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The frozen conflicts of the EU's Eastern neighbourhood and their impact on the respect of human rights

DROI



STUDY

The frozen conflicts of the EU's Eastern neighbourhood and their impact on the respect of human rights

ABSTRACT

The present study provides a detailed overview of the actual human rights situation in the frozen conflict regions of EU's Eastern neighbourhood, namely in Crimea, Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh. The focus of the analysis is on the access to the justice system, as well as on the abilities of the *de jure* or *de facto* authorities to administer justice. Particular attention is paid to Crimea because the rapidly worsening human rights situation there affects far more people than the population of the other four frozen conflicts combined. International community actions, as well as the role of civil society in protecting human rights are also analysed.

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Executive summary

The present study provides an overview of the human rights situation in the frozen conflict regions of Europe's Eastern Neighbourhood, namely in Crimea, Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh. The focus of the analysis is on the access to the justice system, as well as on the abilities of the *de jure* or *de facto* authorities to administer justice. Particular attention is paid to Crimea because the rapidly worsening human rights situation there affects far more people than the population of the other four frozen conflicts combined. Besides, while the human rights situation of the four other unresolved conflict regions is relatively stable, it has been rapidly worsening in Crimea since Russian captured and illegally annexed the territory in 2014.

The four pre-2014 frozen conflicts, i.e. Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh, are largely similar to each other in the sense that they constitute legal 'black holes', because no recognised United Nations (UN) member state is able to exercise jurisdiction over them. While all four of them mimic state-like functioning, thus they have more or less developed legal and institutionalised structures involving also institutions for protecting human rights, in reality these frameworks are hardly fulfilling their tasks. The main reason behind the deficiencies is the lack of will from the separatist authorities to effectively administer human rights and democratic freedoms, motivated by regime security interests. Consequently, victims of human rights violations have only very limited access to justice.

In this respect, Crimea constitutes a highly special case. Since 2014 the peninsula has been under the *de facto* control and jurisdiction of Russia, a full-fledged recognised state that is a member of the Council of Europe (CoE). Hence, Russian authorities would be *de jure* bound to the respect for human rights and democratic freedoms. However, similarly to the other four conflicts, regime security interests overwrite legal obligations, resulting in massive repressions. At present the human rights situation of Crimea has been by far the worst among the five examined frozen conflicts, as massive repressions are taking place, including killings, abductions and disappearances, as well as attacks on the media and the education system. The ethnic Crimean Tatar population as well as Ukrainian political activists are hit particularly hard.

Regarding the four pre-2014 frozen conflicts, due to the uncertain legal status of these territories, the international community, including the European Union (EU), has very limited options for getting directly engaged in defending human rights. Instead, they mostly rely on interlocutors, such as non-governmental and civil society organisations, which are able to conduct on-site monitoring and human rights protection. However, the international community could do much more to hold Moscow accountable for the human rights situation in Crimea, as well as in other parts of the Russian Federation. Such options should be considered particularly seriously, if repression against the Crimean Tatars continues.

The European Parliament (EP) has a key responsibility in sustaining public attention and awareness towards the human rights situation in the 'frozen conflicts' in the Eastern neighbourhood, including both the pre-existing ones as well as Crimea. As the latter constitutes a relatively new, but massive and serious problem regarding respect for human rights and democratic freedoms, it is paramount to maintain the strong and coherent engagement of the EP.

1 Introduction

The present study aims to provide an overview of the human rights situation in the ‘frozen conflicts’ of the post-Soviet region. In this context, the term ‘frozen conflict’ applies to five areas: Crimea, Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh, even though, especially for the latter, ‘protracted’ would probably be a more appropriate qualifier. It is important to underline that referring to these regions as *de facto* states or their administrations as governments does not imply that the author would question that these regions belong *de jure* to their respective metropolitan countries, i.e. Transnistria to Moldova, Crimea to Ukraine, Abkhazia and South Ossetia to Georgia and Nagorno-Karabakh to Azerbaijan. It is equally important to point out that the geographical names used in the study do not bear any implicit political message or significance.

The study seeks to analyse all five frozen conflicts from four different perspectives. First, whether and how victims of human rights violations are able to access justice. Second, the extent to which the *de jure* and *de facto* authorities are able to administer justice and the extent to which they can be held responsible for the human rights violations committed. Third, whether and how legal professionals and civil society actors are able to help victims of human rights violations. Fourth, the role of the international community needs to be assessed, with particular attention paid to the activities of the European Union and the European Parliament.

When studying these problems, one needs to be aware that the five conflicts are hardly similar to each other in any other sense except that they are ‘frozen’. Therefore, a separate chapter of the analysis is dedicated to describing the differences in detail, in order to help the reader understand why the human rights situations and the possibilities for the victims to access justice are different, as well as the possibilities for the international community to access these regions and assess the human rights situation at first hand.

The paper is composed of seven main chapters. Following the introduction, the second part consists of a detailed description of the five conflicts. The subsequent four chapters are dedicated to the cases of Crimea, Transnistria, Abkhazia and South Ossetia, and Nagorno-Karabakh respectively. The decision to group Abkhazia and South Ossetia together stems from the fact that they both belong to Georgia, despite a self-proclaimed ‘independence’. The study ends with a seventh, concluding chapter, in which recommendations are also made.

As a direct consequence of the differences between the conflicts, the paper pays particular attention to the situation in Crimea for two main reasons. First, this is by far the largest of all five frozen conflicts, in terms of both territory and the population affected. Hence, the human rights situation there concerns far more people than in the other four conflicts combined, calling for a more detailed description. Second, the situation in Crimea is still changing dynamically, as only two years have passed since the illegal annexation of the peninsula by the Russian Federation. From this perspective, the situation is not yet frozen, meaning that there is still a chance for positive changes in the human rights situation. The recent success of the mission sent by the Secretary General of the Council of Europe in gaining access to the peninsula in late January 2016 – the first time since the beginning of the conflict – is an important step in this direction.

The paper is mainly intended to serve policy-related purposes by informing the European Parliament about the wider human rights situation in the regions studied. Therefore, instead of analysing individual legal cases in detail, the general objective is to provide the necessary background for such analyses, should the European Parliament deem it necessary.

The views expressed here are solely those of the author and thus they do not reflect the official position of any states, organisations or institutions. The author would like to thank Narine Ghazaryan, Arkady

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2 Differences between the frozen conflicts

When studying the frozen conflicts in the post-Soviet region, one needs to be aware that the subjects under analysis are far from similar. In fact, the five frozen conflicts of the post-Soviet region included in this analysis – Transnistria, Abkhazia, South-Ossetia, Nagorno-Karabakh and Crimea – are highly different from one another in a number of respects, which also influences the human rights situations in these regions. Hence, before going into detail, these key differences need to be overviewed briefly in order to understand the local particularities of the political and human rights situations.

2.1 Geography

First and foremost, the five conflicts are highly different in terms of geography, regarding both land mass and population. Crimea, with a territory of approximately 25 800 km², is nearly seven times larger than South Ossetia with 3 900 km² (Karácsonyi et al., 2014). Moreover, two of these conflict regions, namely South Ossetia and Nagorno-Karabakh, are completely landlocked, surrounded by high mountains and isolated by scarce road connections. For their part, Abkhazia and Crimea have long coastlines, deep water ports and also major airports. Transnistria, albeit landlocked border-wise, is still much less isolated than South Ossetia or Nagorno-Karabakh. The reasons for this relative openness lie both in the physical factors, namely the geographical plains and the proximity of the port of Odessa, as well as in political factors, meaning that the conflict has no military escalation potential. Hence, the borders are passable in all directions, although not without administrative hardships.

Table 1 summarises some of the main geographical parameters of the five frozen conflicts studied.

Table 1

Main geographical data on the frozen conflicts of the post-Soviet region

Name	Country the territory belongs to	Area [1 000 km ²]	Population around 2010, excluding IDPs [1 000 persons]	Ratio of the country's territory [%]	Ratio of the country's population [%]
Transnistria	Moldova	4.1	505	12.0	12.5
Crimea	Ukraine	25.8	2 300	4.3	5.1
South Ossetia	Georgia	3.9	51	5.7	1.0
Abkhazia	Georgia	8.6	242	12.4	5.0
Nagorno-Karabakh	Azerbaijan	11.4	146	13.0 ¹	1.5

Source: Karácsonyi et al., 2014: 37

¹ Without the territories of the occupied Azerbaijani regions adjacent to Nagorno-Karabakh.

2.2 Legal status

The legal statuses of these regions are also different. Although Transnistria and Nagorno-Karabakh both declared independence in 1990 and 1991 respectively, they have not been recognised by any member state of the United Nations, not even by Armenia with regard to Karabakh. In other words, there is no recognised country that would question that Transnistria still constitutes Moldovan territory and that Karabakh *de jure* belongs to Azerbaijan. The 'independence' of these territories has only been recognised by a number of self-declared breakaway entities, such as Transnistria, Abkhazia and South Ossetia.

The two Georgian separatist regions constitute a different category in terms of their legal status, as their independence is recognised by some UN member states², most importantly by Russia. Crimea is a special case as it was annexed by Russia in March 2014. A large majority of the international community does not recognise this takeover, although during the non-binding UN General Assembly resolution of 27 March 2014, aimed at condemning Russia for the annexation, eleven countries voted against the resolution (United Nations, 2014). It should be added, however, that voting against a UN resolution does not equate with a formal recognition.

Another difference, closely related to the legal status, is the *de facto* jurisdiction over these territories. While Abkhazia, South Ossetia, Transnistria and Nagorno-Karabakh have all established their own legal systems, as non-recognised as they are, Crimea is again different: since the annexation, Russia has been enforcing its own laws on the peninsula. In other words, as a result of the annexation, Crimea and the city of Sevastopol have become *de facto* subjects under the jurisdiction of another UN member country. This is not the case in the other four frozen conflicts, as they are *de facto* not under the jurisdiction of any recognised state, thereby constituting legal 'black holes' (Popescu and Bielawski, 2007). The question of jurisdiction directly affects both the human rights situation in these regions and the possible means to protect them.

2.3 The preceding armed conflicts

The duration, scale and nature of the armed conflicts that led to the emergence of these frozen conflicts are also different. Crimea was annexed by Russia without a single targeted shot being fired. At present, Russia is in the process of cementing its control over the territory, by suppressing both the pro-Ukraine political opposition as well as the Crimean Tatar minority. Both issues will be discussed in more detail in Chapter 3.

The Moldovan civil war in April–June 1992 was a relatively short armed conflict of limited intensity, which resulted in approximately one thousand deaths and some 50 000 people being displaced. The conflict broke out not over ethnic or religious divisions, but mainly over the political status of the region. Since 1992, however, the region has been calm, and the military option has never been considered by any of the actors as a possible solution (Pintea, 2004: 95–137). As there was hardly any significant ethnic dimension involved, Transnistria is still multi-ethnic today, with its population composed of some 32 % Moldovans, 30 % Russians, 29 % Ukrainians and several smaller ethnic groups.

Abkhazia and South Ossetia have suffered more than one armed conflict and forceful territorial changes since the dissolution of the Soviet Union. In Abkhazia, the civil war that resulted in the secession of the region from Georgia lasted from 1992 to 1993. Thereafter, in 1998, ethnic Georgians living in the Gali district attempted an uprising against the Abkhazian separatist authorities, but the effort ultimately failed. In 2006 the Georgian government regained control over the Khodori Gorge in East-Abkhazia after

² Nicaragua, Venezuela and Nauru still recognise these regions as independent, while two other countries, Tuvalu and Vanuatu have withdrawn their recognitions, both in favour of fostering diplomatic relations with Georgia.

its governor refused to recognise Georgian President Mikheil Saakashvili; however, during the Georgia-Russia war in 2008 separatist forces again captured the territory. In all these armed conflicts, massive ethnic violence took place, committed both by the separatists (and Russians, when involved), as well as by Georgian government forces. In spite of this, there is still a sizeable Georgian population living in Abkhazia, subject to frequent ethnicity-based discrimination³.

South Ossetia *de facto* seceded from Georgia in the civil war of 1991–1992. In 2004 the Georgian government successfully regained control over several villages on the periphery of the separatist region; however, in the 2008 Georgian-Russian war separatist and Russian forces recaptured these territories. The war practically obliterated the South Ossetian capital, Tskhinvali, and resulted in major infrastructural damage all over the region. Separatist, Russian and Georgian forces all committed serious and massive human rights violations; according to a senior official of Human Rights Watch, 'this conflict has been a disaster for civilians' (Human Rights Watch, 2008). Since 2008, very few ethnic Georgians have remained in South Ossetia; however, many of the Ossetians who fled at the outbreak of the war did not return, as their homes were destroyed and have not been rebuilt since then.

The Azerbaijan-Armenia war over Nagorno-Karabakh has been by far the most serious among all the conflicts studied here. Hostilities broke out as early as 1988, while full-scale war lasted from 1992 to 1994. Since the ceasefire signed in 1994, Armenia has been in full control not only of the former Nagorno-Karabakh Autonomous District, but also of seven adjacent districts of Azerbaijan, which constitute altogether approximately 20 % of Azerbaijan's whole territory. During and after the war, the ethnic Azerbaijani population of Armenia, and of the territories it controlled, was completely displaced, with thousands of fatalities. In all, approximately 800 000 ethnic Azerbaijanis had to leave their homes, with the result that there are hardly any Azerbaijanis left in Armenia and in Nagorno-Karabakh today. Meanwhile, around 230 000 ethnic Armenians had to leave Azerbaijan (de Waal, 2003: 29-44), in part following the anti-Armenian pogroms in Sumgait and Baku in 1990, and in part thereafter. However, there was no comprehensive ethnic cleansing: at present, according to the 2009 census, approximately 120 000 Armenians live in Azerbaijan, constituting 1.3 % of the population (The State Statistical Committee of the Republic of Azerbaijan, 2009).

2.4 Present security situation

As only a short time has passed since the annexation, the security situation in Crimea is far from calm. The Russian authorities are working constantly on strengthening their control over the peninsula by deploying new military forces (Boltenkov and Shapovalenko, 2014: 21-27), and by trying to suppress all forms of potential opposition, be they ethnic or political. Severe human rights violations have continued, many of which will be discussed in detail in Chapter 3.

Although the ceasefire was signed more than 20 years ago in 1994, the Nagorno-Karabakh conflict is more a protracted conflict than a frozen one, in the sense that military confrontations are still a regular occurrence, with a noted escalation in 2015 from sniper-fire exchange to heavy artillery exchanges, claiming lives on both sides, including civilians. Hence, the border between the two countries as well as the Line of Contact are still impassable, with even an OSCE mission to observe the ceasefire coming itself under fire in 2015; business and people-to-people contacts are practically non-existent or take place in third countries. In the last two years there has been a visible upsurge in the violence, including the downing of an Armenian helicopter by Azerbaijani forces in November 2014 (Agence France-Presse in Baku, 2014), as well as several skirmishes, weekly if not daily, along the Line of Contact. In the last ten years Azerbaijan has increased its military expenditure fivefold, from USD 644 million in 2005 to USD

³ See for example Georgia Today, 2015.

3.583 billion in 2014 (SIPRI, 2015). Although it could not keep pace with the oil-fuelled Azerbaijani budget, Armenia has also increased its military spending: from USD 243 million in 2005 to USD 472 million in 2014; these figures do not tell the whole story, however, as Armenia's weaponry is mainly from military ally Russia, and thus provided at discounted prices. Moreover, Armenia has considerably strengthened its military ties with Russia, both in the framework of the Collective Security Treaty Organisation (CSTO) and bilaterally. Although the 2015-2016 collapse of the Azerbaijani economy due to the fall of oil prices worldwide will most probably prevent Azerbaijan from further strengthening its armed forces, the military situation is still tense and likely to remain so.

The security situations in Abkhazia and South Ossetia are largely similar. Since the 2008 war, the Russian military presence and influence over everyday life has become much stronger than before. *De facto* internal borders are now hard to cross; cross-border trade and people-to-people contacts are seriously hindered, and practically severed in South Ossetia. Particularly in South Ossetia, mines and unexploded ordnances remaining from the 2008 conflict still cause numerous accidents. In addition, Russia is increasingly transforming the demarcation lines into regular borders by strengthening the border infrastructure. There have been cases when Russian and local forces in South Ossetia gradually moved the demarcation line further into Georgian territory⁴. On the other hand, since the end of the war, border skirmishes between the separatist and Georgian regular forces have been practically non-existent (MKRU, 2010), mostly due to the massive Russian military deployments, and also due to the presence of the EU Monitoring Mission (EUMM) that has been active since September 2008. All in all, in the wake of the turbulent 2000s, and since the 2008 war, both conflicts have been moving towards becoming completely 'frozen'.

Out of the five frozen conflicts, Transnistria is clearly the calmest. A military solution has not been an option for any of the conflicting parties ever since the ceasefire was signed in 1992. Opposing militaries have never been lined up, nor mobilised. Borders are normally passable – both the border with Ukraine and the internal *de facto* border with Moldova. Since 2005, the EU Border Assistance Mission (EUBAM) has been actively contributing to the improvement of border management and to the fight against corruption. Intense trade and transit traffic is taking place across the borders; cross-border business and people-to-people contacts function normally, without any serious interruptions. Although since 2009 the domestic political landscape of Moldova has been frequently shaken by governmental crises, this does not affect the generally calm hard security situation.

3 Crimea

The Russian occupation and subsequent annexation of Crimea has resulted in dramatic changes not only in the political life, but also in the human rights situation on the peninsula. However, before going into detail, it is important to note that providing a fully comprehensive overview of all the human rights violations is hardly feasible. One reason for this is that the situation is still developing, as less than two years have passed since the annexation. As several processes are still ongoing, making a proper assessment is difficult. Another reason stems from the shortage of reliable information, which is a direct consequence of Russia's restrictive information and policing measures. Hence, it is only possible to map out the general trends concerning human rights violations.

⁴ See, for example, Tsereteli, 2015.

3.1 Access to the justice system and ability of the authorities to administer justice

The human rights situation in Crimea was far from perfect even before the Russian invasion, namely regarding the rights of the Crimean Tatars, media freedom, freedom of assembly and many other issues, well documented by several studies. At the same time, the institutional frameworks for protecting human rights were mostly in place and were functioning, albeit imperfectly⁵.

The annexation had a seriously negative effect on human rights in Crimea in general, and also on the access of victims of human rights violations to a fair trial and justice in particular, in connection with the highly restrictive legal framework applied there by the occupying Russian authorities. This is particularly the case because the Ukrainian institutional system of protecting human rights has ceased to function in Crimea since the annexation. Most importantly, on 7 April 2014 the regional Crimean office of the Ombudsman of Ukraine was forcibly closed down. Despite the fact that the Ombudsman still receives human rights-related information from Crimea through NGOs and local activists, the institutional protection of human rights has been seriously weakened due to the loss of the Ombudsman's regional presence (OHCHR, 2014: 27).

In the present study, some of the predominant human rights violations will be assessed together with the possibilities for administering justice, supported by concrete individual cases in order to demonstrate the severity of the situation. Human rights violations particularly affect members of the Crimean Tatar minority, as well as activists supporting Crimea as a part of Ukraine.

3.1.1 Killings, disappearances and abductions

First and foremost, there have been several cases where the right to life of Ukrainian citizens living in Crimea has been violated. Shortly after the annexation, illegal armed formations harassed journalists and political activists (Human Rights Watch, 2014a). According to a December 2015 Council of Europe report (Parliamentary Assembly of the Council of Europe, 2015: 8), at least three people were killed by unknown armed men. However, in all cases, investigations were suspended shortly thereafter without any results, or even without providing proper grounds for the suspension (Crimean Field Mission on Human Rights, 2016: 3).

In addition, there have been and still are numerous cases of disappearances, none of which has been properly investigated by the Russian authorities. Most victims belong to the Crimean Tatar ethnic group, such as Timur Shaimardanov, Dzhevdet Islaymov, Seyran Zinedinov (Human Rights Watch, 2014b) and others. Some were known political activists, but some had not been involved in any political movements at all. The bodies of some have already been found, bearing signs of violence, such as that of Edem Asanov, while others have disappeared without a trace, such as Islam Dzhyeparov and Mukhtar Arislanov. Police investigations yielded no results. Disappearances are continuing even at the time of completing this study: in January 2016 two other Crimean Tatars disappeared, Ernest Ablyazimov and Elvina Razakova (Crimean Human Rights Group, 2016: 3).

Pro-Ukraine activists have also been victims of disappearances and abductions by local paramilitary security forces since the Russian invasion, such as Mykhailo Vdovchenko, Natalya Lukyachenko, Serhiy Suprun, Oleksiy Gritsenko and others. Most of them were freed following the 'referendum' on joining Russia, such as Suprun and Gritsenko (Amnesty International, 2014), while some are still missing. Even the annual report for 2014 prepared by the High Commissioner for Human Rights of the Russian Federation

⁵ For details, see Human Rights Watch, 2012; Julliard and Vidal, 2010; Klymenko, 2015: 4-6.

admitted that abductions and disappearances constitute a serious problem in Crimea (Upolnomochennyi po pravam cheloveka v Rossiyskoy Federatsii, 2015: 105).

None of the aforementioned cases have been properly investigated. The families of the victims have been allowed to turn to lawyers, and investigations were formally launched, in accordance with the relevant laws of the Russian Federation. It is not the legal framework, but the lack of proper application and execution that is behind the problems. A report by the Parliamentary Assembly of the CoE concretely declared that the occupying authorities did not investigate the disappearances and did not permit international human rights organisations to access Crimea (Parliamentary Assembly of the Council of Europe, 2015: 9).

3.1.2 The right to citizenship

The right to citizenship of the inhabitants of Crimea has also been seriously violated following the annexation. Russia has adopted a law that automatically renders all residents of Crimea Russian citizens. Those who wished to retain their Ukrainian citizenship instead had to register themselves. According to the official position of the Russian Federal Migration Service, anyone who did not apply to retain his/her Ukrainian citizenship automatically lost it. However, first, it is highly questionable whether any state would have the right to deprive a person of another state's citizenship. Second, a very short one-month deadline was issued for the registration process, while registration was possible in only three offices, and information provided to the public about the process was inadequate (Crimean Field Mission on Human Rights, 2016: 11). Those who decided not to take up Russian citizenship – approximately 3 500 people, out of which 500 were Crimean Tatars (Upolnomochennyi po pravam cheloveka v Rossiyskoy Federatsii, 2015: 99) – automatically lost their jobs if they were employed by the state (such as teachers and public administration employees) because, in accordance with the Russian legislation, only Russian citizens can be employed in state institutions. Further, they also automatically lost all their social benefits (OHCHR, 2015: 4).

A blatant case is the one concerning the Crimean Ukrainian activist Alexander Kolchenko, who was accused by the Russian authorities of plotting a terrorist attack. After his arrest in Simferopol on 16 May 2014, he was transferred to Moscow. Hence, Kolchenko's case was processed by the Russian authorities, despite the fact that he still holds a Ukrainian passport and retains Ukrainian citizenship. Moreover, as a citizen of Ukraine, he was not allowed to meet the representatives of the Ukrainian embassy. Many other Crimean Ukrainians held in Russian detention facilities have also been deprived of the right to consular protection, such as Yuri Soloshenko, Valentyn Vygitsky and others (Crimean Field Mission on Human Rights, 2016: 12). In August 2015, Kolchenko was sentenced to ten years in prison for terrorism-related offences. His sentencing provoked widespread international condemnation from various bodies, including the Organization for Security and Cooperation in Europe (OSCE), Amnesty International and many other organisations. Kolchenko is also recognised as a political prisoner by the Russian Memorial human rights group (Memorial Pravozashchitnyi Tsentr, 2015).

Kolchenko's case is also connected with that of well-known filmmaker Oleh Sentsov, with whom he was arrested. Similarly to Kolchenko and together with two Ukrainians, Gennadiy Afanasyev and Alexei Chirnigo, Sentsov was also charged with terrorism-related offences, and was likewise transported to Moscow, where his case was processed. During the trial, he stated that he was forced to confess by being repeatedly tortured. However, the court refused to open an investigation into the alleged torture, claiming that Sentsov's injuries were self-inflicted. Sentsov was duly sentenced to 20 years in prison (Gorbunova and Lokshina, 2015). Afanasyev and Chirnigo received shorter sentences of seven years apiece. These cases stand as blatant examples of how the violation of one's right to citizenship has a collateral effect and limits one's right to a fair trial (OHCHR, 2015: 30) and to the administration of justice.

3.1.3 The right to political representation and free media

Another highly relevant issue that is still unfolding is the right to political representation. The Mejlis, the self-representative body of the Crimean Tatar people, has consistently refused to recognise the illegal Russian annexation, and has become a central coordinating forum for the Tatars in their efforts to preserve their institutions, media and individual rights. In response, the Russian authorities first banned two prominent leaders of the Crimean Tatar community, Mustafa Dzhemilev and Refat Chubarov, from the territory of the Russian Federation for five years in July 2014. Since then, the authorities have been regularly summoning Mejlis members and other leading Tatar figures to long interrogations over charges of extremism, participating in illegal demonstrations and acting against the territorial integrity of the Russian Federation. On top of this, their homes are often searched (Kharkiv Human Rights Protection Group, 2015a) and pressure is exerted against Tatars in other administrative ways as well. These include arresting people based on the Russian law pertaining to participation in demonstrations for marches held before the annexation, which were thus still under Ukrainian jurisdiction (Kharkiv Human Rights Protection Group, 2015b). Recently, in February 2016, following the energy blockade of Crimea, which was also organised by Tatars (Mills, 2015), Crimea's Russian prosecutor, Natalya Poklonskaya, requested the Crimean Supreme Court to declare the Mejlis an extremist organisation, which would effectively ban it (Radio Free Europe/Radio Liberty, 2016). If successful, this move will deprive the Crimean Tatars of their traditional, elected and legal political representative body on the peninsula, which will obviously weaken their opportunities to stand up for their human rights. The same goes for the occupying authorities' efforts to shut down Crimean Tatar media channels (Shevchenko, 2015).

The Russian occupation decisively changed the earlier pluralistic media environment of Crimea. Many Tatar and Ukrainian newspapers got banned, some had their editorial offices raided and vandalised by unknown perpetrators, while transmissions of Ukrainian stations were replaced by broadcasts from Russia (Freedom House, 2016e). Though the Russian law on the status of the Crimea prescribes both Ukrainian and Crimean Tatar to be state languages alongside Russian, in fact the number of schools and classes where Crimean Tatar and Ukrainian are taught has been severely reduced (Karamanoglu, 2015). This obviously limits the rights to education for both Ukrainians and Crimean Tatars living in the peninsula.

Regarding the possibilities for victims to access justice, the picture is bleak. Similarly to the cases of abduction and disappearance, the main problem is not the lack of a functioning legal framework nor the ability of the *de facto* authorities to conduct proper investigations and trials. Instead, all elements seem to converge to the conclusion that the main source of massive human rights violations is the Russian administration's politically motivated lack of willingness to process these cases impartially. In effect, in the author's view, the *de facto* authorities implement the existing legal framework in such a way that serves the blatant repression of Ukrainian and Tatar political activists. Regular over-classification of cases, such as classifying political activism as extremism, vandalism as terrorism, and so forth, is purposefully done to serve the underlying political motives.

3.2 Actions taken by the international community

As mentioned above, the international community closely followed the human rights-related developments in Crimea even before the Russian annexation, through monitoring, awareness-raising and providing policy recommendations. Following the annexation, the importance of these activities has increased dramatically.

The annexation was swiftly condemned by the European Union, the OSCE, the United Nations, as well as by the United States and several other countries. During the vote held on 27 March 2014 in the UN General Assembly, one hundred countries condemned Russia and supported the territorial integrity of Ukraine by calling on the international community not to recognise the results of the 16 March 2014

'referendum', and thus the takeover of Crimea and Sevastopol. As mentioned earlier, only 11 countries voted against, while 58 abstained. However, the Security Council (UNSC) failed to adopt a united position due to Russia's veto (UN News Centre, 2014). Meanwhile, the Office of the United Nations High Commissioner for Human Rights (OHCHR) has closely monitored the situation from the outset, and published a detailed report in 2014 about the human rights situation in Ukraine, a separate chapter of which was dedicated to Crimea (OHCHR, 2014: 26-31).

3.2.1 The role of the EU and the European Parliament

The European Union has emitted complex and multi-faceted reactions to the Russian invasion and annexation of Crimea. Although the set of restrictive measures introduced in connection with the annexation (Council of the European Union, 2014a and 2014b) inflicted a degree of economic harm on Moscow, the overall concrete effect was far too limited to halt Russia's actions, particularly when compared to the domestic political dividends Putin gained as a result of the annexation (Hill, 2015: 59).

However, the political significance of the sanctions should not be underestimated. They are important firstly from the perspective of actively protecting the fundamental principles of Europe, laid down in the Charter of the United Nations and also in the Lisbon Treaty, including the ban on the use of force against the territorial integrity of any state. Secondly, the sanctions send out a strong political message that violating the territorial integrity of Ukraine is not something that Russia can get away with unscathed, as it did following the 2008 war in Georgia. In other words, it was important to make it clear to the Kremlin decision-makers that there will be no easy way back to 'business as usual' and the *status quo ante* in EU-Russia relations. Thirdly, they contribute to awareness-raising both in the EU and in Ukraine that the EU maintains its interest and does not abandon people living in the occupied territories.

Similar actions were taken by the European Parliament. As early as 13 March 2014 the European Parliament adopted a resolution condemning the Russian aggression against Crimea, only two days after Russian-led separatists proclaimed the 'independence' of the region on 11 March (European Parliament, 2014d). The swiftness of the EP's reaction was an important indicator of the EU's lasting opposition to Russia's military aggression. Further, the fact that the Parliament urged the Council to adopt wide sanctions against Russia in the event of annexation was also important because it made Russian decision-makers realise the commitment and the coherence of the EU after sanctions were actually adopted.

The same is true for the EP's decision to suspend inter-parliamentary cooperation with the Russian Duma in the framework of the Parliamentary Cooperation Committee (European Parliament, 2014d). When nearly two years later, on 4 February 2016, the EP resolution (European Parliament, 2016) on the human rights situation enumerated in detail the violations and made the resumption of cooperation with Russia, as well as the lifting of sanctions, conditional upon the return of Crimea to Ukrainian control, it sent a strong message to the Russian authorities about the continuity and consistency of the EP's policies. The reactions of Russian lawmakers indicated that the firm stance of the EP had indeed surprised them, as they were expecting a more compromise-ready attitude (TASS, 2016).

Regarding inter-parliamentary cooperation, the EU-Ukraine Parliamentary Association Committee already held two meetings in February and in November 2015, and both made important recommendations regarding the human rights in Crimea. On the first session the parties drew attention to the massive human rights violations committed in Crimea and in Eastern Ukraine, and called for holding regular meetings to record and monitor the human rights situation (EU-Ukraine PAC, 2015a). The call has been reiterated by the second session (EU-Ukraine PAC, 2015b), and has become a reality since then.

Another important outcome of the EP's Crimea-related actions is that by referring to the findings of international human rights organisations, the visibility of the work and agenda of these organisations is increased, and the synergy between them is consolidated. A good example was the 4 February 2016 Resolution on Crimea, which directly referred to the work of Freedom House, as well as to the findings of

the July 2015 OSCE mission (European Parliament, 2016). The Subcommittee on Human Rights (DROI) plays a key role in providing the EP with up-to-date and actual information about the human rights situation in the Eastern neighbourhood, including Crimea.

3.2.2 The OSCE

The OSCE has also been involved in monitoring the situation from the very beginning, including an on-the-spot presence in Crimea. The latter had to be discontinued, however, after a meeting between OSCE Representative on Freedom of Speech Dunja Mijatovic with local journalists in Simferopol on 5 March 2014 was blocked by armed members of the Russia-backed 'Crimean self-defence militia' (Investigator.ua, 2014). From then on, the OSCE was unable to access the peninsula, either via the OSCE representation in Kyiv, or through the OSCE Monitoring Mission to Ukraine.

Hence, in the Helsinki Declaration adopted by the Parliamentary Assembly in July 2015, the OSCE condemned Russia's actions in Ukraine, including Crimea (OSCE Parliamentary Assembly, 2015: 22). The document concretely mentioned the cases of Sentsov and Kolchenko, as well as the abductions. In addition, it demanded unhindered access by the OSCE Monitoring Mission to all areas of Ukraine, including Crimea, because for almost two years the most serious human rights protection problem on the peninsula had been the exclusion of international organisations by the occupying authorities.

This problem also affected the joint mission of the OSCE Office for Democratic Institutions and Human Rights and the High Commission on National Minorities between 6 and 18 July 2015: although their objective was to assess the human rights situation in Crimea, *de facto* authorities did not allow them onto the peninsula, and thus they could only work on Ukraine-controlled territory (OSCE Office for Democratic Institutions and Human Rights and High Commissioner on National Minorities, 2015: 4-5).

3.2.3 The Council of Europe

The Council of Europe, however, managed to change this. The CoE has followed the situation particularly closely from the very beginning. In June 2015 the Parliamentary Assembly of the CoE (PACE) published a very detailed report on missing persons in Ukraine, including the situation in Crimea (Parliamentary Assembly of the Council of Europe, 2015: 8). Moreover, in January 2016 a decision was taken by the CoE to launch a mission to Crimea, led by veteran diplomat Ambassador Gérard Stoudmann, to assess the human rights situation. The justification for the mission was that the population of Crimea is covered by the European Convention on Human Rights, regardless of where the region belongs in territorial terms. Russia, as a member of the Council of Europe, accepted this reasoning, and the mission was consequently able to visit Crimea and conduct extensive interviews and research between 25 and 31 January (Council of Europe, 2016). At the time of drafting the present analysis, their final report has not yet been published. However, to date, the CoE has been the first and only international human rights organisation that has been granted access to the peninsula to assess the human rights situation. This is an achievement the significance of which should not be underestimated.

3.3 The role of legal professionals and civil society actors

As described earlier, since the annexation neither the institutional human rights protection framework of Ukraine, nor international human rights non-governmental organisations (NGOs) have been granted access to the occupied peninsula. Consequently, the role of legal professionals and civil society actors, many of whom are on the ground, has become much more important in protecting human rights than it was earlier. At present, they constitute basically the only forum to which victims of human rights abuses can turn. This is particularly so when there is a political component involved in the abuses, as in the case of Ukrainian and Crimean Tatar political activists. In such situations, turning to the state human rights protection organisations of the Russian Federation would be of little or no use, even if trust were evinced among the Crimean population towards the new *de facto* authorities.

Based on the experiences of the past two years, there are two main fields of civil society activities for protecting human rights. First, they provide concrete, everyday legal assistance to victims of human rights abuses. This is still possible, although certain cautionary measures are naturally required. Family members of killed, missing or abducted Crimeans are able to turn to private lawyers, advocates and legal advisors. Whether legal assistance is effective in providing justice for the victims is another question, but the possibility of seeking legal assistance exists, basically in accordance with the relevant laws of the Russian Federation. In addition to normal private lawyers, legal advice is also provided by NGOs, both by those operating on site, for example the KrymSOS organisation and the Crimean Field Mission for Human Rights (Portal on Human Rights in Crimea, 2015), and also by those working from the Ukraine-controlled territory, such as the Kharkiv Human Rights Group (Kharkiv Human Rights Protection Group, 2015).

Second, in the absence of an international presence, civil society actors are the only ones who conduct systematic, regular monitoring of the human rights situation and information-gathering both for their Ukrainian and international partners. Recipients include the media, other human rights organisations and also governments. These local actors are the ones who have access to first-hand field information, and thus at present constitute a key asset in the efforts aimed at protecting human rights in Crimea. In this respect, one needs to mention the Russian Memorial human rights group as well because it plays a key role both in monitoring the proceedings in the Crimea-related cases (Sentsov, Kolchenko and others) and in raising awareness of the issues inside Russia.

There are documented cases where active assistance and awareness-raising has actually saved lives. During the March 2014 disappearances, Amnesty International, in cooperation with local activists, actively campaigned to make the occupying authorities release abducted Ukrainian persons such as Suprun, Lukyachenko and others. The domestic and international visibility local and international human rights organisations created played a key role in the decision by the *de facto* authorities to release the hostages⁶. All in all, it is of paramount importance to provide all possible support for these local legal professionals and civil society activists, particularly while international human rights organisations are denied access to the peninsula.

4 Transnistria

When assessing the human rights situation in Transnistria, one needs to keep in mind that this conflict is fundamentally different from the other four conflicts examined in the present study in the sense that there has been no ethnic element involved. Both the struggle for the secession from Moldova, as well as the civil war were not ethnic, but decisively political conflicts over the status of the region. Hence, in Transnistria there are no such ethnic groups present which the *de facto* authorities would aim to collectively suppress.

4.1 Access to justice

Unlike Crimea, Transnistria is not under the jurisdiction of any recognised UN member state, as the Moldovan authorities are unable to exercise control over it. Hence, the region constitutes a legal 'black hole', which also affects the human rights and fundamental freedoms situation in the region.

Meanwhile, in order to seek international recognition, the *de facto* authorities have set up an institutional-legal framework which is largely similar to the ones in recognised states, and thus in a way they are mimicking state-like functions (Popescu and Bielawski, 2007: 6). Hence, Transnistria has a developed *de jure* framework for the protection of human rights. The constitution contains explicit and detailed commitments to human rights (Pridnestrovskiaia Moldavskaia Respublika, 1995); moreover, the

⁶ The father of one of the victims explicitly thanked Amnesty International for campaigning, see Amnesty International, 2014.

de facto authorities even pledged unilaterally to respect several international human rights agreements⁷. Since 2006, Transnistria has also had an Ombudsman responsible for the protection of human rights (Pridnestrovskaja Moldavskaia Respublica, 2006). However, the career path of the Ombudsman, Vassily Kalko, raises some concerns about his impartiality, taking into account that before his appointment he worked at the Investigation Department of the Ministry of Justice of the *de facto* authorities (FIDH, 2014a: 23).

However, while *de jure* in place, *de facto* these institutions essentially serve not the protection of human rights, but the survival and stability of the regime. Hence, victims of human rights violations have only very limited possibilities to seek justice. This is particularly the case because the Transnistrian judiciary system is highly dependent on the government, and in many cases it executes their will instead of providing justice (Freedom House, 2016d). An illustrative case was the one concerning Alexandru Zubco, a human rights defender who sued the Transnistrian security service, the KGB, at the Tiraspol court for a ban imposed on his car in June 2014. When he was on his way to the hearing in December 2014, he was prevented from entering the separatist entity, and thus he could not gain access to justice even in his original case (FIDH, 2014b).

Despite constitutional guarantees of freedom of speech, the media environment is restricted, as well as the freedom of assembly and association (Freedom House, 2016d). A particularly serious problem is that Transnistrian authorities continuously hinder the operation of schools that use Latin script and Romanian language, contradicting the constitutional guarantees of multi-ethnicity and multi-linguality, as well as the right to education (United Nations, 2013: 36).

The right to freedom of religion constitutes a blatant example of the gap between *de jure* rights and *de facto* possibilities to access justice. While the Transnistrian constitution recognises the right to freedom of religion, following a law amendment in 2007 all religious organisations had to re-register, and many smaller communities were not allowed to do so (United Nations, 2013: 38). Further, the law on conscription does not allow alternative military service (Freedom House, 2016d). As a result, members of such religious groups who cannot take up arms, such as Jehovah's Witnesses, frequently receive criminal punishments, including prison sentences⁸.

The freedom of movement is repeatedly and severely hindered. Many Moldovan citizens are banned from passing the separatist entity with no explanation given. This cannot even be prevented, as Moldovan *de jure* authorities have no access to the ban lists of Transnistria. There are even cases where Moldovan citizens living in the government-controlled left bank of the River Dniestr were not allowed to cross Transnistrian territory on their way home.

4.2 The ability of the authorities to administer justice

The *de jure* Moldovan authorities are unable to administer justice in Transnistria due to the lack of access and the lack of cooperation in legal affairs between the two sides. From this perspective, Chisinau has very limited freedom of movement because institutionalised cooperation with the separatists in legal matters could be interpreted as *de facto* recognition of the overall legitimacy and validity of their legal system.

The legal system in Transnistria suffers from a large number of weaknesses and incoherences regarding respect for human rights. This is partially due to the inherently poor legal quality of the laws passed, and

⁷ Both the UN International Covenant on Civil and Political Rights and the UN International Covenant on Economic, Social and Cultural Rights, as well as the European Convention on Human Rights and the Convention on the Rights of the Child, see United Nations, 2013: 5.

⁸ For a detailed overview, see Baran, 2011.

partially due to the massive systemic influence that political and business groups have on the legislative system.

A blatant example of a serious legal shortcoming is that until 2012 there was not even a legal definition of torture (FIDH, 2013: 6), and thus no one could be held responsible for the mistreatment of detainees. Inadequate prison conditions, including frequent cases of torture (United Nations, 2013: 5), still constitute a major problem. Meanwhile, Transnistrian Ombudsman Vassily Kalko has repeatedly downplayed the significance of the torture and ill-treatment issue instead of trying to tackle it, while openly declaring that prison conditions did not constitute a priority (FIDH, 2013: 36-37).

All in all, regarding the legal protection of human rights, the most important missing element is not the ability, but the will of the *de facto* authorities to administer justice. The situation of the *de jure* Moldovan authorities is quite the opposite: even if they wished to provide justice on the Transnistrian side, they would be unable to do so.

4.3 The role of legal professionals and civil society

Separatist entities offer few prospects for the few well-trained legal professionals who do not intend to join the *de facto* government structures. Widespread corruption, incoherence concerning the system of laws, weak legal education as well as major shortcomings in the rule of law are all compelling reasons for them to leave. For Transnistrian lawyers, both Russia and Moldova are obvious destinations for working outside of the separatist entity.

At this point, victims of human rights violations can mostly rely on assistance provided by civil society activists and organisations. The latter also play a key role in monitoring the human rights situation in the separatist entity, which is particularly important as the international community has only very limited access to Transnistria.

One of the most important civil society actors engaged in the promotion and protection of human rights in Transnistria, as well as systematic monitoring, is PromoLex, a Moldovan NGO that had worked for more than a decade in Transnistria as well. Although in April 2015 the *de facto* authorities banned PromoLex from accessing the region, it is still able to conduct distance monitoring. In February 2016 the executive director of the organisation, Ion Manole, urged the international community as well as the Moldovan authorities to become more engaged in monitoring human rights in order to prevent the situation from deteriorating (PromoLex, 2016). PromoLex is, of course, not the only NGO in Transnistria: one could also mention the Apriori Information Rights Centre operating in Tiraspol⁹, supported by both the CoE and the Czech human rights organisation People in Need¹⁰.

Civil society groups have long been under the surveillance of the local security service, the KGB. From the perspective of regime security, this is hardly surprising, as *de facto* authorities even officially (!) perceive the activities of Western-funded NGOs as efforts to undermine the stability of the separatist entity (Komitet Gosudarstvennoy Bezopasnosti Pridniestrovskoy Moldavskoy Respubliki, 2015). Although KGB pressure became slightly less intrusive in the early 2010s than it had been previously (United Nations, 2013: 14), there has been a renewed upsurge since late 2013, most probably connected to the events in Ukraine. In November 2014, the separatist authorities drafted their own version of Russia's 'foreign agent' law (Article19, 2015), which may serve as a tool to strengthen the repression against civil society. Meanwhile, frequent intimidation actions continue: in 2014 two Transnistrian human rights activists, Nicolae Buceatchi and Luiza Dorosenco, were accused of 'subversive activities', and were repeatedly

⁹ Apriori Informatsionnoy-Pravovoy Tsentr, <http://apriori-center.org/about>, last accessed on 08/04/2016.

¹⁰ List of People in Need, 'Support for Transnistrian non-governmental organizations', available at: <https://www.clovekvitsni.cz/en/human-rights/country/transnistria/programy>, last accessed on 08/04/2016.

harassed by the KGB, together with efforts made to compromise them (Civil Rights Defenders, 2014). Blocking the operation of PromoLex in Transnistria chimes with the same logic (FIDH, 2015).

4.4 The role of the international community

Despite its non-recognised status, Transnistria is by far the most open entity of the five frozen conflicts examined here in terms of cooperation with the international community. The OSCE has been present in Moldova since 1993. In terms of human rights, the mission helps Moldovan authorities address problems related to prison conditions, torture, as well as freedom of religion, assembly, language and cultural rights. The OSCE is present in Transnistria as well, and maintains an office in the separatist capital, Tiraspol, where its activities are focused on the development of civil society, the rights of detainees, and Moldovan-administered schools in the separatist territory (OSCE Mission to Moldova).

The UN also maintains a full presence in Moldova, and is active on both sides of the River Dniestr through the United Nations Development Programme (UNDP) (UNDP Republic of Moldova, Human Rights Protection and Promotion). In Transnistria, the main focus of their activities is confidence-building measures at the community level, including the development of civil society (UNDP Republic of Moldova, Support to Confidence-Building Measures). The latter is particularly important for the NGOs that operate in the separatist entity. Further, the first ever comprehensive human rights report by an international organisation about Transnistria, the so-called Hammarberg report, was prepared in UNDP frameworks.

4.4.1 The role of the EU and the European Parliament

Out of the five frozen conflicts studied, EU involvement meets the least resistance in Transnistria. This is mainly due to the full support and consent received from the metropolitan state. The explanation of this support goes back to 2003, when a so-called '3D' strategy was elaborated in Chisinau, meaning demilitarisation, decriminalisation and democratisation (Nantoi, 2004). The underlying idea of this strategy is that peaceful re-unification with Transnistria is possible via the gradual, step-by-step transformation of the separatist region, as well as via making Moldova more attractive to the population of the separatist region. Though the original '3D' strategy is not much present any more in the discourse, Moldovan authorities are still strongly in favour of all initiatives contributing to the transformation of Transnistria.

Thanks to strong support from Chisinau, the EU is engaging in active and multi-faceted involvement in the Moldova-Transnistria conflict (Nuta, 2012: 71). However, the main focus area of the EU's activities regarding Transnistria is conflict settlement, while protection of human rights in the separatist region is of lesser importance.

Besides being an observer in the 5+2 negotiation format, the EU's first ever crisis management mission in the Eastern neighbourhood started in Moldova. Since 2005, the European Union has been continuously operating a Border Assistance Mission (EUBAM) to Moldova and Ukraine. EUBAM is mandated to assist and facilitate efficient border and customs control between Ukraine and Moldova, including the Transnistrian section of the border. Although the mission's mandate has no explicit human rights element, it is authorised to assist local authorities in combating illegal migration and human trafficking (EU Border Assistance Mission to Moldova, 2015), and thus it indirectly contributes to the improvement of some aspects of the human rights situation as well. Moreover, tighter border control has significantly reduced the smuggling-related revenue of the separatist entity, and thus contributed to the co-operativeness of Tiraspol with Chisinau and the European Union (Interview with former EUBAM official, Budapest, December 2015).

Since 2009, the EU has also been supporting confidence-building measures (CBM) on Transnistrian territory (Nuta, 2012: 58). In addition to the CBMs, the EU Delegation to Moldova also supports a large number of projects dealing with governance, democracy, human rights and economic and institutional

reforms. Some of the grantees are active on Transnistrian territory as well (Delegation of the European Union to Moldova).

The most active role in protecting human rights in Transnistria was played by the Council, as it introduced a travel ban against Transnistrian leaders involved in the suppression of Latin-script Moldovan schools in 2004 (Council of the European Union, 2004). The travel ban has been extended several times, and is currently in force until 31 October 2016 (Council of the European Union, 2015). Meanwhile, the two EU Special Representatives, who worked in Moldova between 2005 and 2011, namely Adriaan Jacobovits de Szeged and Kálmán Mizsei focused their activities on conflict settlement, and had not been specifically mandated to protect human rights in the separatist entity. Human rights and fundamental freedoms were mentioned only as parts of the EU's general policy objectives in Moldova (Council of the European Union, 2005).

The European Parliament is playing a largely symbolic, but nonetheless important role by continuously condemning human rights violations, including the restrictions imposed upon Romanian-language schools in Transnistria. In its position, the Parliament has frequently referred to the findings and actions of the OSCE, thus strengthening the coherence of the actions of different international actors. A resolution adopted in February 2014 (European Parliament, 2014a) specifically mentioned the pressure from the *de facto* authorities exerted against the Lucian Blaga school in Tiraspol, and called for improvement in the functioning conditions of other Romanian-language schools in the separatist region. In addition to this, the EP has repeatedly condemned Russia for its involvement in the separatist conflicts in the Eastern neighbourhood, mentioning Transnistria, South Ossetia, Abkhazia and Nagorno-Karabakh in a June 2015 resolution (European Parliament, 2015) and in many more.

5 Abkhazia and South Ossetia

Abkhazia and South Ossetia need to be discussed together, for a number of reasons. First and foremost, *de jure* they both belong to Georgia, and Tbilisi lost control over both of them amid very similar circumstances: for the first time following the wars of the early 1990s, and the second time after the 2008 war against Russia. Second, Russia plays a key role in maintaining the separatist *de facto* states both via its massive military presence as well as via political and economic support. Third, both regions are similar in that there are two distinctly different dimensions to the human rights situation: one concerning the internally displaced persons who had to leave their homes in Abkhazia or South Ossetia, and one concerning the inhabitants still living there.

5.1 Access to justice

Similarly to Transnistria, Abkhazia and South Ossetia also constitute legal 'black holes' in the sense that they do not fall under the jurisdiction of any recognised states. This makes it hard, if not impossible, for victims of human rights violations to efficiently seek justice. Further, it is true for Abkhazia and for South Ossetia that they mostly imitate state-like functioning (Nuta, 2012: 51), including in the field of human rights. It is important to note, however, the political differences between the two separatist regions. Abkhazia is much keener on preserving, defending and even developing its "statehood" and identity (also vis-à-vis Russia) than South Ossetia, which is already largely russified.

De jure both territories have human rights mentioned in their constitutions, although the Abkhazian constitution (Republic of Abkhazia, 1994) is much more detailed in this respect, while the South Ossetian document (Kavkazskiy Uzel, 2006) even fails to mention the right to life (!) (Kavkazskiy Uzel, 2013). Even though both administrations frequently refer to various international human rights agreements (Popescu and Bielawski, 2007: 6), this is done mostly in order to strengthen their own international legitimacy, and not due to any real commitment to the principles of these agreements, nor to any will to implement them.

Both entities have set up basic frameworks that imitate the Western institutional background of protecting human rights: Abkhazia has a Human Rights Commissioner, while in South Ossetia the position of Presidential Commission of Human Rights was created. However, both positions are hollow in terms of their real powers and importance. The first South Ossetian plenipotentiary, David Sanakoyev, was not an independent figure at all, but was an integral part of the local political establishment to such a degree that he was a presidential candidate in 2012 and also served as Minister of Foreign Affairs. His successor as plenipotentiary, Inal Tasoev, openly admitted in an interview given shortly after his appointment that he did not have adequate power or real leverage over the government to secure the protection of human rights (AlaniyaInform, 2012). The political differences between the two entities also affect the roles of the Ombudsmen. According to anecdotal evidence, the Abkhaz human rights Ombudsman is reportedly communicating with his partner in Tbilisi, though only informally, of course. On the contrary, the Ombudsman of South Ossetia has neither the ambition, nor the possibility to do so.

Moreover, in South Ossetia the whole legal system is severely biased in favour of the ruling elites, including the justice system (Freedom House, 2016c), causing serious incoherence. The situation is better in Abkhazia, where the justice system is more in line with the Russian one, thus is more coherent; however, it still suffers from a number of shortcomings. Judicial procedures tend to proceed very slowly, while defendants often have only limited access to trained legal assistance, and long pre-trial detention is a frequent practice (Freedom House, 2016a). Amid such circumstances, victims of human rights violations cannot expect much by turning to the authorities. Moreover, as pointed out by Freedom House, they are often actively discouraged from seeking justice.

This is particularly true for the ethnic Georgians still living in Abkhazia (more than 47 000 have returned from Georgia since 1994, and another 5 000 are commuting across the administrative border on a daily basis) (Freedom House 2016a), who are often subjected to restrictions on their freedom of movement, restrictions concerning receiving education in their native language, as well as forced passportisation. However, due to the deficiencies in the legal system described above, instead of seeking justice, a decisive majority just seek workable solutions: they obtain an Abkhazian passport because the lack of one results in serious constraints on their everyday life. If Russian border guards or separatist forces detain them at the administrative border for fabricated reasons, as is often the case in South Ossetia, victims prefer to pay the requested bribes instead of making a legal case.

The limited access to justice also affects Russian victims of human rights violations. Since 2010 there have been cases where Abkhazian authorities have confiscated the homes of ethnic Russians (International Crisis Group, 2010: 13) who could not do much to retaliate due to the deficiencies (International Crisis Group, 2013: 9) in the legal system (MKRU, 2010). The same is true for those Russian citizens who lost their homes in the 1992-1993 war. Despite the huge number of claims, there is only very limited progress in terms of restitution (International Crisis Group, 2013: 9-10).

A particular group with only very limited access to justice comprises those victims of human rights violations committed during the 2008 war. Although many crimes and atrocities were committed during the conflict, perpetrated by all warring parties, albeit to varying degrees, as described in detail in an OSCE Report from November 2008 (OSCE, 2008), as well as by Human Rights Watch, the most serious atrocities took place in South Ossetia and were committed by irregular fighters on the separatist side, including several cases of killing, torture, inhuman treatment, taking hostages for ransom, as well as the looting and burning of civilian homes. The initial Georgian attack on Tskhinvali, which involved the indiscriminate and disproportionate use of tanks and heavy artillery shelling, also took its toll on civilian lives and properties (Human Rights Watch, 2009).

The main problem in terms of gaining access to justice is the lack of willingness on the part of the *de jure* or *de facto* authorities to conduct proper investigations. Neither the separatists nor the Russians admit

that their units committed any atrocities against the civilian populations, and even the Georgian side is very reluctant to conduct proper investigations into the crimes committed¹¹.

5.2 The ability of the authorities to administer justice

The human rights violation that affects by far the most people in the region is the issue of Internally Displaced Persons (IDPs), namely the ethnic Georgians who were forced to leave Abkhazia and South Ossetia. According to an estimate from 2015, there are thousands of such displaced, with more than 200 000 from Abkhazia, and approximately 20 000 from South Ossetia (Freedom House, 2016c). They are still unable to return to their homes and regain the property they have lost, or at least receive compensation.

The main problem with administering justice is connected to the fact that both sides are factually unable to conduct investigations on each other's territory due to the lack of access. To make things even worse, Tbilisi and the separatist entities are hardly cooperating with each other in legal affairs at all, and neither does Russia with Georgia. At this point, even if Georgian and international courts were to recognise the rights of IDPs to return to their homes in the separatist territories and regain their property, these decisions simply could not be implemented.

The limited ability of the authorities to administer justice also affects the victims of human rights violations committed during the 2008 war by either side. As the report by the Norwegian Helsinki Committee puts it, 'Georgian investigators are unable to access South Ossetia, where the most serious crimes were committed, and investigate there and in Russia', which makes Georgia unable, even if willing, to conduct proper investigations (Norwegian Helsinki Committee, 2011: 1-2). In addition, deficiencies in the legal systems of the two separatist entities, particularly in South Ossetia, constitute additional factors that render the *de facto* authorities unable to administer justice, even if they were willing to do so.

5.3 The role of legal professionals and civil society

Inside Abkhazia, and particularly South Ossetia, the possibilities of obtaining legal assistance are very limited. The emigration of trained legal professionals from the two separatist entities constituted a problem even before the 2008 war (Popescu and Bielawski, 2007: 8). Since 2008, normal life has hardly been restored at all in South Ossetia: at present the population of the region is only around 50 000, in addition to approximately 4 000-5 000 Russian soldiers. South Ossetia's budget is built almost exclusively on Russian economic aid. Amid such circumstances, most legal professionals either leave the region, or decide to join the state structures. In either case, the victims of human rights violations can hardly count on them.

The situation is not much better for NGOs either. The South Ossetian NGO sphere is strongly influenced by the state. In 2014, despite repeated protests from civil society actors (ASI, 2014), South Ossetia adopted its own version of Russia's 'foreign agent' law, which allows the state to closely monitor civil society activities (Freedom House, 2016c). In 2015 the two most prominent South Ossetian NGO activists, Lira Kozaeva, leader of the Association of South Ossetian Women for Democracy and Human Rights, and Dina Alborova, head of the Association for Social, Economic and Cultural Development, announced that they had to close down their organisations due to the continuing intimidation campaign and harassment conducted against them by the regime (Cagara, 2015). There are very few Georgian human rights NGOs active or even present in South Ossetia due to the restrictive legal environment.

¹¹ For a detailed report, see Norwegian Helsinki Committee, 2011: 1-2.

Most remaining NGOs have close ties to Russia, and thus serve as agents of Russian interests rather than operate as real civil society organisations. The predominantly pro-Russian sentiments of the local population create favourable conditions for Russian influence. According to an earlier account from Kozaeva, out of the approximately 150 registered civil society organisations only ten could be regarded as real NGOs (3 Sector). An additional particularity is that NGO activities are concentrated in the capital, Tskhinvali, and hence in the countryside there is hardly any civil society to speak of.

The situation is considerably better in Abkhazia. The region has a diverse, flourishing NGO sector that is able to influence government policies as well. This included a strong NGO campaign for a judiciary reform intended to increase the impartiality, transparency and efficiency of the criminal code (Freedom House, 2016a). An Abkhazian particularity is the strong role of women in the NGO sector (Caucasus Times, 2014). An additional positive difference compared to isolated South Ossetia is that several Georgian human rights NGOs have field offices operating in Abkhazia, such as the Human Rights Centre¹². Several Georgia-based NGOs focus their work on the situation and rights of the IDPs (Insight on Conflict). The EU is also playing a role in sponsoring people-to-people contacts through the Confidence Building and Early Response Mechanism (COBERM) programme, implemented with the assistance of the UNDP – which has regular access to Abkhazia and works with NGOs from both Georgia and Abkhazia.

5.4 The role of the international community

Similarly to the case of Transnistria, international human rights organisations have very limited and often hectic access to the separatist territories; however, the situation is still much better than in Crimea. Hence, international monitoring of the human rights situation has been more or less possible, albeit with occasional hardships and limitations. There is a considerable difference between Abkhazia and South Ossetia: while the former is more open and readier to cooperate with international organisations, Tskhinvali has recently become almost completely isolated, particularly since Russian forces started to push the administrative border line further into Georgian territory.

Following the 2008 war, both the OSCE and Human Rights Watch were able to prepare detailed reports on the human rights violations committed during the conflict and on the post-conflict situation. They were also able to access both Abkhazia and South Ossetia. International Crisis Group was also successful in monitoring and reporting on Abkhazia in 2012 (International Crisis Group, 2013). In order to strengthen the monitoring, Western human rights organisations have been cooperating intensively with local NGOs that have both access to and information on the actual situation on the ground.

Regarding the active promotion of human rights, the possibilities of international organisations are much more limited, due to the legal 'black hole' status of the non-recognised entities. However, there are still a number of successful examples: the International Red Cross is actively involved in mediating between Tbilisi and the separatist entities over the fate of missing and detained persons (Georgia Today, 2016). The Red Cross also cooperated with the landmine clearing organisation Halo Trust in the Shida Kartli region in assessing land for water supply projects once the ground had been cleared of explosives (Halo Trust).

An important new development in the active international promotion of human rights is that the International Criminal Court (ICC) has launched an investigation into the war crimes allegedly committed during the fighting in South Ossetia in August 2008 (BBC, 2016). Although Russia is not a member of the International Criminal Court, the fact that the ICC found sufficient evidence to launch an investigation increases the chances that justice could be provided at least in some cases.

¹² See Human Rights Center, <http://www.hridc.org/>, last accessed 04/03/2016.

5.4.1 The role of the EU and the European Parliament

The European Union is an important player in conflict settlement and the protection of human rights in Georgia. Regarding the separatist territories, the EU's contribution remains mostly indirect, as the EU Monitoring Mission does not have access to the breakaway republics, and the EU has no presence there.

The EU is able to contribute most to the protection of human rights in the separatist regions via the intensive and widespread support it has been providing to local human rights NGOs working in the occupied territories. However, the EU's assistance projects, including human rights-related ones are limited by two main factors. First, the EU can operate in the separatist territories only with the consent of the Georgian authorities, and Tbilisi has not been entirely amenable, even though it is true that in recent years a policy shift towards 'engagement, but not recognition' has helped to start easing tensions. In fact, Georgia has imposed two main conditions on the EU's human rights protection work in Abkhazia: the assistance should not help the separatists to consolidate their regime, and it should not create contacts between the separatist régime and the international community in any way (Nuta, 2012: 70). Second, the EU also has to cope with the firm refusal on the Abkhazian side to allow any project that would describe the region as a part of Georgia, or which involves Georgian state funding. Besides, Sukhumi cannot openly contradict Moscow either. Amid such circumstances, the efficiency of the EU's human rights promotion work in the separatist territories¹³ depends very much on the personalities present in the EU mission, and not that much on the institutional framework (Nuta, 2012: 71). A good example of pragmatically overcoming such limitations, with UNDP help, and hence in a format which can be seen as more 'neutral' by all sides, is COBERM, as described above.

The European Parliament plays a largely symbolic, but nonetheless important role. It was the European Parliament that first proposed sending an EU monitoring mission (EUMM) to Georgia, as early as 3 September 2008 (Nichol, 2009: 19). In the same resolution, the EP strongly condemned Moscow's recognition of the 'independence' of Abkhazia and South Ossetia. While addressing the war, the EP maintained a balanced, human-rights-oriented position by mentioning both the violence against civilians and the forced resettlement of ethnic Georgians from Abkhazia and South Ossetia. The EP also called on both sides to immediately define the locations where they used cluster munitions in order to prevent further losses among the civilian population (European Parliament, 2008). What is more, the EP has repeatedly insisted¹⁴ that the EUMM should be provided with unhindered access to both Abkhazia and South Ossetia, because the mission's presence could be an important contribution to protecting human rights. While EP parliamentary missions to Georgia did feature visiting the Abkhazian or South Ossetian theatres prior to the 2008 war, there has not been any such attempt ever since. The EP has, however, strongly backed the role played by the EU through COBERM in enhancing confidence building measures and people-to-people (P2P) contacts.

6 Nagorno-Karabakh

Nagorno-Karabakh is a highly isolated entity in terms of geography, economy and the security situation described in detail earlier. As a direct consequence of the ongoing armed conflict, the entity is technically still at war (International Crisis Group, 2005). The *de facto* state of war has a strong cohesive effect on society, meaning that it is in the essential interest of the *de facto* authorities to mediate conflicts and handle internal tensions as efficiently as possible in order not to damage the state's self-defence capabilities. Consequently, there is little room for massive or lasting repression, simply because it would

¹³ Although Nuta describes only the Abkhazian case in detail, taking into account the much more closed and isolated position of the South Ossetian regime, it is safe to assume that the situation is no better there.

¹⁴ For example, see European Parliament, 2011.

weaken the necessary coherence. Due to this 'besieged fortress' mentality, the sense of patriotism is very high throughout society, which affects the political life as well. As Freedom House puts it, 'dissent – including political opposition – is generally regarded as a sign of disloyalty and a security risk. As a consequence, opposition groups have either disappeared or been brought into the government over the past several years' (Freedom House, 2016b).

However, if compared to the other frozen conflicts of the post-Soviet region, Karabakh is still more pluralistic, albeit with severe limits. While none of its elections have been recognised as valid by the international community, political life is diverse and intense. The way the presidential election was conducted in 2015 constituted a significant improvement compared to the previous one held in 2010¹⁵. Further, despite its non-recognised status, Karabakh is conducting a remarkably successful foreign policy, particularly if compared to South Ossetia or Abkhazia in order to seek international recognition, or at least to strengthen contacts with the outside world (Goetz, 2015).

6.1 Access to justice

While assessing the human rights violations and the victims' access to justice, one needs to keep in mind that since the end of the war there has been no such minority living in Nagorno-Karabakh, which the *de facto* authorities would regard as a threat to national security. The region's indigenous Azerbaijani population was completely expelled more than two decades ago, while thousands of them were killed. In this sense, the war and ensuing ethnic cleansing created a gruesome, but firm *fait accompli*. This is an important difference compared to Crimea, Abkhazia and South Ossetia, where part of the indigenous population – the Crimean Tatars and ethnic Georgians, respectively – is subject to widespread repression and human rights violations. Of course, the situation of the approximately 800 000 IDPs still living in Azerbaijan constitutes an integral part of the human rights environment of Nagorno-Karabakh, and will be addressed separately.

Similarly to Transnistria, Abkhazia and South Ossetia, Nagorno-Karabakh is also a human rights legal 'black hole' in the sense that no recognised state exercises jurisdiction over it. In line with its efforts to gain international recognition, Nagorno-Karabakh has set up an institutional framework largely similar to those of recognised states, including the necessary legal frameworks for the protection of human rights. In the constitution of Nagorno-Karabakh (Constitution of the Nagorno-Karabakh Republic, 2006), which bears many similarities to that of Armenia (Constitution of the Republic of Armenia, 1995), over 43 articles are dedicated to the detailed description of human rights and freedoms respected and guaranteed in Nagorno-Karabakh. These include the right to life, freedom of speech, assembly, religion, beliefs and many others. Hence, in terms of rights *de jure* guarantees Nagorno-Karabakh has the most widespread human rights constitutionally provided among all five frozen conflicts examined.

An integral part of the institutional framework for protecting human rights is the Ombudsman's office, officially termed the Human Rights Defender of the Republic of Nagorno-Karabakh¹⁶. Uniquely among the human rights defenders of the frozen conflict regions, since 2009 (Panorama.am, 2015) the Ombudsman of Nagorno-Karabakh has been a member of the European Ombudsman Institute, an Austrian non-governmental, non-profit organisation focusing on facilitating information exchange and academic research between the human rights Ombudsmen of Europe¹⁷.

¹⁵ Freedom House 2015 rated the entity as Partly Free, which is considerably better than the Not Free status in 2010.

¹⁶ See Human Rights Defender of the Republic of Nagorno-Karabakh, <http://www.ombudsnkr.am/en/index.html#>, last accessed on 04/03/2016.

¹⁷ See Europäische Ombudsman-Institute, <http://www.eoi.at/?Willkommen>, last accessed on 04/03/2016. Due to the protest from Azerbaijan, the status of the Nagorno-Karabakh Ombudsman had to be changed to individual member.

The Ombudsman's office regularly publishes yearly reports of its activities, including detailed statistics about the numbers and types of cases it has had to deal with. According to these reports, the population of Nagorno-Karabakh is actively using the Ombudsman to ensure that their rights are protected. In 2013 the Ombudsman's office received 123 complaints, which is a relatively high number given that the overall size of the population is around 146 000 (Human Rights Defender of the Republic of Nagorno-Karabakh, 2014: 5). By analysing the locations from which complaints originated, it emerges that some 30 % of them were submitted from penitentiary facilities, indicating that there is indeed much room for improvement in Nagorno-Karabakh prisons.

Freedom of speech and the media is limited, partially by governmental legal measures and partially by self-censorship (Shahnazaryan, 2014), concerning the peace process in particular (Freedom House, 2016b). However, the role of social media is increasing: in the 2014 presidential elections, the opposition intensively used social media channels for campaigning (Freedom House, 2016b).

The ones who do not have access to justice at all are the IDPs from Nagorno-Karabakh, who are often still living in poor conditions in Azerbaijan. They are still unable to return to their homes and regain property that was lost, or at least receive compensation. Due to the technically still ongoing war between Azerbaijan and the separatist territory, as well as to the lack of communication between Azerbaijan and the separatist authorities, there is very little hope of the IDPs getting their rights restored any time soon.

The separatist authorities regularly use the ongoing war as an excuse for not conducting the necessary investigations, claiming that they are not possible 'due to objective reasons' (Regnum, 2016). However, in fact, as they are the ones in *de facto* control of the territory, technically they would be in a much better position to impartially investigate the crimes committed than Azerbaijan, which has no access to the region. The main reason for the failure to conduct investigations is that the victorious war against Azerbaijan constitutes a fundamental element of the still highly militarised Nagorno-Karabakh identity (Shahnazaryan, 2010), and discussing the crimes committed against ethnic Azerbaijanis would taint this image. Incidentally, Armenia's continued failure to ratify the Rome Statute of the ICC is also widely attributed to this factor.

6.2 The ability of the authorities to administer justice

The legal system of Nagorno-Karabakh suffers from a considerable number of deficiencies, which also affect the authorities' abilities to administer justice. Problems are partly due to legal-technical shortcomings, due to the lack of expertise, resulting in a situation whereby laws affecting human rights are sometimes inconsistent with the provisions of the constitution, or with each other. A detailed report by the Nagorno-Karabakh Ombudsman from 2011 describes several such cases (Human Rights Defender of the Republic of Nagorno-Karabakh, 2011). Further, the comparatively large number of complaints submitted to the Ombudsman also indicates problems in the administrative-legal system.

Another reason for the legal deficiencies is the widespread corruption, nepotism and favoritism that are rife among the Nagorno-Karabakh elite, including the civil sector. Hence, legal regulations are sometimes passed in order to represent particular political or business interest groups instead of the public good, often resulting in coherence problems. Despite constitutional provisions, the justice system is *de facto* not independent; powerful political-security and business groups exercise widespread influence over it (Freedom House, 2016b).

An indicative issue is the freedom of religion. Freedom for religious groups other than the Armenian Apostolic Church is limited (Freedom House, 2016b); authorities reportedly refuse to register various protestant groups as well as Jehovah's Witnesses. What is more, the Nagorno-Karabakh legal framework does not guarantee the possibility of alternative military service. In 2012 a Jehovah's Witness member, Karen Harutyunyan, was sentenced to 30 months in prison for refusing to serve in the army due to religious reasons (Corley, 2012). There were several other cases when conscientious objectors were

imprisoned (Freedom House, 2016b), including a four-year (!) sentence in 2005 (Jehovah's Witnesses). The Ombudsman fully supported the authorities, claiming that Harutyunyan had violated the law, and not recognising that in this particular case the law was contradicting the constitution (Corley, 2012).

The repression of conscientious objectors is an illustrative example of regime security interests clearly superseding the *de jure* prescribed respect for human rights. Besides, it also indicates that the Ombudsman is, in fact, not an independent actor, but an integral part of the political-security establishment, in a similar vein to Abkhazia and South Ossetia. His frequent clashes with Azerbaijan in the media point to a similar conclusion.

In addition to the weaknesses in the administrative system, objective factors also hinder the population in exercising several key human rights *de jure* guaranteed by the constitution. Freedom of movement is seriously restricted due to the geopolitical and geographical isolation. At present, Nagorno-Karabakh can only be accessed by road since Azerbaijan has repeatedly threatened to shoot down any civilian airplanes that would attempt to use Khankendi/Stepanakert Airport (Radio Free Europe/Radio Liberty, 2011) which is the only existing airport in Nagorno-Karabakh. The minefields laid during the conflict still make travel and also agricultural activities in certain regions extremely dangerous. Due to the often unmarked minefields and unexploded ordnances, Nagorno-Karabakh has one of the highest *per capita* mine-related accident rates in the world (Halo Trust, 2016). The *de facto* authorities lack both the skills and the resources to conduct efficient and widespread demining.

Property rights constitute a key factor in the whole conflict due to the massive forced relocations that took place before and during the war. In addition, property rights are closely connected to the right to live and return to the territory (Popescu and Bielawski, 2007: 11). The *de facto* authorities are constantly engaged in trying to compensate local war veterans and displaced Armenians for their losses, including via widespread community housing projects and social support. Meanwhile, nothing is being done to compensate ethnic Azerbaijanis for their losses. The Azerbaijani authorities, although fully supportive of the rights and claims of the refugees, are unable to implement the decisions. Similarly to the situation in Georgia, the main problem with administering justice is connected to the fact that both sides are factually unable to conduct investigations on each other's territory due to the lack of access. Added to this, Baku and the separatist entities are not cooperating with each other in legal affairs at all.

The missing persons situation is another issue where the authorities are unable to administer justice. During the war, more than 4 500 Azerbaijanis and Armenians disappeared, and their fate is still unknown (International Committee of the Red Cross, 2015). The lack of direct cooperation between the *de jure* and *de facto* authorities leaves the families of the missing with little hope of ever getting proper information about their relatives.

6.3 The role of legal professionals and civil society

In Nagorno-Karabakh, due to its isolated geographical and political position, as well as the technically still ongoing war and the widespread corruption, there are very few independent legal professionals to whom victims of human rights violations could turn for assistance. For trained legal professionals that do not want to join the state structures, leaving the region is an obvious choice, particularly as the widespread and influential Armenian diaspora living abroad may offer good career opportunities.

According to the Freedom House report, civil society in Nagorno-Karabakh is weak, and is suffering from a lack of funding as well as from the rivalry between state-run organisations. The situation is actually more complex, however, and the attitude of the *de facto* authorities is multi-faceted. On the one hand, they still largely perceive Western-funded civil society organisations as fifth column (Shahnazaryan, 2014: 10), particularly if these organisations would like to deal with such topics that affect the very fundamentals of the regime. This does not mean, however, that there would be no civil society activism at all. The most important local human rights organisations are the Helsinki Initiative-92, the Center for Civic

Initiatives and the Stepanakert Press Club. The several veteran and youth organisations are also worthy of note. In addition to these, there are various other initiatives that receive funding from the Armenian diaspora.

On the other hand, since the 2008 war in Georgia the *de facto* Nagorno-Karabakh authorities have recognised the value of increased international involvement in conflict resolution (Shahnazaryan, 2014: 10-11), and are planning to use it as a tool to strengthen their own recognition and legitimacy. Hence, at present, international civil society networks play a highly important role in mediating between Azerbaijan and Armenia, including the separatist territories. This is particularly so since the 2008 war in Georgia, which made conflict resolution a top priority for civil society actors. They are working through joint training sessions, journalistic and youth projects, as well as various reconciliation efforts. There are several international networks engaged in such processes, such as the Caucasus Forum for NGO Cooperation, the Conciliation Resource, the International Alert and many others. These initiatives operate mostly with support received both from Western governments and foundations, including the European Partnership for the Peaceful Settlement of the Conflict over Nagorno-Karabakh (EPNK)¹⁸.

In Azerbaijan, displaced inhabitants of the Nagorno-Karabakh region have their own civil society organisations, which deal mostly with improving the living conditions of the IDPs as well as with their socio-economic problems. As an example, the Azerbaijani Community of the Nagorno-Karabakh region (ACNK), established in 2006, is worth mentioning (Rzayev, 2015: 103). Despite the active political support provided by the Azerbaijani government to these organisations, most IDP communities still suffer from the lack of proper living conditions.

6.4 The role of the international community

Nagorno-Karabakh is different from Transnistria, Abkhazia and South Ossetia also in the sense that international organisations are much less engaged there, mostly due to the difficult political and security circumstances. As a result, regular international monitoring of the human rights situation in Nagorno-Karabakh is not possible.

The UN has not been actively involved in the conflict settlement since 1993. Conflict resolution talks have been going on between Azerbaijan and Armenia in the framework of the OSCE Minsk Group since 1992, but with few concrete results. There is no OSCE field presence in Nagorno-Karabakh, and the mandate of the chairman of the Minsk Group (OSCE, 1995) does not include a human rights element (Popescu and Bielawski, 2007: 14).

International non-governmental organisations are actively engaged, however. The International Red Cross has been working actively in facilitating prisoner exchanges as well as in information exchange about the fate of those who went missing during the conflict (International Committee of the Red Cross, 2015). The Halo Trust also conducts important demining activities in the region.

6.4.1 The role of the EU and the European Parliament

Unlike in Transnistria, Abkhazia and South Ossetia, the EU appears lukewarm in demanding to play a greater or more direct role in the settlement of the Nagorno-Karabakh conflict. While in the other three cases the EU is unquestionably supporting the metropolitan states, namely Moldova and Georgia, in Nagorno-Karabakh the EU tries to balance between the two sides, while avoiding any direct engagement (Popescu and Bielawski, 2007: 15). Although from time to time the idea of an EU-led crisis management mission has emerged, it has never materialised. A telling sign of the EU's reluctance to become more

¹⁸ See The European Partnership for the Peaceful Settlement of the Nagorno-Karabakh Conflict, <http://www.epnk.org/>, last accessed 04/03/2016.

deeply engaged is that the mandate of the EU Special Representative of the South Caucasus does not include active participation in Nagorno-Karabakh conflict settlement, but focuses exclusively on the conflicts in Georgia (Council of the European Union, 2006).

Regardless of this, the EU has been financing a number of non-governmental discussion frameworks focusing on conflict settlement. The most important of these is the EPNK, which got underway in 2010 and is financed from the Instrument contributing to Stability and Peace.

The European Parliament has been closely monitoring the situation ever since the onset of the conflict (Hovhannisyan, 2013: 159). In December 2007 it published a report calling for a more effective EU policy in the region (European Parliament, 2007), and made a number of concrete policy suggestions, as well as supported the existing conflict settlement mechanisms. In 2010 the EP adopted a resolution declaring the need for an EU strategy for the South Caucasus. Besides welcoming the more intensive negotiations between Armenia and Azerbaijan, including the meetings of the Presidents, in this document the Parliament mentioned the possibility of sending an EU crisis management mission to the region. Regarding the way to settle the conflict, the EP's position was that Armenian forces had to be withdrawn from the regions surrounding Nagorno-Karabakh, while Karabakh itself should be granted a special status. In terms of human rights, EP documents have consistently called for the unhindered return of the IDPs (European Parliament, 2010). Since then, the EP has reiterated its positions several times, unfortunately without any concrete policy results emerging in respect of the Council or the Commission.

It should be mentioned that out of the five frozen conflicts, the EP has been subject to the most intensive lobbying in connection with Nagorno-Karabakh. The Parliament has been put in a particularly odd situation not only because of individual trips of some of its Members, invariably in a private capacity, to Nagorno-Karabakh (including an outgoing EP Vice-President in mid-2014), but also due to the various informal 'friendship groups' established in the first half of the 2010s. These groups included not only an EU-Azerbaijan and an EU-Armenia group, but even a self-proclaimed EU-Nagorno-Karabakh one (European Movement International, 2014). Finally, in 2014 the EP had to officially distance itself from these formations, stressing that such informal groups do not represent the European Parliament in any sense, even if they are composed of individual MEPs (European Parliament, 2014c), furthermore labelling Nagorno Karabakh an 'unrecognised entity'.

7 Conclusions and recommendations

The five frozen conflicts examined in this study differ considerably from each other in terms of their history, as well as size, intensity and the population affected. While four of them, namely Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh, have existed for more than two decades, the Crimea problem erupted only in 2014. More people live on the Russia-occupied peninsula than in the four other frozen conflict regions combined, and the human rights situation has been steadily worsening since Russia has captured and annexed the territory.

Paradoxically, to a certain extent, in theory the human rights situation in Crimea should be much better than in the other four frozen conflicts, because Crimea is under the *de facto* control of Russia, a full-fledged recognised state that is a member of the Council of Europe. Hence, *de jure* it is bound to the respect for human rights, while the other four frozen conflicts constitute legal 'black holes' from the perspective of human rights. In practice, however, at present the situation is worst in Crimea. Killings, abductions and disappearances are taking place, and the Crimean Tatar population is being repressed *en masse*. At the time of completing the present study, occupying authorities are on their way to ban the Tatar's democratically elected, representative body, the Mejlis, together with many Tatar media channels and civil society organisations.

The general logic behind the events taking place in Crimea is similar to the logic of the other four frozen conflicts in terms of human rights and fundamental freedoms. While *de jure* the respect for human rights

is ensured by a more or less developed institutional and normative framework, regime security interests are overwriting it, leading to massive, lasting repressions.

Consequently, victims of human rights violations have only very limited access to justice. This is so even when *de facto* authorities would be technically able to administer justice, which is not always the case with the underdeveloped, often incoherent legal systems of the separatist entities. The key reason why justice is hard to access is the lack of political will from the *de facto* authorities to efficiently and impartially administer it.

At this point, civil society organisations and independent legal experts have a highly important role to play. In most cases, they are the only ones who are able to provide on-site legal assistance to victims of human rights violations. Further, as international access to the frozen conflict areas is strictly limited, local civil society actors are important also in terms of monitoring the human rights situation there and providing information to international governmental and non-governmental organisations. The latter is particularly relevant in the case of Crimea, where no international human rights organisation could enter for almost two years, and also for South Ossetia and Nagorno-Karabakh, as both regimes are highly isolated and restrictive.

Due to the uncertain legal status of Transnistria, Abkhazia, South Ossetia and Nagorno-Karabakh, the international community, including the EU, has very limited options for getting directly engaged in defending human rights in these regions. The EU travel ban introduced against Transnistrian leaders over the suppression of Latin-script schools is a good example, however. Moreover, there is much scope for stepping up indirect engagement as well. One option would be to strengthen support for the civil society organisations that have access to the frozen conflict regions. Another possibility would be to increase the contribution to the improvement of living conditions, as well as the human rights situation of the internally displaced persons, mostly in Georgia and Azerbaijan, but also in Ukraine.

Crimea, as it is *de facto* under Russian jurisdiction, constitutes a special case due to Russia's institutionalised commitment to the respect for human rights, including its membership of the Council of Europe. In line with international humanitarian law on occupied territories, the party exercising effective control over the given territory is responsible for ensuring the efficient protection of human rights and fundamental freedoms there. Hence, the international community could do much more to hold Moscow accountable for the human rights situation in Crimea, as well as in other parts of the Russian Federation. Such options should be considered particularly seriously, if repression against the Crimean Tatars continues.

The European Parliament has a key responsibility in sustaining public attention and awareness towards the human rights situation in the 'frozen conflicts' in the Eastern neighbourhood, including both the pre-existing ones as well as Crimea. As the latter constitutes a relatively new, but massive and serious problem regarding respect for human rights and democratic freedoms, it is paramount to maintain the strong and coherent engagement of the EP.

7.1 Recommendations

- Public awareness of the human rights situation in the ‘frozen conflicts’ of the Eastern neighbourhood needs to be maintained, both inside the EU and in the neighbouring countries. The European Parliament is very well equipped to meet this challenge and has deep, decades-long experience in doing so. Sustaining attention is important not only because of the EU’s general commitment to human rights, but also because of the political and moral support European attention provides for victims of human rights violations.
- The EU needs to maintain its firm and consistent policy of supporting the territorial integrity of countries in the Eastern neighbourhood. Hence, the non-recognition of the changes that have taken place since 1991 in exercising control over the territories of the ‘frozen conflicts’ has to be maintained, particularly with regard to the annexation of Crimea, as well as Russian recognition of the ‘independence’ of Abkhazia and South Ossetia.
- Consequently, sanctions introduced against Russia over the annexation of Crimea have to be maintained, in line with the fundamental values and principles of the European Union. This is particularly the case because Moscow would most probably interpret the lifting of sanctions as *de facto* approval of its action against Ukraine, and thus as *carte blanche* for further violating the territorial integrities of other sovereign countries in the future. Mistakes committed after the 2008 war in Georgia by not sanctioning the aggression must not be repeated, if the EU does not want to see a repeat of the aggression. While there is no guarantee that maintaining the sanctions will suffice in preventing further aggression, lifting the restrictive measures, thereby leaving aggression unsanctioned, surely does not help.
- The efficient promotion of human rights in the ‘frozen conflicts’ of the Eastern neighbourhood requires concerted, coordinated and flexible actions from the actors involved, including governments, international human rights organisations and both international and local civil society organisations. Therefore, more efficient coordination needs to be ensured, especially between state and non-state actors.
- Limited or no direct access to the territories of the ‘frozen conflicts’ is very likely to remain a problem in the long run. Therefore, the European Parliament together with the Council and the Commission/European External Action Service should focus on strengthening the cooperation with those interlocutors who are able to conduct efficient on-site human rights monitoring and assistance, either via maintaining a continuous presence (such as Georgian NGOs active in Abkhazia and South Ossetia and the Ukrainian ones working in Crimea), or via occasional fact-finding missions (as the CoE finally managed to do in Crimea, for example). Exactly as EP Delegations occasionally visit Transnistria, to convey a European message to those willing to hear, such attempts could be made in Abkhazia or even Nagorno-Karabakh, provided that all parties would agree and always in a firm ‘engagement, not recognition’ mode.
- The EP’s oversight over EU financial instruments could be efficiently used to foster the work of interlocutors. For example, the EP could ask how the EU budget is spent on human rights monitoring and protection in frozen conflict areas. Also, the EP could push for a special tool or programme to support human rights monitoring and human rights organisations in regions where these are missing. The European Endowment for Democracy, for example, could be a partner in this.
- The Council of Europe is a key partner of the EU in protecting human rights in the Eastern neighbourhood, because the CoE is the only organisation through which institutionalised

cooperation with Russia in protecting human rights is still possible, albeit to a limited extent. Therefore, the EU needs to do its best to support the activities of the CoE in the 'frozen conflict' regions and to strive for a high degree of cooperation with CoE.

- Crimea constitutes a human rights-related problem of a size and severity long unprecedented in the EU's Eastern neighbourhood. Hence, in order to efficiently cope with the increased challenge, it is in the EP's best interests to strengthen its monitoring and analytical capabilities.
- Visibility and attention save lives. International attention paid to individual human rights violation cases is able to significantly help the victims by increasing the political cost for the perpetrators of committing further violations. Therefore, the EP needs to maintain and even strengthen its practice of concretely naming individual cases of human rights violations and demanding the restoration of the rights violated. Even in such cases where there is strong political motivation behind the violations perpetrated, such as in the case of Sentsov and Kolchenko, international attention is still helpful in exercising damage control.
- While addressing the human rights situation in the 'frozen conflicts' of the Eastern neighbourhood, one has to continuously take into account that these conflicts actually differ from each other in a number of key respects. Hence, besides seeking general solutions, it is also necessary to elaborate tailor-made, individual policies towards these regions.
- Regarding Crimea in particular, but also South Ossetia and Nagorno-Karabakh, the primary task is to enable continuous, reliable monitoring of the human rights situation, as well as to provide victims of human rights violations with the necessary legal and other assistance. At present, the most feasible way to do this seems to be to support local NGOs and international civil society networks operating on the ground. The situation in Abkhazia and Transnistria is much better in terms of access and willingness of the local authorities to allow at least occasional human rights monitoring to take place. However, there is still room for improvement in terms of more systematic and coherent monitoring, as well as providing assistance to victims of human rights violations.
- Furthermore, much still needs to be done to improve the situation of the IDPs forcibly displaced from Abkhazia, South Ossetia and Nagorno-Karabakh. While providing full justice and compensation is hardly possible due to the political and security circumstances, the living conditions of the IDPs could still be improved significantly.
- While maintaining the pressure on Russia, the EU needs to remain open to opportunities to cooperate with Russia in protecting human rights, when circumstances allow and when such opportunities arise. The success of the CoE in gaining access to Crimea demonstrated that occasional cooperation is not impossible. In this respect, Abkhazia could be a prospective region, as human rights violations in that region also affect ethnic Russians.

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