

International Sanctions for Human Rights Violators on the Occupied Territories

Author: Shota Utiashvili, Senior Fellow at Rondeli Foundation

The death of a Georgian citizen, Archil Tatunashvili, on 22 February 2018 in the Tskhinvali region's State Security Committee building has once again raised the issue of the protection of human rights of Georgians living on the occupied territories.

According to the official information of the Tskhinvali regime, Tatunashvili attempted to take a weapon away from a guard. As a result of the guard's defensive actions, Tatunashvili fell down a staircase and then died in a Tskhinvali hospital several hours later as a result of heart failure.

During the IPRM mechanism meetings held on 26 February and 1 March 2018 in Ergneti, the Tskhinvali regime refused to turn over Tatunashvili's body to the Georgian side despite promises made prior to the meeting.

The refusal of turning over the body further strengthens the suspicion that Tatunashvili died as a result of being tortured with the transfer being postponed until traces of physical trauma to the body from the act of torture disappeared as a result of decomposition.

On 25 February, the High Representative of the European Union for Foreign Affairs and Security Policy, Federica Mogherini, made a statement about this issue, expressing deep concern about the tragic death of Archil Tatunashvili.

On 26 February, the Embassy of the United States in Tbilisi also made a statement, calling on the responsible persons, including Russian officials who exercise effective control over the occupied regions, to hand over full information to the Georgian side.

The Ministry of Foreign Affairs of Georgia also made a statement on 23 February which put the responsibility for this tragic event on the Russian Federation as the effective controller of the occupied territories.

The Georgian state and its partners are calling for an investigation of the incident. The European Union and its Monitoring Mission are expressing their readiness to assist in the investigation if the parties agree to its launch.

Representatives of the occupation regime are stating that Tatunashvili participated in the genocide of the Ossetian people and, in this specific case, he was planning to create diversions for the day of the Russian Presidential election. In any case, we can state with high likelihood that the chances for an independent investigation are practically non-existent at this stage. Archil Tatunashvili's murderers will not be punished.

After this tragic incident, many drew parallels to the murder of Giga Otkhзорia. Otkhזורia was killed in May 2016 in the village of Khurcha. His murderer, Rashid Kanji Ogli (who was sentenced in absentia to imprisonment by the Zugdidi court), was first sentenced by the Abkhazian “court” to home arrest and afterwards, due to a lack of evidence, was cleared of all charges.

In September 2017, “South Ossetian Television” published a video showing a report regarding the demolition of homes in the village of Eredvi. After the 2008 war, practically all of the houses in the village of Eredvi as well as in other villages of the Didi and Patara Liakhvi ravines were burned down as a result of ethnic cleansing. The dismantling and removal of these destroyed houses is now underway. Tskhinvali Mayor, Alan Kochiev, stated that a dumpster will be put in place near Eredvi.

On 4 June 2014, police in the town of Akhgori arrested 19 year-old Davit Basharuli. After this, Basharuli disappeared. The police stated that he was interrogated and set free. After several months, Basharuli’s corpse was found hanging from a tree in the forest. The police stated that Basharuli probably committed suicide. However, a second and much more trustworthy version also exists: Basharuli died at the hands of the police during an act of torture. Afterwards, they buried the body in the forest and several months later, when traces of torture were gone due to decomposition, they dug up the body and hanged it on a tree in the forest in order to imitate suicide.

In Davit Basharuli’s case, the calls from the Georgian side for an independent and impartial investigation were also unanswered.

In summer 2013, the Parliament of Abkhazia adopted a decision saying that the passports distributed to Georgians in Abkhazia were illegal and demanded their confiscation. As a result, about 26,000 people in the districts of Gali, Ochamchire and Tkvarcheli lost their passports as well as their right to vote. According to various sources, only about 700 Georgians from the over 40,000 who reside there had the right to vote during the past several elections in the Gali district. The seizure of passports endangered both the civil rights of Georgians as well as their right of property and freedom of movement.

After the beginning of the 2015-2016 academic year, all schools in the Gali district, where 97% of the population is Georgian, switched to teaching in the Russian language even though neither the teachers nor the pupils speak this language. The right of getting an education in one’s mother tongue is, according to international conventions, the right of every human; however, this right was taken away from Georgians.

Georgia’s Policy towards the Occupied Regions

Georgia’s policy towards the occupied regions is based upon two main documents. These are the 2008-2009 Law on Occupied Territories and the 2010 National Strategy towards the Occupied Territories: Inclusion through Cooperation.

Despite the change of government in 2012, there were no changes in the two main concepts of Georgia's state policy: non-recognition and inclusion. Non-recognition means that the Georgian state must do everything in its power not to let third countries recognize the occupied territories as independent states. Inclusion means that the Government of Georgia admits that, apart from the Russian occupation, there is also a problem of the alienation of the population living on the occupied territories and the state is obliged to take steps in order for Abkhazian and Ossetian citizens to have more trust towards the Georgian state.

The most effective among the confidence-building activities is the so-called healthcare project which has been functioning since 2010 and which provides free treatment in Georgian hospitals for patients from Abkhazia and South Ossetia. Interesting initiatives have been voiced lately, encompassing the encouragement of trade across the administrative boundaries and the facilitation of joint economic activities. In the case of their implementation, these initiatives could give an additional impetus to the process of confidence-building.

Apart from these two main postulates, the state policy of maintaining stability on the occupation line is also important and consists of two components: obligation vis-à-vis the non-use of force and the steadfast implementation of the memorandum signed with the EUMM. Any time when something happens that could put the stability on the occupation line in doubt (Otkhozoria's murder, borderization, abduction of people), the state prefers to do everything possible to maintain stability, even at the cost of heavy concessions and turning a blind eye.

European Union Policy towards the Occupied Territories

The policy of the European Union towards Abkhazia and South Ossetia is determined by the document about Non Recognition and Engagement Policy (NREP) adopted in 2009 but never published. According to this policy, the European Union, on the one hand, states that it will never recognize Abkhazia and South Ossetia as independent states; however, on the other hand, it will attempt to maintain relations with various official and unofficial institutions operating on the occupied territories. According to non-official data, the European Union spent about EUR 40 million on projects implemented in Abkhazia from 2009 to 2017. The projects mainly concern supporting local NGOs, education, healthcare, assistance to farmers and so on. The European Union wants to have certain relations with and influence on the occupied territories. However, this policy is only partly successful as the EU finds it difficult to implement projects on the territory of South Ossetia.

Apart from the Non-Recognition and Inclusion Policy, the EUMM also plays a vital role on the ground, functioning since 2008 and having a significant role in the stabilization of the situation.

The policy of the United States of America is somewhat similar to that of the European Union. Last year, the Congress of the United States adopted a correction in the Law on Budget according to which the countries that recognize the independence of Abkhazia and South Ossetia will not be able to get

US financial assistance. Apart from the US and the EU – Canada, Australia, Japan, New Zealand, the Vatican and others also play a significant role in the non-recognition policy.

Protection of Human Rights on the Occupied Territories

As we have seen, neither for the Government of Georgia nor its international partners, the protection of the rights of people living on the occupied territories, including Georgian minorities, is among the top priorities. This situation, which may seem strange at first glance, can be explained owing to the lack of instruments. What can the Government of Georgia do to punish the murderers of Otkhozoria or Basharuli without threatening stability along the occupation line and causing a chain of revenge? What can the European Union do in such situations without endangering its already fragile contacts and influence in Abkhazia?

These questions, unfortunately, have no simple answers. Hence, if we look at the reactions of the Government of Georgia and its allies with regard to the aforementioned violation of minority rights, we can see that in each case the reaction did not exceed expressions of concern and condemnation.

Georgian attempts to blame the Russian Federation for cases of human rights violations on the occupied territories have no tangible results.

In the cases of especially gross violations of the rights of compatriots, international practice uses the method of direct punishment of those culpable. A state, which has no way of legally punishing those who committed a crime, does this through special steps and these steps then form the basis for the prevention of future rights violations. No cases of such punishment have been reported to have been used since 2012. In fairness it must be pointed out that the closing down of the occupation line by the Russian border control forces has made such operations much more difficult but not impossible. Either way, Georgia has refused to use such special steps on the occupied territories and it is highly unlikely that it will change this approach, especially given the fact that the government considers the normalization of relations with Russia to be one of its main achievements.

There are many factors that make us think that the rights of Georgian minorities on the occupied regions will be violated even more. First of all, we should point out the significant regress in terms of human rights issues in Russia itself for the past several years. The Putin regime worries less and less about the protection of human rights in its own country and it is impossible for this approach not to influence the occupied regions as well. Second is the growing self-isolation of Abkhazia and so-called South Ossetia from the international community. Third, there is the so-called statehood crisis, especially on the territory of Abkhazia, which often makes scapegoats of Georgians living there. Fourth, there is the de facto annexation of the region and the de facto movement of the Russian border: in one case, from Psou to Enguri and in the other case, from the Roki Tunnel to Ergneti.

The influence of the international community in Abkhazia and the Tskhinvali region is not substantial enough to be able to seriously influence the state of human rights there. Of the

international organizations, only the Red Cross operates permanently in so-called South Ossetia. The co-chairs of the Geneva negotiation format visit Tskhinvali several times a year. Foreign NGOs also sometimes manage to implement joint projects together with “South Ossetian” NGOs. However, the number of cases of such cooperation decreases every year. The answer to the question of whether or not this is enough for the international community to influence the actions of the local regime is a resounding no.

The situation is not much different in Abkhazia either. As already pointed out above, the amount of money allocated by international organizations for project implementation in Abkhazia is about USD 4 million. To compare, the annual budgetary and investment assistance allocated by Russia exceeds USD 100 million.

Case of Ukraine

After its annexation of Crimea in 2014 and the destabilization of Eastern Ukraine, the European Union adopted stage-by-stage sanctions against citizens of both Russia as well as Ukraine who participated in the undermining actions taken by Russia.

Diplomatic sanctions: regular bilateral summits were abolished, negotiations were halted about visa liberalization and about signing a new EU-Russia treaty. G7 instead of G8 summits are held. The process of becoming an OECD member has been halted for Russia as well as that of its membership of the International Energy Agency.

About 150 people and 37 organizations were subjected to sanctions, including freezing bank accounts and banning travel to the European Union.

After the annexation of Crimea the European Union banned imports of goods from Crimea and also the ability to make investments there as well as banning the supply of tourist services and the export of some of the goods that could prove important for infrastructural projects on the peninsula as well as the production of oil and natural gas.

According to the statements of the EU, the aim of the sanctions is not to punish but rather to alter the policies and individual steps taken by sanctioned persons and organizations.

Canada, Japan, Australia, Switzerland, Norway and other smaller countries also quickly joined in the EU sanctions or imposed their own.

As for the United States, according to the US Department of Treasury, it has adopted the following in terms of Ukraine: “Sanctions against the persons who led or participated in individual actions concerning Ukraine, sanctions against Russian government officials, sanctions against persons working in the fields of armament or other related fields in the Russian Federation, sanctions against persons and organizations that are operating on the territory of Crimea, sanctions against organizations that are operating in various fields of the Russian economy, ban on imports or exports

of goods, services and technologies to and from Crimea and a ban on investment in Crimea for American citizens.”

As you can see, the “menu” is rather diverse. In the cases of the Tskhinvali region and Abkhazia, personal sanctions would be relevant against individuals (including Russians as well as Abkhazians and Ossetians) who directly participate, lead or facilitate especially severe cases of human rights violations. Further, they would be relevant against Russian officials exercising the occupation policy and also against Russian or other foreign companies which operate on the occupied regions without permits from the Government of Georgia.

These sanctions are important not only in the field of the protection of human rights but also in terms of the anti-annexation policy. Russia must be aware that additional sanctions are unavoidable in the case of the annexation of South Ossetia or Abkhazia.

In addition, Georgia’s partners, especially the European Union and the United States, will have acquired some leverage on the territories of South Ossetia and Abkhazia.

Steps to be Taken

The tragedy at hand makes it clear that Georgia’s approaches, as well as those of its international partners and which are based on two main fundamentals, non-recognition and inclusion, are insufficient. The aforementioned two must be coupled with a third full-fledged component – the protection of human rights on the occupied territories.

In order to implement this component, however, international sanctions are the only real leverage that can be used. The imposition of such sanctions must become the main aim of Georgian policy towards the occupied regions.

The EU and the US already have examples of such sanctions. As a rule, a framework is set first (for which actions the sanctions can be used and upon which individuals to impose them as well as the structures needed to make these decisions) and then the “blacklist” is filled with the names of the individuals who have committed a punishable action before the imposition of the sanction regime or after it.

Until now, we and our partners, the US and the European Union, were only exercising a “carrot policy” towards the occupied territories but the carrot was apparently not tasty enough. It is better if we now replace it with the policy of “sticks and carrots” through which we can manage to protect the defenseless population of the occupied territories and perhaps also make the carrot a little more tasty as well.