

GEORGIA-RUSSIA

Political, Legal and Humanitarian Dimension
of the Current Developments on the Dividing Line

The publication was created in the framework of the project “Georgian-Russian Dialogue for Peace and Cooperation”, which is implemented with the financial support of “Conflict Pool” of the Foreign and Commonwealth Office



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FOREWORD

With a view to the existing conflict situation between Georgia and Russia since 2011, “The Centre for Cultural Relations - Caucasian House” began to actively work towards peace-building between the Georgian and Russian societies. This process unites several components, including the young Georgian and Russian analysts’ research, working visits to Georgia and the Russian Federation, meetings with representatives of both countries government agencies and experts, a common webpage and more.

In 2013, in the research framework, policy documents were prepared, articles were written and a joint analytical bulletin was created. (Materials can be found at: www.regional-dialogue.com).

This paper is a part of the abovementioned process. The paper discusses one of the main problematic issues in Georgian-Russian Relations: the situation on the dividing (occupation) line and political, legal and humanitarian dimension of the issue.

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The contents of the publication reflect the authors' personal opinions.

DYNAMICS OF GEORGIAN-RUSSIAN RELATIONS AFTER OCTOBER, 2012

As a result of the October 2012 parliamentary elections, the new governance, “Georgian Dream” came to power in Georgia, aiming the regulation of Russian-Georgian relations as one of its declared foreign policy goals.

The coalition, after the formation of the government, immediately started to take appropriate steps both, at the symbolic, as well as at the practical level.

Practically after the very first communication, started between Tbilisi and Moscow, philosophy of dialogue became clear - the parties agreed to circumvent the acute political issues (the so-called “red lines”) and try to establish cooperation in the areas where it is possible.¹ To work in the direction of humanitarian, trade - economic and transportation issues were identified as such.

During the past year, certain progress has been achieved in bilateral relations:²

- Georgian wine, mineral water and agricultural products begin a gradual return to the Russian market;³
- Despite the psychological discomfort, Tbilisi agrees to participate in the Olympic Games in Sochi;
- The problems between the two countries in terms of transport and aviation communication is resolved: Larsi border crossing point throughput is increased;
- Humanitarian and cultural ties are intensified.⁴

It should be noted that all this happens against the backdrop of substantially altered political rhetoric, when the confrontation language and symbolism between the two countries is increasingly being replaced by the cooperation discourse.

At present, we can say that the constructive position of the parties, promoting cooperation and confidence-building by bypassing “red lines” was based on the pragmatic and right political calculations. How the new interaction framework, created due to this policy will facilitate starting the discussion on the acute political and security issues and a continuing search for certain solutions, will become clear in the near future.

In general, it should be noted that such separation of the “humanitarian” and “political” issues is essentially problematic and can not work over and over again. In this situation, it is particularly important when and how the crossing of these two themes (“humanitarian” and “political”) will happen.

Recent experience shows that the current situation on the dividing line⁵ and the related political / security and humanitarian issues are the major challenge for normalization of the process of Georgian - Russian relations.

¹ “We agreed we have discord on certain issues. As a first step we defined the issues such as trade, humanitarian - cultural relations and regular air flights recovery matters for talks “. Zurab Abashidze said after the first meeting with Grigory Karasin. Front News, 14 December 2012.

² It has been stated several times by Zurab Abashidze too, the Prime Minister’s special representative for relations with Russia: “I think we have some progress. In particular, in the areas that we initially discussed in the dialogue format. In the field of trade and economic relations, communications, cultural and humanitarian spheres we have moved forward “. Zurab Abashidze: “We will try to approach the “red lines”;
<http://gorchakovfund.ru/news/9053/>

³ part of the critics of the government believe that the effect achieved in this direction is not the good will of the Russian Federation, or the result of resetting relations, but part of the obligations undertaken by the Russian Federation towards “World Trade Organization” (WTO). The authors of this publication do not agree with this position and believe that resolving these issues in a short period of time is namely a result of the recently started Georgian - Russian dialogue.

⁴ In this direction, a major obstacle still remains the problem of obtaining visas of the Russian Federation for citizens of Georgia. However, analysis of the current dynamics allows us to assume that the issuing of visas for certain categories of citizens will become easier. (Author). After as long as “unofficial contacts” second round of representatives of the Russian Federation and Georgia, which was held in Prague on March 1, 2013, the Russian side confirmed that the possibility of facilitating the visa regime from Russian side will be discussed during the meeting. Russian MFA press release on meeting of State Secretary - Deputy Minister of Foreign Affairs of Russia Grigory Karasin and Special Representative of the Prime Minister of Georgia on relations with Russia, Z. Abashidze, 02.03.2013. http://www.mid.ru/brp_4.nsf/newsline/9CDA548E676130E744257B22001F9C76

⁵ The term “dividing line” is used “in the State Strategy of Georgia on Occupied Territories: The Government of Georgia, State Strategy on Occupied Territories Engagement through Cooperation <http://www.smr.gov.ge/docs/doc212.pdf>. In addition, the term is used in the Georgian Government Resolution N 257, where it speaks of creating of an interim government commission and approval of the regulations “ to respond to the needs of the affected population from the nearby villages of the dividing line “: http://www.government.gov.ge/index.php?lang_id=GEO&sec_id=276&info_id=38490. See also on this issue: the comment of Paata Zakareishvili, State Minister of Georgia for Reintegration: <http://ghn.ge/news-98692.html>



CURRENT SITUATION ON A DIVIDING LINE

Solution to the deadlock situation, which is a result of the August 2008 war and Russia's unilateral recognition of Abkhazia and South Ossetia, does not appear in the near and medium term. This is realized by both, Tbilisi and Moscow.⁶ On the other hand, it is quite clear that significant progress in relations between the two countries would be impossible without deepening the co-operation on security issues. The current situation on the dividing line is exacerbating the vacuum existing in this direction. In particular, the so-called "border demarcation process" and related political and humanitarian problems. It is paradoxical that this process has particularly increased since February 2013 - in parallel with Georgian - Russian relations normalization.

Statistics and Specific Cases according to 2013 October - November Data

Due to the Georgian Interior Ministry estimations the total length of the dividing line in the Shida Kartli region is about 350 km. Out of this 128 km runs on Mtskheta-Mtianeti region, 92 km runs on the Gori district -, 60 km on Kareli district and 70 km on Sachkhere district. By this time, about 30-35 kilometers are "demarcated". i.e. 10% of the whole perimeter.

Through present more than 50 families were directly affected by installing barbed wire fence and lattice (had to leave their homes, were limited right of using homestead and agricultural land, opportunity to visit the family cemetery and right to use irrigation water).

Much more is the number of people on both sides of the dividing line, who were limited:

- Freedom of movement
- Right to property
- The right to medical care;
- The opportunity of relationships with family members and relatives;
- The possibility of economic activity

Kvemo Nikozi: Barbed wire fence is installed on 2-3 km. The largest part of it is drawn on the Tbilisi-controlled territory. As a result, several local family farmlands and agricultural lands appeared on the other side of the dividing line partially or fully.

Gegutiantkari: Several families were limited to the agricultural land using right. At the same time the homestead area was divided into two parts.

Didi Khurvaleti: In this village barbed wire fence was installed over the whole Tbilisi controlled territory. As a result houses of three local families, homestead and agricultural lands partially or fully appeared on the other side of the dividing line.

Dvani and the village Atotsi: Barbed wire fence is installed about on 10-12 km. Out of this, on Tbilisi controlled territory in the village Dvani on several kilometer, as a result of which houses and agricultural lands were divided in a half. At the same time the irrigation system (irrigation channel)⁷ fell into the other side of the dividing line.

⁶ "I can't imagine a step backwards, I just can't imagine it," Putin said, commenting on the recognition of Abkhazia and South Ossetia, adding: "But it's in a way, the red line for Georgia too, and Georgia also is not able to overcome it. Because Georgia fights, as Georgia believes for its territorial integrity". Vladimir Putin's interview with "Russia Today", 11 June. "We have no illusions that the problems may be solved quickly. Especially those related to conflict regions - Abkhazia and South Ossetia. "Zurab Abashidze: We will try to approach the "red lines". <http://gorchakovfund.ru/news/9053/>

⁷ "Screaming will not work" - answer of Dvani residents to arriving guests; Shida Kartli Information Center, 07.10.2013. <http://qartli.ge/web/14900>

The village Adzvi: Russian border guards installed barbed wire fence in the village in September 2013, as a result of which 4 acres of land fell beyond the barriers.⁸ The affected family can no longer afford to secure the harvest.⁹ Besides the lands, in addition residents of Adzvi have other problems - the village cemetery went behind the barbed wire.¹⁰



The Village Ditsi: On 27 May 2013 the process of marking lattice and not of barbed wire fences started. In Ditsi, metal constructions drawing over the dividing line renewed on September 7. As a result the road to the ancestral cemetery was blocked for several families.¹¹

The section of the villages Mereti-Krui: Here the lattice is marked about 3 km - on. At the same time, approximately 600 meters section has been prepared for the lattice marking;

The village Sakorintlo: The process of lattice marking goes through. Currently about 500 meters have been marked.

The villages Tvaurebi and Akhmadji: Currently about 500 meters are marked.

The village Medjvriskevi: The process began in the spring of 2012, however, it was intensified at the end of June 2013. Currently about 800 meters of demarcation fences are marked.

The village Dirbi: The process began in August 2013. Due to the September 2013 data, 200 meters are marked.

The village Djariasheni: Again, here too, the process began in August 2013, due to the September 2013 data 500-600 meters are marked.

THE FACTS OF ILLEGAL DEPRIVATION OF LIBERTY, UNDER THE ACCUSATION OF THE SO CALLED „STATE BORDER” CROSSING, BY REPRESENTATIVES OF THE DE FACTO SOUTH OSSETIA AND RUSSIAN TROOPS

In addition to the so-called “border demarcation”, the security and humanitarian problems existing on the dividing line are deepened by the facts of illegal deprivation of liberty of the local residents by the de facto South Ossetia representatives and the Russian border guards.

According to the data from the Interior Ministry, from 2009 to 2013, under the accusation of the so-called illegal crossing of the border, **536** Georgian citizens were arrested at the dividing line of the Shida Kartli region.

Most of them were arrested in 2013, **142** citizens. (See table)

⁸ When the Adzvi barbed wire emerged? Shida Kartli Information Center, 08.10.2013. <http://qartli.ge/web/14929>


⁹ Russian occupants marked barbed wire in the village Adzvi, Gori district, Tabula 08.10.2013 <http://www.tabula.ge/story/75507-rusma-okupantebma-mavtulklartebi-goris-raionis-sofel-adzvshic-gaavles>

¹⁰ Ketevan Tsikhelashvili: the process of marking barbed wire fences started in 2009. 09.10.2013. <http://reportiori.ge/?lang=1&menuid=2&id=5491>

¹¹ Russian militaries divide the village Ditsi into halves. 17.09.2013

<http://news.ge/ge/news/story/64298-ditshi-rusi-samkhedroebi-akhali-saokupatsio-sazghvrebs-amontazheben>

Georgian citizens arrested for breach of the occupation line in the direction of the Tskhinvali region

ცხინვალის რეგიონის მიმართულებით ოკუპაციის ხაზის დარღვევისათვის დაკავებული საქართველოს მოქალაქეები www.opendata.ge		Year	number of arrested people
	წელი	დაკავებული რაოდენობა	
	2009	84 პირი	84
	2010	71 პირი	71
	2011	135 პირი	135
	2012	104 პირი	104
	2013	80 პირი	142

Source: The Interior Ministry and www.opendata.ge

The arrest of the population by reason of the so-called “illegal border crossing” mainly takes place during the agricultural works (shepherding cattle, wood cutting, etc.). After the arrest Russian border guards transfer the citizens of Georgia in Tskhinvali and in case of paying the fine, which consists of 2000 rubles (60 USD)¹² detainees are freed. The length of detention varies in different cases. However one recently identified positive trend should be noted, which was discussed by Paata Zakareishvili, the State Minister of Georgia for Reintegration (from January 1, 2014, State Minister for Reconciliation and Civil Equality Issues): “Unfortunately, the dynamics of arrests is not reduced, but unlike before, this time the Georgians have to be in prison a little while.”¹³

THE PARTIES’ SUBMISSIONS POSITIONS OF MOSCOW AND TSKHINVALI:

In 2009, the Russian Federation and South Ossetian de facto authorities signed an agreement “On the Joint Efforts of the Border Guard of the Republic of South Ossetia.”¹⁴ Delivery of an agreement may be considered in the context of the recognition of this territory at the first stage and hereafter promotion of its statehood. This agreement is a certain continuation of the comprehensive agreement, signed on 17 September 2008, defining principles of friendship, cooperation and mutual assistance between the Russian Federation and South Ossetia.¹⁵

After starting the implementation of the agreement on border protection (which originally had fragmented character) Russia and South Ossetia began to justify the reasons for the development of the correctness of that decision. In a sign of an active civil, or diplomatic discussions various types of arguments emerged, which in some cases reflect the official positions of Moscow and Tskhinvali, while others represent the experts’ reflections.

In a statement of the Russian Foreign Ministry, October 4, 2013,¹⁶ declarations of the NATO, the EU and the U.S authorities on the so-called “Border” construction in Abkhazia and South Ossetia are criticized. According to the text, Abkhazia and South Ossetia are independent states, in accordance, conducted work of Russian border guards fully fits the framework of an agreement signed between these two parties and the Russian Federation. On the other hand, according to the statement, the border demarcation process is performed in order to prevent incidents in the vicinity of this territory. In particular, for reducing the illegal violations of border from both sides. In support of this argument the statistics produced by the European Union Monitoring Mission is given in the statement, which states that the facts of border violations decreased significantly after installing fences. On 10 September 2013 OSCE session Russian envoy Andrei Kelin declared in his speech that if dozens of cases of violation of the border were recorded formerly, in July - September period, there were a total of 38 cases,¹⁷ which,

¹² In Tskhinvali two Georgians will be charged in a few hours, 18.07.2013 <http://pirveliradio.ge/?newsid=6682>

¹³ Paata Zakareishvili: The word “Djondjoli” (capers) went into the headlines of World Conflictology: <http://www.interpressnews.ge/ge/politika/238853-paata-zakareishvili-sityva-qjonjoliq-msoflio-konfliqtologiis-hedlainebshi-shevida.html?ar=A>

¹⁴ Agreement between the Russian Federation and the Republic of South Ossetia on joint efforts to protect the state border of the Republic of South Ossetia, April 30, 2009, <http://archive.kremlin.ru/text/docs/2009/04/215691.shtml>

¹⁵ Treaty of Friendship, Cooperation and Mutual Assistance between the Russian Federation and the Republic of South Ossetia, September 17, 2008, <http://archive.kremlin.ru/text/docs/2008/09/206582.shtml>

http://www.mid.ru/BDOMP/Brp_4.nsf/arh/24C2DB5D86441F6544257BFA00646284?OpenDocument

¹⁶ http://www.mid.ru/BDOMP/Brp_4.nsf/arh/24C2DB5D86441F6544257BFA00646284?OpenDocument

¹⁷ According to Andrei Kelin’s statement, border violators are warn verbally, or fined by a symbolic value, which composes 50 euros. Moscow denies accusations and evaluating Russian border guards in South Ossetia. <http://www.regnum.ru/news/polit/1719934.html>

in his opinion, claims the stabilization in the region.

According to the interpretation of Tskhinvali, they offered Tbilisi to start talks on border delimitation and demarcation. Murat Jioev, the representative of the South Ossetia de facto president on the post - conflict situation resolution mentioned this as well; Such an offer has been made in the framework of the Geneva discussions too.¹⁸

According to Nikolai Silaev, the Russian expert, the Ossetia side was really ready to start informal negotiations with Georgia, in order to achieve agreement on the parcels of land that are owned by local people and due to the demarcation falls on the other side of the boundary.¹⁹ According to him, Russian border guards were also ready to this type of negotiations, however the Georgian side had refused on participation both in formal and informal talks.²⁰

Due to South Ossetia officials' explanation, the demarcation process is performed according to the maps of the Soviet Union, in particular, the demarcation line will pass along the border of South Ossetia autonomous region.²¹ Their officials say in the number of cases, when the demarcation line was crossing the lands of local residents, Russian border guards moved the border line within the territory of South Ossetia, in order to avoid potential complications. In the opinion of Russian experts, there are cases when the lands of Ossetia population appears in the Georgian side, but such cases are few.²²

Russian officials believe that the Georgian side is deliberately trying to mislead the international community, through the cultivation of the idea, according to which the demarcation process prevents freedom of movement in the region. Russia's envoy to OSCE - Andrei Kelin said, only in 2013, 139 thousand of crossing and 30 thousand cars are registered on the "border" of Georgia and South Ossetia.²³

In 2013, about the processes taking place on the dividing line from the Russian and Ossetian sides Tbilisi has repeatedly stated that this process is related to the (is a reaction) new government's peace policy, as a result of which South Ossetia residents actively started to travel to the big cities of Georgia.²⁴ Part of Russian experts do not agree with this position and think, the process activation three years after signing the Agreement is related not to the political changes that occurred in Georgia, but the decision-making process and their enforcement practices in the Russian state. In their opinion, due to Russia's geographical size and large scale bureaucratic system, enforcement of political decisions, in some cases are delayed. According to Andrei Sushentsov, the execution of the border demarcation program just coincided with the Russia-Georgia relations reconciliation process and has become an inhibiting factor for a dialogue. According to him, this coincidence can be explained just by delay of the political decision enforcement process.²⁵

South Ossetian and Russian sides explain the sharp reaction of the Georgian government and, in general, of the Georgian society for several reasons: Georgian government is using the issue for political expediency, gaining scores during the election (meaning the presidential elections on October 31, 2013). On the other hand, the opposition too, represented by the national movement, is trying to turn this issue to source of gaining additional political dividends. Tskhinvali believes that there is a kind

¹⁸ It's time Tbilisi reporters to understand that South Ossetia has no relation to the "territorial integrity" of Georgia - presidential envoy, , <http://cominf.org/node/1166499728>

¹⁹ The prospect of normalization of Georgian-Russian relations in the background of the situation around the administrative boundary, <http://regional-dialogue.com/articles/%D0%BF%D0%B5%D1%80%D1%81%D0%BF%D0%B5%D0%BA%D1%82%D0%B8%D0%B2%D0%B0-%D0%BD%D0%BE%D1%80%D0%BC%D0%B0%D0%BB%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D0%B8-%D0%B3%D1%80%D1%83%D0%B7%D0%B8%D0%BD%D0%BE-%D1%80%D0%BE/>

²⁰ According to Paata Zakareishvili, the State Minister of Georgia for Reintegration, "They clearly want to engage the Georgian government in talks on where the border lines. "It's absolutely unacceptable for us. There is not any border passing through South Ossetia territory. There are only dividing lines and we will in no way be involved in the game settled by Russia. " <http://www.netgazeti.ge/GE/105/News/20061/>.

²¹ According to the law of South Ossetia, the state border of this republic includes the territory of the former South Ossetia autonomous region. <http://cominf.org/node/1166498854>

²² The prospect of normalization of Georgian-Russian relations in the background of the situation around the administrative boundary, <http://regional-dialogue.com/articles/%D0%BF%D0%B5%D1%80%D1%81%D0%BF%D0%B5%D0%BA%D1%82%D0%B8%D0%B2%D0%B0-%D0%BD%D0%BE%D1%80%D0%BC%D0%B0%D0%BB%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D0%B8-%D0%B3%D1%80%D1%83%D0%B7%D0%B8%D0%BD%D0%BE-%D1%80%D0%BE/>

²³ Moscow denies accusations and evaluations of Russian border guards action in South Ossetia <http://www.regnum.ru/news/polit/1719934.html>

²⁴ Zaqareishvili: You want us to declare war with Russia for 200-300 meters? <http://www.netgazeti.ge/GE/105/News/20061/>

²⁵ "Moscow was obliged to declare oneself" <http://www.ekhokavkaza.com/content/article/25136848.html>

of competition between Georgian political parties, who will make much capital on speculating on this issue and who will be the winner politically. The Ossetia side's second argument in this regard is that due to the speculation on this subject, Georgia is trying to discredit Russia's policy in the region and to strengthen its image, as the occupying power in the eyes of the international community.²⁶

In conclusion, it can be said that the Russian side considers the so-called "demarcation of the border," not as an individual political decision, but one of the units in the chain of the policy of recognizing South Ossetia and Abkhazia, which, in their view includes not only the legal act of recognition of these territories as the states, but also the long-term policy of promoting their statehood. The so-called "border demarcation" decision fits in this policy. On the other hand, Tskhinvali considers this process in the context of assuring its national security and strengthening sovereignty.²⁷

POSITION OF TBILISI

a) The political dimension

It is obvious that the arguments offered by Moscow and Tskhinvali are unreliable for Tbilisi. This process is considered by Tbilisi as encroachment of the country's sovereignty and territorial integrity.²⁸ Several announcements were made hereon by The Ministry of Foreign Affairs of Georgia. This issue has come to the final rounds of talks in Geneva, where information session was held on November 5, titled "pragmatic approaches to freedom of movement". Invited experts shared the practices of the free movement in conflict-affected regions and stressed the need and the necessity of ensuring humanitarian effort and the unhindered movement in any situation.²⁹

In addition to the official statements, the representatives of Georgian authorities had to comment the processes developing on dividing line both, within the country, as well as beyond it. According to the official position of Tbilisi, installing the wire fences is a harsh violation of international law and the principle of territorial integrity of Georgia and resists to the August 12, 2008 ceasefire agreement, according to which the Russian troops had to return to pre-war positions.³⁰ At the same time it creates artificial barriers in relations between people and additional humanitarian problems, manifested in the violation of populations property rights and their rights of free movement, producing obstruction to agricultural land use and free economic activity, restriction of access to health care and other social and political rights violations. Tbilisi believes that the Russian Federation, as the exercising power of an effective control on the occupied territories, is responsible to protect the fundamental rights and freedoms of people living in the occupied zone.

In parallel with making the official position statements, Georgian government, of course, had to comment/interpret the current situation for the public and opponents. In the wake of the recent dynamics in Georgian - Russian relations, the "demarcation" process, taking place on a dividing line is so atopic that its interpretation and explanation in any way impartially, is almost impossible. Moreover, Georgian government had to do it when his opponents considered their attempt to regulate relations with Russia and starting dialogue as a wrong and desperate political move and the policy of the so called wire fences from the Russian side is explained by them as a result of such a constructive policy.

It is right to note that the government of Georgia virtually has no effective tool for neutralizing the process. Actually, this is one part of the August 2008 war occupational activities sequence. Consequently, its connection with the policies of the new government – is a political speculation, devoid of reasoning. The only means for the process correction in the hands of the government was the engagement in negotiations proposed by Russian and Ossetia sides, but it actually meant the legitimization of the border. "There is not any border passing on the territory of South Ossetia. There are only dividing lines and we will be in no way involved in the game which Russia settles. They may remise 400, or even 500 meters if

²⁶ It's time Tbilisi reporters to understand that South Ossetia has no relation to the "territorial integrity" of Georgia - Presidential Envoy, , <http://cominf.org/node/1166499728>

²⁷ National Security Concept of the Republic of South Ossetia, <http://cominf.org/node/1166499811>

See also: Presidential decree "On measures to implement the foreign policy course of the Russian Federation", <http://president.kremlin.ru/acts/15256>

²⁸ Statement of The Ministry of Foreign Affairs of Georgia, http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=59&info_id=16336

²⁹ Statement of the Ministry of Foreign Affairs of Georgia on 25th Round of International Geneva Talks, http://www.mfa.gov.ge/index.php?lang_id=GEO&sec_id=59&info_id=16884

³⁰ The Ministry of Foreign Affairs of Georgia, 6,06,2013 http://un.mfa.gov.ge/index.php?lang_id=GEO&sec_id=149&info_id=19004

only to catch the Georgian government into these talks, “said State Minister for Reintegration”.³¹ (Since January 1, 2014, State Minister for Reconciliation and Civil Equality Issues).

Representative of the Georgian government in an interview with one of the authors of the present study explains the activation of the demarcation process after October, 2012 elections with several reasons. A) Test for constructive policy of the new government and its endurance; B) “Locking” the citizens living in occupied South Ossetia C) Creating a pre-election agenda for Nino Burjanadze.

Indeed, due to all accounts of the experts estimation, the new government policy has changed substantially in the direction of the conflict. Tbilisi expressed willingness for direct dialogue with de - facto authorities, the process of releasing ethnic Ossetia prisoners started, provocative actions in the Gali district suspended, etc.³² Most notable is the resolution adopted by the Parliament on 7 March 2013, “On Georgia’s Foreign Policy Principal Directions”.³³ The preamble of the document states that Georgia remains committed to the obligation, taken by President Saakashvili on November 23, 2010, not to use force. As a result, we can say that among South Ossetia population the perception of Tbilisi, as a major threat is increasingly shrinking. In addition, geographic location of de-facto South Ossetia should be considered, which does not leave other means to the people, living in this area than close social, economic and cultural ties with the rest of Georgia. Because of these two factors movement of people living in the territory of South Ossetia in the direction of Tbilisi increased. In this respect, information, spread in media (which in turn relies on the corresponding security service materials) about the citizens detained for “illegal border crossing” at the end of 2013, is interesting: 39 people are arrested altogether, among them 25 citizens – of de - facto South Ossetia, 5 - of the Russian Federation and 9 –of Georgia.³⁴ In an interview with the author of the study, the representative of Georgian government says that the given data is significant, and in case, if Tbilisi consistently continues the peace policy – this tendency will become an irreversible. The comment of ex - Prime Minister, Bidzina Ivalishvili should be considered in the context of “patience and consistency strategy” : “ In my opinion such mishaps in relationships will be in future too, the most important thing is not to disrupt the strategy. With patience, determination, principally, step - by-step, I think we will manage relations with our great neighbor”.³⁵

Thus Tbilisi has demonstrated the consistency in its strategy, and temporarily “took out of brackets” the processes taking place in dividing line from the Georgian - Russian dialogue. This by no means does not mean “red lines” to be abandoned, because the prospects of normalization of relations are still seeing by Tbilisi, which tries not to turn this issue as the main obstacle of the process. Tbilisi, with this pragmatic decision, without damaging its national interests (territorial integrity, sovereignty), imposed the entire responsibility of the future of normalization of Georgian - Russian relations on Moscow. How consistent and sincere is Russia in his desire to repair relations with Georgia, regarding its attitude towards the humanitarian and political issues on the dividing line, will be visible in the mid-term.

B) The Legal Dimension

On 26 August 2008 the Russian Federation recognized the independence of Abkhazia and South Ossetia, which laid the foundation for the so-called “new reality” in the region. Georgian side, unlike Russian, considers Abkhazia and South Ossetia as occupied territories.

Under the 1907 Hague Regulations 42 article, as well as the 1949 Geneva Convention and the First Additional Protocol to this Convention (1977), the territory can be regarded as occupied, when hostile state’s armed forces are taking a control over it. The existence of two major conditions are necessary to determine the occupation: 1. Existence of the armed forces of the hostile state in a particular area; 2. Effective control over the territory they occupy.

Based on the above-mentioned international legal regulations, Tskhinvali region occupation, consequently the existence of the effective control of the Russian Federation there, confirms the international human rights defender organization - Human Rights Watch, in its report, “Up In Flames”.³⁶ Based on the above stated, according to the international law principles and standards of the European Court of

³¹ Zakareishvili: “You want us to declare war with Russia for 200-300 meters”? <http://www.netgazeti.ge/GE/105/News/20061/>

³² Crisis Group Europe Report No 224, “Abkhazia: The Long Road to Reconciliation,” 10 April 2013

³³ See the full text of the resolution: Adopted by mutual consent resolution on foreign policy. <http://civil.ge/rus/article.php?id=24539>

³⁴ South Ossetia border guards detained ten trespassers from 13 to 27 December, <http://www.georgiatimes.info/news/97955.html>. See also: For trespassing in South Ossetia three Georgian citizens are detained, <http://www.kavkaz-uzel.ru/articles/237188/>

³⁵ Ivanishvili: I am not waiting a decisive steps from Russia”. <http://www.civil.ge/geo/article.php?id=27095>

³⁶ (2009). Up In Flames, Humanitarian Law Violations and Civilian Victims in the Conflict over South Ossetia. New York: Human Rights Watch.

Human Rights, in any case of the human rights violation, even if it be committed by the representatives of the de facto authorities, the responsibility lies on the Russian Federation.³⁷ The Russian Federation, as a member state of the Council of Europe, which is connected to the European Convention on Human Rights and recognizes the jurisdiction of European Court of Human Rights, is obliged to create conditions established by human rights European standards in South Ossetia and Abkhazia regions.

With the so-called “border demarcation,” the Russian Federation makes a gross violation of Human Rights and Fundamental Freedoms Protection Convention of 4 November 1950 (Human Rights European Convention), one of the participants of which he is, as a member state of the Council of Europe. First of all the property rights, protected under the first article, optional protocol on the European Convention on Human Rights, March 20, 1952, was violated. Georgian citizens living in the adjacent villages of the administrative border actually have no longer the possibility of using owned houses, lands and other tangible benefits.

The so called artificial boundaries destroyed in fact the communication tools, necessary to conduct a normal private life, which is the violation of the respect for private and family life protected by European Convention on Human Rights Article 8.

In the village Ditsi, erasing the possibility to the local population to visit the cemetery can be considered as violation of freedom of conscience, freedom of belief and religion, protected by Article 9 of the European Convention on Human Rights. Care of souls of those, who departed is a part of the Christian religion, recognized by the overwhelming majority of citizens living near the dividing line. In accordance, falling of the cemeteries on the occupied territories actually deprives these people to perform rituals according to their beliefs, traditions and culture.

All of the above human rights violations in a certain sense are conditioned by unjustified restriction of the freedom of movement protected under the European Convention on Human Rights 16 September 1963 additional Fourth Protocol Second Article. In light of the restriction of freedom of movement, the illegal detention of Georgian citizens is urgent issue.

The study showed that towards these detainees the European Convention on Human Rights Article 5 and Article 6 have been violated, which in turn admits on one hand, liberty and security of person, prohibits the detention without a proper legal basis and requires appropriate procedures protection, on the other hand grants any person the right to a fair trial. In cases of Georgian citizens' arrest there was no legal basis for their detention, and the appropriate safeguards to ensure their legal protection were not provided.

IN PREFERENCE TO CONCLUSION

Current reality, taking into account the so-called “red lines”, does not leave the flexibility to the dialogue to Georgia and the Russian Federation. The authors of the paper realize that the Georgian - Russian relations depend on a lot of the other factors, analysis of which is beyond the scope of the goals of this research. However, we believe that at this point the situation around the “dividing line” is particularly sensitive issue that could endanger recently started process of resolution of relations between Georgia and Russia. The “demarcation works”, being held on the so-called border is exactly the case, when the concept agreed by Tbilisi and Moscow, to separate the political and humanitarian issues, does not work. On the one hand, the Russian Federation continues to fulfill its obligations to ensure the safety of its own recognized Republics, on the other hand, Georgia is not going to recognize the so-called new reality.

It should be noted that the government of Georgia, in spite of severe discomfort, did not turn the situation, created on the “dividing line” into the barriers that could stop the process of normalization of relations with the Russian Federation, started after October 2012. Therewith Tbilisi shifted the significant responsibility on the future dynamics of the process on to the shoulders of Moscow. The empirical confirmation of understanding this responsibility by the Russian side may be President Vladimir Putin's expressed readiness, to meet with President of Georgia in case of his willingness. In addition, Tbilisi

³⁷ GYLA (2013, June 13). www.gyla.ge. Retrieved February 4, 2014, from: Georgia's Young Layers Association echoes developments along the occupation line. <http://gyla.ge>

continues peace-making policy and the constructive approach towards Tskhinvali and, in general, the South Ossetian population. Against this background, the policy of barbed wires, proposed by Russia, in the long-term becomes counterproductive for Russia's own benefit, at least according to two points of view: 1) He loses the opportunity to settle relations with Georgia, its southern neighbor, which occupies an important geopolitical location and is bordered by Russia's most vulnerable region - the North Caucasus; 2) Hindering with wire barriers the normal socio - economic life of South Ossetians, Russia, from the chief contributor of security evolves in their eyes into the main impeding force to the development. Therefore, the situation requires adequate steps and the adjustment of the approaches from the Russian Federation.

The authors of the study, beyond any doubt understand that the tendency, described above, can be changed at any time, for any unforeseen reason. However, realizing the importance of the settlement of Georgian-Russian relations, we believe that exactly this stalemate can become a background for continuing a dialogue from "humanitarian" to "political" issues. Therefore, a meeting of the leaders of the two countries may become the corresponding platform for this.

GEORGIA-RUSSIA

Political, Legal and Humanitarian Dimension
of the Current Developments on the Dividing Line

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