same time, in paragraph 333, the Court established that when a Contracting State is prevented from exercising its authority over its entire territory due to the existence of a de facto situation which compels it, such as the installation of a separatist regime, regardless of whether it is or not accompanied by the military occupation of the territory of another State, this State ceases to have the jurisdiction (under the Article 1 of the Convention) over that part of its territory which is temporarily subject to a local authority supported by rebel forces or another State [50]. Thus, the Court found that the responsibility of Moldova could be undertaken under the Convention, as a result of its failure to comply with its positive obligations regarding the events that occurred after May 2001 and which were denounced by applicants.

In light of these circumstances, the Court decreed that the Russian Federation is responsible for the illegal acts committed by the Transnistrian separatists, taking into account the political and military support provided for the establishment of a separatist regime

and its military participation in the battles that took place. In doing so, the authorities of the Russian Federation contributed both militarily and politically to the creation of the separatist regime in the Transnistrian region, which is an integral part of the Republic of Moldova. Further, the Court noted that even after the ceasefire agreement of July 21, 1992, the Russian Federation continued to provide military, political and economic support to the Transnistrian regime, thus allowing it to survive and consolidate in order to obtain the autonomy. Moreover, the Court found that the enterprises and institutions of the Russian Federation, whose activity is authorized by the state and operating in the military field, have established commercial relations with companies and similar institutions in the "Pridnestrovian Moldovan Republic". Similar positions The Court had in Ivanțoc I, II.

As concerns Georgia, several applications are considered in the European Court asking to examine the responsibility of the states for human rights violations produced in the regions controlled by the separatists. The first claim in this regard was filed by Georgia against Russia in 2008. Thus, Georgia appeals to the European Court in concern with the armed attacks to which the Georgian territory was subjected by the Russian Armed Forces. According to the factual circumstances invoked, the Russian Armed Forces organized a counter-attack against the Georgian Army by airstrikes and navy attacks at the Black Sea, getting deep into Georgia, crossing the main east-west road of the country, reaching Poti port and then to the capital of Georgia, Tbilisi.

By a decree of August 26, 2008, Russian President Dmitry Medvedev recognized South Ossetia and Abkhazia as independent states following the unanimous vote of the Russian Federal Assembly. The Government of Georgia claims that Russia had effective control over the territory of Abkhazia and South Ossetia both because of the direct armed attacks and the acts of the separatists who acted as *de facto* agencies or organs of Russia. The entire scheme for carrying out military operations has been developed by the Russian Federation as architect, controller, instructor and executor of military operations.

In its decision of admissibility, the Court considered that it does not have sufficient means to resolve these issues, these being matters closely related to the merits of the case, which will be examined together with it.

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