From Recognition to Remedy: The European Court of Human Rights' Approach to Property Restitution for Internally Displaced Persons in Disputed Post-Conflict Territories – The Case of Abkhazia, Georgia

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I, the undersigned, Ana Zantaraia, candidate for LLM degree in Human Rights declare herewith that the present thesis titled "From Recognition to Remedy: The European Court of Human Rights' Approach to Property Restitution for Internally Displaced Persons in Disputed Post-Conflict Territories – The Case of Abkhazia, Georgia" is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography.

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ABSTRACT

The law may recognise displaced persons' property rights, but turning that recognition into meaningful restitution remains one of the most difficult challenges in post-conflict justice. Restitution of property is often considered the ideal remedy for displacement. International law supports this idea in theory, but turning it into reality is far more complex. This thesis investigates how the European Court of Human Rights has adjudicated cases involving property claims in post-conflict zones with disputed territorial control and what this reveals about its approach to restitution, particularly in contexts such as Abkhazia, Georgia.

The study situates property restitution within the broader context of international law, exploring relevant key human rights standards before narrowing its scope to Abkhazia, Georgia, where the Georgian state's loss of effective control complicates access to justice. A central part of this research involves carefully examining the Court's relevant case law, which reveals a consistent judicial approach: a tension between the Court's recognition of property rights and its hesitation to demand full restitution, hesitation often justified by political sensitivities, enforcement limitations and the passage of time. For Georgian internally displaced persons from Abkhazia, legal victories in Strasbourg carry symbolic power, but they struggle to restore what was lost. This thesis underscores the need to close the gap between legal recognition and actual remedy and recommends coordinated political engagement and stronger international support. Without such measures, the Court's judgments may ultimately reaffirm rights without delivering justice.

Keywords: European Court of Human Rights; Internally Displaced Persons; Property Restitution; Abkhazia, Georgia; Post-Conflict Justice; Disputed Territories; Effective Control; Frozen Conflicts.

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This work is more than just an academic project and is especially close to my heart. While it is based on legal analysis, it has been shaped by a deep personal connection to the region, which made writing this both difficult and meaningful.

I dedicate this thesis to those still waiting to return home. I hope it contributes, in its own small way, to keep their stories alive and to quietly affirm what so many of us carry in our hearts: Abkhazia is Georgia!

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LIST OF ABBREVIATIONS

ECHR – European Convention on Human Rights

ECtHR – European Court of Human Rights

IDP – Internally displaced person

IIFFMCG – Independent International Fact-Finding Mission on the Conflict in Georgia

UDHR – Universal Declaration of Human Rights

UN – United Nations

UNGA – United Nations General Assembly

INTRODUCTION

1. Background to the Problem

'Displacement … [is] arguably the most significant humanitarian challenge that we face', stated the United Nations (hereinafter UN) Secretary-General Ban Ki-moon in the report on the protection of civilians in armed conflict.[2] Today, the majority of people who are forced to leave their homes due to conflict or similar reasons stay within their own country and since they do not cross international borders, are referred to as internally displaced persons (hereinafter IDPs).[3] Indeed, in recent years, the global number of IDPs has reached almost 70 million, representing nearly double the number compared to the past decade.[4] Worth to notice, that around 68.3 million of this figure were displaced by armed conflict and violence[5] which, with a vast body of research, once again proves that conflict is a major driver of displacement and violence, at the same time, directly and significantly forces people to leave their homes in search of safety and stability.[6] Even decades after the armed conflicts and political unrest, many countries still struggle with the lasting impacts of displacement and property loss.[7] As a result, property restitution in post-conflict zones remains one of the most multifaceted challenges in

[2] UN Security Council, 'Report of the Secretary-General on the Protection of Civilians in Armed Conflict' (28 October 2007) UN Doc S/2007/643, para 5.

[3] Walter Kälin, '*The Protection of Internally Displaced Persons in International Law' in* XXXVII *Curso de Derecho Internacional'* (Comité Internacional de la Cruz Roja 2010) 67 <https://www.oas.org/es/sla/ddi/docs/publicaciones_digital_XXXVII_curso_derecho_internacional_2010_Walter_Kaelin.pdf> accessed 28 February 2025.

[4] United Nations High Commissioner for Refugees (UNHCR), *Global Appeal 2025: Impact, Focus, Outcome, Enabling Areas* (November 2024) 9 <https://reporting.unhcr.org/sites/default/files/2024-11/Global%20Appeal%202025%20-%20Impact%2C%20Focus%2C%20Outcome%2C%20Enabling%20Areas.pdf> accessed 27 February 2025.

[5] Internal Displacement Monitoring Centre (IDMC), *Global Report on Internal Displacement 2024* (May 2024) 8 <https://api.internal-displacement.org/sites/default/files/publications/documents/IDMC-GRID-2024-Global-Report-on-Internal-Displacement.pdf> accessed 27 February 2025.

[6] Miriam Bradley, *The Impact of Armed Conflict on Displacement* (Institut Barcelona d'Estudis Internacionals, December 2017) 8–9 <https://www.researchgate.net/publication/327976746_The_Impact_of_Armed_Conflict_on_Displacement?channel=doi&linkId=5bb111e192851ca9ed3213b2&showFulltext=true> accessed 27 February 2025.

[7] Sandra F Joireman and Rosine Tchatchoua-Djomo, 'Post-Conflict Restitution of Customary Land: Guidelines and Trajectories of Change' (2023) 168 *World Development* 106272, 1.

international law, particularly in cases involving IDPs. International human rights frameworks, such as the UN Guiding Principles on Internal Displacement and UN Principles on Housing and Property Restituton for Refugees and Displaced Persons, with the jurisprudence of international courts like the European Court of Human Rights (hereinafter ECtHR or the Court), provide essential guidelines for protecting the rights of IDPs, especially regarding their right to restitution of property. However, these frameworks face significant challenges in ensuring property restitution in situations where disputed territories exist. The main reason behind this is that such entities exist within a State that is party, for example, to the European Convention on Human Rights (hereinafter ECHR or the Convention), but are outside the effective control of the territorial government's authority.[8] In general, international treaty law offers limited guidance about how treaties apply to areas of a state's territory that fall beyond its effective control.[9] Consequently, the government is unable to fully ensure the protection of the Convention rights for the people living in those areas. Academic discussions on disputed territories sometimes raise questions about whether certain conventions, including the ECHR, continue to apply when a state lacks effective territorial control,[10] as well as questions about when a state can be considered to have no obligations in parts of its territory.[11] This uncertainty in these regions often leaves populations in limbo, without clear legal recourse or protections under international law.

An important example of this issue is the case of Abkhazia, Georgia, which is a unique legal and political challenge in international law. The conflict in Abkhazia, Georgia, in the early

[8] Anthony Cullen and Steven Wheatley, 'The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights' (2013) 13 *Human Rights Law Review* 691, 692.
[9] Marko Milanović and Tatjana Papić, 'The Applicability of the ECHR in Contested Territories' (2018) 67(4) *International and Comparative Law Quaterly* 779, 782.
[10] Ibid 780.
[11] Kjetil Mujezinovic Larsen, 'Territorial Non-Application of the European Convention on Human Rights' (2009) 78 *Nordic Journal of International Law* 73,74.

1990s resulted in the displacement of over 200,000 ethnic Georgians.[12] Despite global recognition of property restitution as a fundamental right under human rights law, the majority of these displaced persons remain unable to reclaim their property more than three decades later, indicating that the issue remains unresolved.[13] Unlike many other post-conflict situations, where displaced people can use national systems to get their property back, Georgian IDPs face an additional challenge. In the aftermath of a violent conflict with substantial military involvement from Russia in support of Abkhazia's separation from Georgia, the region declared independence in the early 1990s[14]. While the majority of states and international organisations continue to recognise it as part of Georgia's sovereign territory (*de jure*)[15], Georgia has not exercised effective control over the region since the 1992-1993 conflict.[16] This resulted in Abkhazia's *de facto* detachment from Georgia's territorial and administrative framework.[17] The region's so-called *de facto* authorities are heavily dependent on the Russian Federation for political, military and economic support.[18] As mentioned, the international community overwhelmingly recognises the region as part of Georgia, particularly the UN Security Council, which has repeatedly reaffirmed Georgia's territorial integrity through a series of resolutions.[19] Moreover, in the interstate case *Georgia v Russia (II),* the Court affirmed

[12] Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War and Russia's Role in the Conflict* (Vol 7 No 7, March 1995) <https://www.hrw.org/reports/1995/Georgia2.htm#P131_14666> accessed 25 January 2025.
[13] UN General Assembly, Status of Internally Displaced Persons and Refugees from Abkhazia, Georgia, and the Tskhinvali Region/South Ossetia, Georgia (29 April 2024) UN Doc A/78/864 para 55.
[14] Harri Kalimo and Shorena Nikoleishvili, 'Sovereignty in the Era of Fragmentation - EU Trade Agreements and the Notion of Statehood in International Law' (2022) 32 *Duke Journal of Comparative & International Law* 353, 387.
[15] Only five United Nations member states have recognized the occuppied territory of Abkhazia, Georgia as an independent entitiy: Russia, Nicaragua, Venezuela, Nauru and Syria.
See Eurasianet, 'Syria Formally Recognizes Abkhazia and South Ossetia' (29 May 2018) <https://eurasianet.org/syria-formally-recognizes-abkhazia-and-south-ossetia> accessed 21 March 2025.
[16] Larsen (n11) 90.
[17] Kalimo and Nikoleishvili (n14).
[18] Shorena Nikoleishvili and Toni Selkälä, 'At the Break of Thaw, a Deluge: The Last Moments of Abkhazia?' (ISPI, 12 January 2024) <https://www.ispionline.it/en/publication/at-the-break-of-thaw-a-deluge-the-last-moments-of-abkhazia-189552> accessed 21 March 2025.
[19] See UN Security Council Resolution 1781 (15 October 2007) UN Doc S/RES/1781, UN Security Council Resolution 1808 (15 April 2008) UN Doc S/RES/1808.

that the Russian Federation was exercising effective control over the occupied region of Abkhazia[20]. The same was reiterated in its decision on admissibility in *Georgia v Russia (IV)*.[21] At the domestic level, Georgian law recognises the right of IDPs to property restitution,[22] however, implementation is delayed due to the contested nature of the region and its legal ambiguities. The Court, as a key adjudicator of human rights violations in Europe, has ruled on multiple cases concerning property restitution in disputed regions. Landmark cases such as *Loizidou v Turkey (1996),*[23] *Demopoulos and Others v Turkey (2010),*[24] *Chiragov and Others v Armenia (2015),*[25] *Ilascu and Others v Moldova and Russia (2004)*[26] and *Taganova and Others v Georgia and Russia (2023)*[27] have shaped the Court's jurisprudence on property restitution in post-conflict settings.

2. Scope, Objectives and Methodology of the Thesis

The primary aim of this thesis is to assess how the ECtHR addresses the adjudication of property restitution claims in territories that are not under the full sovereign control of the state party involved. The Court's remedial practice classically involves *restitutio in integrum*[28], meaning that when a state violates a provision of the Convention, it has a legal duty to provide reparation in a manner that seeks to restore, as much as possible, the conditions that existed before the violation occurred.[29] However, in cases concerning disputed territories, restitution

[20] *Georgia v Russia (II)* App no 38263/08 (ECtHR, 21 January 2021) paras 174, 175, 295, 321.
[21] *Georgia v Russia (IV) (dec)* App no 39611/18 (ECtHR, 28 March 2023) para 44.
[22] Law of Georgia on Internally Displaced Persons from the Occupied Territories of Georgia, Art 15 (issued 6 February 2014, entered into force 1 March 2014) <https://matsne.gov.ge/en/document/view/2244506?publication=1> accessed 25 January 2025.
[23] *Loizidou v Turkey* (Merits) App no 15318/89 (ECtHR, 18 December 1996).
[24] *Demopoulos and Others v Turkey* (dec) App nos 46113/99 et al (ECtHR, 1 March 2010).
[25] *Chiragov and Others v Armenia* App no 13216/05 (ECtHR, 16 June 2015).
[26] *Ilascu and Others v Moldova and Russia* App no 48787/99 (ECtHR, 8 July 2004).
[27] *Taganova and Others v Georgia and Russia* App no 13268/21 (ECtHR, 17 December 2024).
[28] Suzan L Haasdijk, 'The Lack of Uniformity in the Terminology of the International Law of Remedies' (1992) 5 *Leiden Journal of International Law* 245, 250.
[29] *Papamichalopoulos and Others v Greece* App no 14556/89 (ECtHR, 31 October 1995) para 34.

strictu sensu is most of the time impossible, resulting in the provision of financial compensation for the harm experienced.[30] Nevertheless, granting this type of reparations offers little relief in situations where hundreds of thousands are affected, since in these cases, very few victims can bring their claims to the Court, successfully prove their financial losses and receive compensation, which may not adequately address the rights and needs of displaced persons.[31] For example, in *Loizidou v Turkey,* compensation was awarded to an individual,[32] but this did not extend to the estimated 170,000 displaced Greek Cypriots,[33] illustrating the disparity above.

The significance of this research lies in its contribution to understanding how regional human rights mechanisms, specifically the ECtHR, can address the complexities of property restitution for IDPs in disputed post-conflict territories. Property restitution is not only a legal issue but a matter of justice and dignity for IDPs who have been deprived of their homes for decades. Without addressing this fundamental right, displaced persons cannot truly rebuild their lives or fit back into society, which keeps them stuck in poverty and feeling left out. By analysing the ECtHR's jurisprudence on property restitution, this study contributes to the broader discourse on the role of the ECtHR in adjudicating human rights violations in disputed territories, such as Abkhazia, Georgia, Northern Cyprus and Nagorno-Karabakh, where political realities complicate legal enforcement. While much academic attention has been devoted to them, [34] the

[30] *Sargsyan v Azerbaijan (Just Satisfaction)* App no 40167/06 (ECtHR, 12 December 2017) para 37.
[31] Felix E. Torres, 'Reparations: To What End? Developing the State's Positive Duties to Address Socio-Economic Harms in Post-Conflict Settings through the European Court of Human Rights' (2021) 32(3) *European Journal of International Law* 807, 823.
[32] *Loizidou v Turkey (Just Satisfaction)* App no 15318/89 (ECtHR, 28 July 1998).
[33] Peter Loizos, 'Displacement shock and recovery in Cyprus' (2008) *Forced Migration Review* <https://www.fmreview.org/loizos/#:~:text=170%2C000%20Greek%20Cypriots%20left%20their,because%20they%20feared%20further%20violence> accessed 22 March 2025.
[34] See generally Marko Milanović and Tatjana Papić, 'The Applicability of the ECHR in Contested Territories' (2018) 67(4) *International and Comparative Law Quarterly* 779; Marko Milanović, *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (OUP 2011); Kjetil Mujezinović Larsen, '"Territorial Non-Application" of the European Convention on Human Rights' (2009) 78 *Nordic Journal of International Law* 73; Ganna Yudkivska, 'Territorial Jurisdiction and Positive Obligations of an Occupied State: Some Reflections on Evolving Issues Under Article 1 of the Convention' (SSRN, 2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2825208> accessed 16 March 2025; Ettore Asoni,

specific issue of property restitution in such regions remains mainly underexplored. This thesis aims to contribute to filling the gap in the literature and provide a legal framework for analysing property restitution claims in the context of disputed territories.

The main research question guiding this thesis is: How has the European Court of Human Rights adjudicated cases involving property claims in post-conflict zones with disputed territorial control and what does this reveal about its approach to restitution, particularly in contexts such as Abkhazia, Georgia?

To address this question, the thesis primarily employs a doctrinal method to analyse legal principles, judicial reasoning and case law related to property restitution in post-conflict zones. The research is based on a qualitative analysis of primary legal sources, including judgments of the ECtHR and international human rights instruments, to assess the rights of displaced persons and corresponding state obligations. Landmark ECtHR cases are the core of the analysis, with a focus on concepts such as effective control[35], continuing violations[36] and the adequacy of the remedies in restitution cases.

The doctrinal method is supported by a systematic review of secondary sources, including academic literature, journal articles and legal commentaries. An analysis of key scholarly works on post-conflict property restitution, ECtHR jurisprudence and contested governance places the Court's rulings within the broader scholarly debates. Comparative insights are also

'Territory, Terrain, and Human Rights: Jurisdiction and Border Control Under the European Convention on Human Rights' (2023) 29(4) *Geopolitics* 1198.

[35]Council of Europe, *Guide on Article 1 of Protocol No. 1 – Protection of Property* (31 August 2020) <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc> accessed 25 January 2025.

[36] *Taganova* (n27) paras 303-310.

given to highlight how the ECtHR's approach aligns with established legal principles on restitution.

The thesis also uses contextual legal analysis through a detailed case study of Abkhazia, Georgia, to show how international legal principles are or are not effective in practice when enforcement is weak and political solutions are lacking.

The thesis is structured in five chapters. The first chapter lays the foundation, introducing the concepts of post-conflict zones and disputed territories. The second examines the legal principles underlying property restitution, illustrating how international law has evolved to safeguard the rights of individuals displaced from their homes. The third chapter focuses on Abkhazia, providing the historical and legal background, including its legal status, which is necessary to understand the displacement that occurred there and the obstacles to returning, thereby setting the stage for the main discussion. Chapter four shifts to the ECtHR and analyses ECtHR jurisdiction in cases involving loss of territorial control. The final chapter brings everything together through an analysis of key cases before the Court, assessing how it handles restitution claims in practice and what that means for displaced people from Abkhazia and similar regions.

CHAPTER 1: UNDERSTANDING POST-CONFLICT ZONES AND DISPUTED TERRITORIES

1.1 Exploring Post-conflict Zones

The concepts of post-conflict zones and disputed territories are central to understanding the legal and human rights challenges connected with property restitution for IDPs. While international law provides specific guidelines, the absence of universally accepted definitions for post-conflict zones and disputed territories makes it harder to determine state responsibility and apply consistent property rights.

The term *post-conflict zone* generally refers to regions that have undergone armed conflict but are not experiencing active hostilities and although active warfare has ceased, genuine peace and stability may not yet have been achieved.[37] Generally, hostilities rarely end suddenly with a clear, lasting peace[38] and the transition from conflict to peace is typically gradual, slow and complex, marked by uncertainty. Consequently, such regions often remain volatile with political tensions and unresolved concerns continuing to threaten stability. This is why some legal scholars have argued that restoring institutional infrastructure damaged by conflict is equally, if not more, crucial than rebuilding infrastructure.[39] Hans Kelsen, in his early work, laid the foundation for legal discussions on post-war legal orders and argued that 'peace is a

[37] Lakhdar Brahimi, *State Building in Crisis and Post-Conflict Countries* (7th Global Forum on Reinventing Government, 26–29 June 2007) 3 <https://constitutionnet.org/sites/default/files/Brahimi%20UNPAN026305.pdf> accessed 2 March 2025.
[38] Graham Brown, Arnim Langer and Frances Stewart, *A Typology of Post-Conflict Environments: An Overview* (CRISE Working Paper No 53, December 2008) 4 <https://assets.publishing.service.gov.uk/media/57a08b99ed915d3cfd000e06/wp53.pdf> accessed 2 March 2025.
[39] Krishna Kumar, *Rebuilding Societies after Civil War: Critical Roles for International Assistance* (Lynne Rienner 1997) cited in Lakhdar Brahimi, *State Building in Crisis and Post-Conflict Countries* (7th Global Forum on Reinventing Government, 26–29 June 2007) 3 <https://constitutionnet.org/sites/default/files/Brahimi%20UNPAN026305.pdf> accessed 2 March 2025.

state characterised by the absence of force'.[40] However, he emphasised that the absolute absence of force, when discussing an organised society, is impossible and leads to the idea of anarchism.[41]

Additionally, John Heathershaw and Daniel Lambach in their work call post-conflict 'a misleading term'[42] and follow the definition which was argued by Gerd Junne and Willemijn Verkoren and understood as 'shorthand for conflict situations, in which open warfare has come to an end', but can easily relapse into large-scale violence.[43] Consequently, one can conclude that the academic literature on post-conflict zones and peace is extensive, offering diverse perspectives on how it can be defined. The understanding of post-conflict and peace is not static and evolves depending on the context, the actors involved and the specific challenges faced by the region. A dominant group of thought, which I will follow in this thesis, aligns with the view that post-conflict zones should be understood as regions where hostilities have ended, but lasting peace has not been fully achieved. These areas are often characterised by fragile political structures, human rights challenges and displacement issues. This approach enables a more nuanced understanding of the challenges these regions face and is particularly relevant to the problem of property restitution, as it emphasises the need for both political and institutional rebuilding alongside legal reform. However, although there is no universally agreed-upon definition, several common features can still be identified that characterise such regions, including unstable political and governance systems, ongoing human rights concerns, displacement problems and disputes over governance.

[40] Hans Kelsen, *Peace Through Law* (University of North Carolina Press 1944) 3.
[41] Ibid.
[42] John Heathershaw and Daniel Lambach, 'Introduction: Post-Conflict Spaces and Approaches to Statebuilding' (2008) 2(3) *Journal of Intervention and Statebuilding* 269, 278.
[43] Gerd Junne and Willemijn Verkoren, *Postconflict Development: Meeting New Challenges* (Lynne Rienner 2005) 1.

1.2 The World of Disputed Territories - the Nature and Challenges

'Territorial disputes are perhaps the quintessential problem of public international law'.[44] *A disputed territory* can be defined as a geographical area where sovereignty is disputed due to the presence and control of an external entity.[45] Two or more actors often claim these regions, each justifying their sovereignty based on geographical, historical, economic or cultural grounds.[46] These territories are neither widely recognised by the international community as part of the controlling entity nor acknowledged as independent sovereign states.[47]

The definition of disputed territories can be understood through international legal principles. The Montevideo Convention on the Rights and Duties of States, although ratified by only 17 countries and not universally binding,[48] is still widely regarded as customary international law.[49] As mentioned in Article 1, the criteria above establish the classical requirements that a state, as a person of international law, should possess: a permanent population, a defined territory, a government and the capacity to enter into relations with other states.[50] Many disputed territories fail to meet all these criteria as their status is often contested within the international community and they frequently operate outside the traditional bounds of

[44] Christopher J Borgen, 'Contested Territory' in Robin Geiß and Nils Melzer (eds), *The Oxford Handbook of the International Law of Global Security* (OUP 2021) 274.
[45] Olia Kanevskaia, 'WTO Rules for Trade with Disputed Territories' (2023) 26(3) *Journal of International Economic Law* 397, 397.
[46] Alexander B Downes, *Targeting Civilians in War* (Cornell University Press 2008) 3.
[47] Kanevskaia (n45) 397.
[48] Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19.
[49] Cédric Ryngaert and Sven Sobrie, 'Recognition of States: International Law or Realpolitik? The Practice of Recognition in the Wake of Kosovo, South Ossetia, and Abkhazia' (2011) 24 *Leiden Journal of International Law* 467, 470.
[50] Montevideo Convention (n48), art 1.

statehood,[51] leaving them in a legal grey area. Generally, territories can be acquired through different processes, such as secession,[52] devolution[53] or state succession.[54]

Nevertheless, some territories can be taken by force, for example, through military occupation or annexation.[55] Interesting to notice that military occupation during armed conflict differs from occupation as a mode of territorial acquisition.[56] In this context, occupation occurs when territory is under the control of an opposing military force.[57] However, despite some states' military and civil presence in a foreign territory, they do not recognise it as occupation.[58] For instance, the Russian Federation denies being an occupant in Georgia and asserts that it neither currently nor plans to exercise effective control over Abkhazia, since, according to its 'explanation', the presence of an armed force in the territory of another state is not always construed as occupation.[59] This position was presented in the aftermath of the 2008 conflict with Georgia and was documented in the report of the Independent International Fact-Finding Mission on the Conflict in Georgia (hereinafter IIFFMCG). Russia argued that its military presence was legitimised and aimed at peacekeeping and the protection of local populations, rather than exercising governmental authority.[60] The IIFFMCG challenged the legal adequacy of Russia's claims, emphasising that Russia's military and political influence over Abkhazia may meet the criteria for occupation under the Hague Regulations and the Fourth Geneva Convention.[61] It also stressed that effective control, not consent from non-recognised

[51] Kanevskaia (n45) 399.
[52] James Crawford, *The Creation of States in International Law* (2nd edn, OUP 2007) 375.
[53] Ibid.
[54] Ibid ch 1.
[55] Kanevskaia (n45) 399.
[56] Borgen (n44) 288.
[57] Hague Regulations Respecting the Laws and Customs of War on Land (adopted 18 October 1907) art 47.
[58] Kanevskaia (n45) 399.
[59] Independent International Fact-Finding Mission on the Conflict in Georgia, *Report*, vol II (September 2009) 308 <https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf> accessed 16 March 2025.
[60] Ibid 303.
[61] Ibid 311.

authorities, is the key criterion under international humanitarian law for establishing occupation.[62] Moreover, the ECtHR has on several occasions affirmed Russia's effective control over Abkhazia, based on various factors, including its military presence, political influence and economic support.[63]

In examining the terminology relevant to this thesis, it needs to be mentioned that the term *contested territory* is often used interchangeably with *disputed territory* in academic and policy discourse. However, neither term has a universally fixed legal meaning. Scholars such as Milanović and Papić emphasise that this terminology is not a formal legal term but rather a simple way to describe different situations involving the loss of territorial control.[64] A distinction can be made between internal territorial disputes, meaning they arise within the state itself and external disputes, involving another state.[65] In the first case, a state may lose control over part of its territory when it cannot stop a non-state group from operating there, providing basic services or enforcing its authority. In contrast, the second scenario occurs when a third state takes control of a region that is legally held by another state.[66]

The topic of disputed territories is an ongoing and often contentious issue in academic and legal discourse. These challenges about territorial control can shift into debates over recognition,[67] with ongoing disagreements about terminology and classification. This lack of consensus arises from the complexity of territorial disputes, as they involve not only legal and political elements but also historical, cultural and social dimensions.[68] In many cases, the same region is described

[62] Ibid 304.
[63] See *Georgia v Russia (II)* (n20) paras 174, 175, 295, 321; *Georgia v Russia (IV) (dec)* (n21) para 44; *Taganova* (n27) para 216.
[64] Milanović and Papić (n9) 783.
[65] Ibid.
[66] Ibid.
[67] Borgen (n44) 285.
[68] Stefan Wolff, *Disputed Territories: The Transnational Dynamics of Ethnic Conflict Settlement* (Berghahn Books 2003) 3.

differently depending on legal or political perspectives. For example, Russia supports the occupied Abkhazia's so-called 'independence',[69] while the majority of the international community refers to it as an integral part of Georgian territory.[70] As the nature of disputes changes, approaches to them will likely remain and even expand, further complicating these discussions. Some scholars even argue that determining the nature of a contested territory requires considering several key questions.[71]

In conclusion, this ongoing debate highlights both legal and practical challenges in resolving sovereignty issues under international law. These challenges have real-world consequences. For displaced people in disputed regions, unresolved status can threaten their rights and safety, while also complicating the enforcement of human rights protections.

[69] Borgen (n44) 285.
[70] BBC News, 'Abkhazia profile', (*BBC News*, 19 November 2024) <https://www.bbc.com/news/world-europe-18175030> accessed 12 March 2025.
[71] Milanović and Papić (n9) 784.

CHAPTER 2: PROPERTY RESTITUTION AS A REMEDY FOR INTERNALLY DISPLACED PERSONS IN INTERNATIONAL HUMAN RIGHTS LAW

2.1 Return, Restitution and the Evolving Human Rights Framework

The legal basis for property restitution is closely tied to the right to return[72]. Article 13 (2) of the 1948 Universal Declaration of Human Rights (hereinafter UDHR) stated: 'Everyone has the right to leave any country, including his own, and to return to his country'.[73] However, the legal contours of this provision are vague and open to interpretation. The UDHR itself is a declaratory document that serves primarily as a normative framework outlining ideals for the protection of human rights and it does not impose any legal obligations on states.[74] Consequently, the enforceability of this right may be limited.

Nevertheless, the article has been influential in the development of international human rights law, particularly concerning refugees and IDPs. For instance, later in 1998, the UN sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 'Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons' recognising the ability of refugees and internally displaced persons to safely and voluntarily return to their homes and acknowledging its importance for national

[72] Megan J Ballard, 'Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations' (2010) 28 *Berkeley Journal of International Law* 462 480.
[73] Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III)) art 13(2).
[74] Franklin D Roosevelt, 'Statement by Mrs Franklin D Roosevelt on 9 December 1948' (1948) 19(494) *Department of State Bulletin 751*, cited in Josef L Kunz, 'The United Nations Declaration of Human Rights' (1949) 43(2) *American Journal of International Law* 316, 321.

reconciliation and rebuilding.[75] This resolution goes further by emphasising the voluntary and safe nature of return, which is seen as a prerequisite for successful reintegration and property restitution. To this day, a widely held view remains in scholarly discussion claiming that voluntary return is the most effective, if not the best, long-term solution for refugees and IDPs affected by mass displacement.[76] However, others do not fully agree with the general assumption about IDPs that they always and unquestionably want to return to their homes[77] and put more emphasis on the voluntary nature of return, while reiterating that 'IDPs should have the choice'.[78] While such displacement is considered illegal, international law weakly supports the right of victims to return to their origins[79] and above-mentioned right is frequently denied in practice.[80] The issue of enforcement, which is not adequately addressed, comes from a failure to establish effective mechanisms for ensuring implementation, resulting in the disability to return home.[81]

Another factor hindering the implementation of this right is unclear ownership of property. In many cases, the original owners of property cannot be identified due to the destruction of records or competing claims over ownership. More precisely, after displacement, homes and properties are often taken over by others rather than remaining vacant, hence, finding an appropriate balance between the rights of the original owners and those who later occupy the

[75] UN Sub-Commission on the Promotion and Protection of Human Rights, 'Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons' (26 August 1998) UN Doc E/CN.4/Sub.2/RES/1998/26.
[76] Bret Thiele, 'Housing and Property Restitution in the Context of the Return of Refugees and Internally Displaced Persons: Developments at the United Nations' (2000) 18(2) *Netherlands Quarterly of Human Rights* 283.
[77] Ballard (n72) 482.
[78] Deniz Şenol Sert, *Property Rights in Return and Resettlement of Internally Displaced Persons (IDPs): A Quantitative and Comparative Case Study* (PhD dissertation, City University of New York 2007) 41.
[79] Rhodri C Williams, *The Contemporary Right to Property Restitution in the Context of Transitional Justice* (International Center for Transitional Justice, May 2007) Executive Summary <https://www.ictj.org/sites/default/files/ICTJ-Global-Right-Restitution-2007-English.pdf> accessed 14 March 2025.
[80] Thiele (n76) 283.
[81] Bhupinder S Chimni, 'Refugees, Return and Reconstruction of "Post-Conflict" Societies: A Critical Perspective' (2002) 9(2) *International Peacekeeping* 163, 169.

property is quite challenging.[82] In addition, political and administrative challenges with a lack of effective legal frameworks for property restitution often interfere with the creation of solid restitution procedures. Nevertheless, returning is only one part of the challenge,[83] 'property problems are at the heart of the return process'.[84]

In general, restitution or *restitutio in integrum* is one type of remedy available within the legal system which mean that the affected party can request the state that committed an internationally wrongful act to eliminate the harmful effects of its actions either by restoring the situation to what it was before the violation or by recreating the problem that would have existed had the international law not been violated.[85] As Antonio Cassese argues in modern international law, there exists a hierarchy of modes of reparation.[86] For some authors, the top place is taken by restitution, which is referred to as 'the primary means of reparation'.[87] Those who support this perspective often argue that restoring the injured party to their *status quo ante* is the most effective way to uphold their interests.[88] This approach strengthens the principle that rights are not just commodities that can be substituted with financial compensation.[89] In this regard, it is also observed that restitution could be a more effective motivator for state authorities to change their actions rather than merely requiring financial compensation.[90] However, restitution may not always be a suitable way to repair every human rights violation.[91]

[82] Williams (n79) 52.
[83] Thiele (n76) 283.
[84] Catherine Phuong, '"Freely to Return": Reversing Ethnic Cleansing in Bosnia-Herzegovina' (2000) 13(2) *Journal of Refugee Studies* 165, 169.
[85] Haasdijk (n28) 250.
[86] Antonio Cassese, *International Law* (OUP 2005) 259.
[87] Antoine Buyse, 'Restitution as a Remedy for Human Rights Violations' (2008) 68 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 129, 132.
[88] Ibid.
[89] Ibid.
[90] Ibid.
[91] For academic debate see Thomas M Antkowiak, 'Remedies Before the Inter-American Court of Human Rights: A Critical Assessment of the State of the Art' (2008) 30 *Michigan Journal of International Law* 1; Megan J. Ballard, 'Post-Conflict Property Restitution: Flawed Legal and Theoretical Foundations' (2010) 28 *Berkeley Journal of International Law* 462; Antoine Buyse, 'Restitution as a Remedy for Human Rights Violations' (2008)

In the words of the UN Secretary General: 'No single form of reparation is likely to be satisfactory to victims. Instead, appropriately conceived combinations of reparation measures will usually be required, as a complement to the proceedings of criminal tribunals and truth commissions'.[92] Nevertheless, restitution can be an effective solution for specific rights[93] and restoring one's residence and reclaiming property are two clear examples of the above-mentioned.[94]

Continuing the analysis of UDHR, according to Article 17 'Everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property'.[95] This provision complements the above-mentioned Article 13(2). While it provides the basis for return, Article 17 affirms the continued importance of property rights even after displacement. The two articles are thus interconnected in the context of restitution claims, as return is often closely linked to reclaiming one's home or land. However, since they are non-binding, their enforcement largely depends on their incorporation into binding treaties, customary international law or domestic legislation.[96] While there is ongoing academic debate regarding their precise legal status, many scholars consider these rights to reflect widely accepted legal principles and think that they should be part of customary law.[97] However, scholarly discussions continue and there is currently insufficient agreement to definitively determine whether these provisions have become part of customary international law.[98]

68 *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht (ZaöRV)* 129; Christine Gray, 'The Choice Between Restitution and Compensation' (1999) 10 *European Journal of International Law* 413.
[92] UN Secretary-General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' (23 August 2004) UN Doc S/2004/616, 18, para 55.
[93] Buyse (n87) 153.
[94] Ibid 141.
[95] UDHR (n73) art 17.
[96] See generally: Hurst Hannum, 'The Status of the Universal Declaration of Human Rights in National and International Law' (1995) 25 *Georgia Journal of International and Comparative Law* 287.
[97] Ibid 346-347.
[98] For academic debate see: Hurst Hannum, *The Right to Leave and Return in International Law and Practice* (Martinus Nijhoff 1987); Luis Valencia Rodríguez, *The Right of Everyone to Own Property Alone as well as in Association with Others: Report of the Independent Expert* UN Doc E/CN.4/1994/19 (1993).

Additionally, one might question whether IDPs are effectively included in this protection. Analysing present circumstances reveals a gap: there is a lack of a comprehensive framework supporting IDPs in reclaiming their homes, lands and property.[99] Citing Bailliet, 'general human rights instruments do not set forth a right to restitution of property and the soft law is vague'.[100] Diving into details, because IDPs remain within their own country's borders, unlike refugees, the 1951 Convention Relating to the Status of Refugees does not apply to them, as well as the UN High Commissioner for Refugees does not have an automatic mandate to provide them with assistance.[101] As a result, there is no specific international convention that addresses the protection or legal status of IDPs and among scholars, it remains arguable whether current international law sufficiently addresses all the legitimate needs of the displaced.[102]

2.2 The Role of International Principles for Property Restitution in Displacement Contexts

Since there is a lack of a dedicated international treaty that specifically protects IDPs, it is essential to consider how this gap has been approached. One significant development in this regard is the non-binding Guiding Principles on Internal Displacement (hereinafter the Guiding Principles), also known as the 'Deng Principles'[103], which play an important role in bridging

[99] Sert (n78) 26.
[100] Cecilia M Bailliet, 'Property Restitution in Guatemala: A Transnational Dilemma' in Scott Leckie (ed), *Returning Home: Housing and Property Restitution Rights of Refugees and Displaced Persons* (Transnational Publishers 2003) cited in Deniz Şenol Sert, *Property Rights in Return and Resettlement of Internally Displaced Persons (IDPs): A Quantitative and Comparative Case Study* (PhD dissertation, City University of New York 2007) 38.
[101] Sert (n78) 16.
[102] Kälin (n3) 73.
[103] Robert Muggah, 'A Tale of Two Solitudes: Comparing Conflict and Development-Induced Internal Displacement and Involuntary Resettlement' (2003) 41(5) *International Migration* 9.

the gap in international law regarding situations of internal displacement. The final section of the document focuses on 'principles relating to return, resettlement and reintegration', specifically Principle 29(2), which sets out the right to restitution of property.[104] It places a responsibility on authorities to use restitution before other types of reparation, such as compensation, which can be the resort only when recovery of the mentioned property is not possible.[105] However, states still have the discretion to choose the form of reparation and provide no guarantees that land will be returned.[106] Francis M. Deng, the first Special Representative of the UN Secretary-General on IDPs, stated that the reason they decided to adopt Guiding Principles rather than a contentious treaty, which could have taken decades to approve, was to ensure broader acceptance.[107] However, it can still be argued how effective this type of soft law is. Although most states welcomed the Guiding Principles, many remained hesitant to formally acknowledge their legal character.[108] Furthermore, some authors argue that sufficient legal tools to adequately address the struggles of IDPs were not established[109] and the main gaps, among them, included property rights.[110]

Continuing with analysing more recent approach, in 2005, a sub-commission of the UN Commission on Human Rights approved guidelines, UN Principles on Housing and Property Restitution for Refugees and Displaced Persons (hereinafter the Pinheiro Principles)[111] that

[104] UN Commission on Human Rights, Guiding Principles on Internal Displacement (11 February 1998) UN Doc E/CN.4/1998/53/Add.2, Principle 29(2).
[105] Ibid.
[106] Bailliet, cited in Sert (n100) 39.
[107] *Researching Internal Displacement: State of the Art* (Trondheim Conference Report, Forced Migration Review Supplement, 2005) 6 <https://www.files.ethz.ch/isn/139354/TrondheimConf.pdf> accessed 14 March 2025.
[108] *The Future of the Guiding Principles on Internal Displacement* (Brookings-Bern Project on Internal Displacement, Forced Migration Review Special Issue, 2006) 6 <https://www.academia.edu/download/33606479/2006_WKfmr_FutureofGPs.pdf> accessed 15 March 2025
[109] Sert (n78) 26.
[110] Bailliet, cited in Sert (n100) 26.
[111] Centre on Housing Rights and Evictions, *The Pinheiro Principles: United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005)*) 4 <https://2001-2009.state.gov/documents/organization/99774.pdf> accessed 15 March 2025.

address the legal and technical aspects of property restitution for individuals who were displaced unlawfully or unfairly. These principles outline a legal framework for restitution, with methods to manage the process and enforce decisions.[112] Principle 2 explicitly reaffirms the right of displaced persons to have restored to them any property of which they were illegally deprived.[113] Moreover, it refers to restitution as 'the preferred remedy for displacement' and urges states to prioritise it over other types of reparation[114]. This, once again, emphasises that restitution, when addressing property rights, should be given primacy in post-conflict recovery, as it directly addresses the root cause of displacement. In the view of Ballard, 'restitution is the only form of reparations through which return can be immediately advanced'.[115]

Additionally, Principle 12 encourages states to establish 'equitable, timely, independent, transparent and non-discriminatory' mechanisms to assess and enforce claims.[116] It recommends that all peace agreements include property restitution procedures.[117] This resembles the restitution approach in Bosnia and Herzegovina, where the Dayton Peace Agreement not only placed property issues at the heart of the return process but explicitly required parties to ensure the return of individuals.[118] It will be no surprise to say that the property restitution process following violent conflict involves not only the parties directly affected but also external actors from the international community, since it relies on international resources, including funding.[119] Regarding this, Principle 22 advises international

[112] Ballard (n72) 466.
[113] United Nations, *Principles on Housing and Property Restitution for Refugees and Displaced Persons* (UNHCR 2005) (Pinheiro Principles) principle 2.
[114] Ibid.
[115] Ballard (n72) 482.
[116] Pinheiro Principles (n113*)* principle 12.
[117] Ibid.
[118] Organization for Security and Co-operation in Europe*, Handbook on Housing and Property Restitution for Refugees and Displaced Persons* (OSCE, 2014) <https://www.osce.org/files/f/documents/e/0/126173.pdf> accessed 15 March 2025.
[119] Ballard (n72) 469.

cooperation with national governments.[120] International involvement in post-conflict restitution can indeed promote human rights and institutional rebuilding, however, authors mention concerns over foreign influence and national sovereignty.[121] While it is understandable that some authors criticise the Pinheiro Principles' approach to restitution,[122] detailed examination of such criticisms falls outside the scope of this thesis, which only aims to provide a general overview of the international framework.

[120] Pinheiro Principles (n113) principle 22.
[121] Ballard (n72) 470.
[122] Ibid 467.

CHAPTER 3: TERRITORY IN DISPUTE: THE CONFLICT IN ABKHAZIA AND STRUGGLE FOR PROPERTY RIGHTS

3.1 The Road to Displacement and Roots of the Conflict

The conflict in Abkhazia, described as a 'forgotten conflict',[123] has deep roots, shaped by a long and complicated history of ethnic tensions, political struggles and historical grievances.[124] However, a deep dive into the historical roots of the conflict is beyond the scope of the thesis. In short, Abkhazia has historically been an integral part of Georgia, enjoying varying degrees of autonomy. From 1931, Abkhazia became an Autonomous Republic within the Georgian Republic,[125] reinforcing its political connection to Georgia. Some scholars refer to this date as the start of a policy of 'Georgianization' and cite repressive measures against Abkhaz culture during the Stalinist period.[126] However, after the death of Joseph Stalin in 1953, many of the discriminatory policies were lifted. The Abkhaz language was reintroduced in some primary schools, an Abkhaz-language TV program was launched and in 1978, Abkhaz State University opened in Sukhumi with Georgian, Russian and Abkhaz sections.[127] However, Abkhaz only constituted a minority in the region, approximately 18% of the total population, while ethnic

[123] Alexandros Petersen, 'The 1992–93 Georgia–Abkhazia War: A Forgotten Conflict' (2008) 2(4) *Caucasian Review of International Affairs* 187, 188 <http://cria-online.org/Journal/5/THE%201992-93%20GEORGIA-ABKHAZIA%20WAR.pdf> accessed 7 April 2025.
[124] See further Ghia Nodia, *Causes and Visions of Conflict in Abkhazia* (Berkeley Program in Soviet and Post-Soviet Studies, University of California, Berkeley 1997) <https://escholarship.org/uc/item/4qr0m8wn> accessed 7 April 2025.
[125] Stanislav Lakoba, 'History 1917–1989' in George Hewitt (ed), *The Abkhazians* (Richmond, Curzon Press 1999) 89–94, cited in Marco Siddi, 'A Short History of the Georgian–Abkhaz Conflict from Its Origins to the 2008 War' in Bruno Coppieters (ed), *Reflections on Abkhazia*: *Ways Forward* (VUB Press 2016) 2 <https://www.reflectionsonabkhazia.net/pdf/Marco_Siddi_History_of_Georgian_Abkhazian_Conflict.pdf> accessed 9 April 2025.
[126] Eva-Maria Auch, 'The Abkhazia Conflict in Historical Perspective' in *Institute for Peace Research and Security Policy at the University of Hamburg* (ed), *Yearbook on the Organization for Security and Co-operation in Europe (OSCE) 10* (2004) 227.
[127] IIFFMCG Report, vol II (n59) 68.

Georgians made up almost 46%, living alongside Armenians, Russians and Greeks.[128] Nevertheless, Georgians were strongly underrepresented in the political system while the Abkhaz enjoyed significant overrepresentation in the government and administration of the autonomous republic.[129] Moreover, Abkhazia had a significantly higher standard of living than the rest of Georgia and was considered one of the richest regions in the Soviet Union.[130]

While reforms were introduced to ease tensions and address minority needs, they failed to fully satisfy Abkhaz ambitions.[131] Between 1989 and 1990, as the Soviet Union weakened, Georgia entered a period of political instability and growing ethnic tensions with rising separatist movements,[132] which were at least in part fueled by the Russian propaganda machine.[133] Although negotiations between Tbilisi and Sokhumi over Abkhazia's political status began as early as 1991, they made little real progress and failed to ease the situation.[134] When Georgia formally declared its independence on April 9, 1991, fears grew that it would lead to a rise in nationalism.[135] In response, on July 23, 1992, Abkhazia declared its sovereignty under the restored 1925 constitution.[136] Following a series of political tensions, clashes and hostage incidents, armed conflict erupted on August 14, 1992, between forces of the Georgian government and those supporting Abkhazia's secession.[137]

[128] George B Hewitt, 'Abkhazia: A Problem of Identity and Ownership' (1993) 12(3) *Central Asian Survey* 267, 269.
[129] IIFFMCG Report, vol II (n59) 68.
[130] Marco Siddi, 'A Short History of the Georgian–Abkhaz Conflict from Its Origins to the 2008 War' in Bruno Coppieters (ed), *Reflections on Abkhazia: Ways Forward* (VUB Press 2016) 3 <https://www.reflectionsonabkhazia.net/pdf/Marco_Siddi_History_of_Georgian_Abkhazian_Conflict.pdf> accessed 9 April 2025.
[131] IIFFMCG Report, vol II (n59) 68.
[132] See further Siddi (n130) and IIFFMCG Report, vol II (n59).
[133] George Tarkhan-Mouravi and Nana Sumbadze, 'The Abkhazian–Georgian Conflict and the Issue of Internally Displaced Persons' (2006) 19(3–4) *Innovation* 283, 289.
[134] IIFFMCG Report, vol II (n59) 76.
[135] Erin D. Mooney, 'Internal Displacement and the Conflict in Abkhazia: International Responses and Their Productive Effect' (1996) 3 *International Journal on Group Rights* 197, 199.
[136] Supreme Soviet of Abkhazia, 'Resolution on Termination of the Constitution of Abkhazian ASSR of 1978' (adopted 23 July 1992) <https://www.rrc.ge/law/dadg3_1992_07_23_r.htm?lawid=373&lng_3=ru> accessed 16 April 2025 (in Russian).
[137] Mooney (n135) 199.

However, Russia played the most significant and influential role in this conflict, shaping its course and outcomes right from the start, more than any other party involved.[138] Although its responsibility remains debated among scholars,[139] considerable evidence suggests its involvement. As Olivier Roy pointed out nearly a decade ago, in the early 1990s, Moscow was stirring up conflicts in the Caucasus, all while presenting itself as a fair and neutral peacemaker.[140] During the 1992–1993 conflict in Abkhazia, Russia maintained a significant military presence in the breakaway region, with around 2,500 troops stationed there by 1994.[141] Russia's influence was evident through its financing, training, logistical support and supply of weapons to armed groups[142] that included heavy military equipment, too.[143] Moreover, in the *Georgia v Russia* case before the International Court of Justice, Georgia accused Russia of supplying separatists with advanced weaponry throughout the conflict.[144] Furthermore, Russia directly intervened by launching air raids on Georgian-held Sukhumi in early 1993.[145] Some scholars, without any doubt, affirm Russia's military support to Abkhaz forces and claim that the so-called North Caucasus 'volunteers' were openly recruited, trained and armed by Russian officers.[146] In its report, Human Rights Watch also reaffirmed Russia's significant role in various aspects of the crisis.[147]

[138] Júlia Miklasová, *Secession in International Law with a Special Reference to the Post-Soviet Space* (Brill 2024) 483.
[139] IIFFMCG Report, vol II (n59) 79.
[140] Olivier Roy, 'Crude Manoeuvres' (1997) *Index on Censorship*, no. 4, 148; in George Tarkhan-Mouravi and Nana Sumbadze, 'The Abkhazian–Georgian Conflict and the Issue of Internally Displaced Persons' (2006) 19(3–4) *Innovation* 283, 292.
[141] Alexander Lott, 'The Abkhazian Conflict: A Study on Self-Determination and International Intervention' (2020) *29 Juridica International* 133, 139.
[142] Ibid 140.
[143] Ibid 139.
[144] *Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (Georgia v Russia) (International Court of Justice, 1 April 2011) ICJ Reports 51-53, 56.
[145] Lott (n141) 140.
[146] Georgi Derluguian, 'Abkhazia: A Broken Paradise' in *Frontier Scouts and Border Crossers* (2007) 65, 76 <https://abkhazworld.com/aw/Pdf/Derluguian_Abkhazia.pdf> accessed 22 April 2025.
[147] See Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War* (n12).

As a result, the civilian population paid the highest price during the war. The conflict led to widespread and severe human rights violations, causing great suffering for countless individuals.[148] Because of the systematic nature and clear intention behind the atrocities, the term ethnic cleansing is often used to describe the tragic events in Abkhazia.[149] The Ministry of Foreign Affairs expressed these concerns in its letter to the Organization for Security and Co-operation in Europe. The letter cited the separatists' aim to expel or eliminate the Georgian population through acts such as torture, executions, rape and the mass kiling of civilians based solely on ethnicity while the methods included public beheadings, burning people alive and heavy bombing of civilian areas.[150] The mistreatment of Georgians has not only been described as ethnic cleansing by the Georgians themselves. The UN has also repeatedly expressed concern about the violent, ethnically motivated displacement in Abkhazia, particularly concerning the non-Abkhaz victims.[151] Following the brutal conflict, more than 250,000 people were forced to flee their homes.[152] The expulsion of the Georgian population led to the Abkhaz becoming the majority in Abkhazia for the first time since 1867.[153]

3.2 The Legal Status of Abkhazia and Its Impact on Property Restitution Claims

Under international law, Abkhazia remains an integral part of Georgia's sovereign territory. This position is firmly supported by UN Security Council resolutions,[154] the Council of

[148] See Amnesty International, '*Georgia: Alleged Human Rights Violations During the Conflict in Abkhazia'* (1993) <https://www.amnesty.org/en/documents/eur56/007/1993/en/> accessed 25 April 2025.
[149] Mooney (n135) 202.
[150] ODIHR, Note Verbale to the Representatives of the OSCE participating States, Warsaw, 20 Dec. 1994, No. 120/94 cited in Erin D. Mooney, 'Internal Displacement and the Conflict in Abkhazia: International Responses and Their Productive Effect' (1996) 3 *International Journal on Group Rights* 197, 203.
[151] UN Security Council, 'Report of the Secretary-General concerning the Situation in Abkhazia, Georgia' (7 October 1993) UN Doc S/26551, para 17.
[152] Human Rights Watch, *Georgia/Abkhazia: Violations of the Laws of War* (n12).
[153] Miklasová (n138) 483.
[154] See further UN Security Council Res 1524 (2004) UN Doc S/RES/1524; UN Security Council Res 1781 (2007) UN Doc S/RES/1781; UN Security Council, 'Security Council Verbatim Record' (19 October 1993) UN Doc S/PV.3295; UN Security Council Res 1808 (2008) UN Doc S/RES/1808.

Europe,[155] the European Union[156] and numerous other international bodies,[157] all of which recognise Georgia's territorial integrity and explicitly reject any recognition of Abkhazia's so-called 'independence'. Furthermore, the ECtHR in its judgments also mentions Abkhazia as the 'region in Georgia which is currently outside the *de* facto control of the Georgian Government'.[158] Following Russia's recognition of Abkhazia's so-called 'independence' in 2008,[159] only four other states have extended similar recognition,[160] which grants Abkhazia's unilateral declaration of 'independence' no standing under international law.

Russia's governmental institutions' support for secessionism, both before and during the conflict, was a clear sign of bias and interference in the internal affairs of a sovereign state.[161] Currently, Abkhazia's policies and institutional frameworks, particularly its security and defence structures, remain heavily influenced and controlled by Moscow.[162] The situation in Abkhazia is not merely a case of internal separatism but constitutes an ongoing military occupation by the Russian Federation. Georgia quite a few times asserted that Russian forces occupied its territories, including Tskhinvali region/South Ossetia and Abkhazia.[163] In 2008,

[155] See Parliamentary Assembly of the Council of Europe, Resolution 1647 (2009); Parliamentary Assembly of the Council of Europe, Resolution 1633 (2008).
[156] See European External Action Service (EEAS) Press Team, 'Georgia: Statement by the Spokesperson on the So-Called Presidential Elections in the Georgian Occupied Breakaway Region of Abkhazia' (15 February 2025) <https://www.eeas.europa.eu/eeas/georgia-statement-spokesperson-so-called-presidential-elections-georgian-occupied-breakaway-region_en>; European Commission, 'Georgia: Statement by the Spokesperson on the So-Called Presidential Elections in the Georgian Breakaway Region of Abkhazia' (23 March 2020) <https://enlargement.ec.europa.eu/news/georgia-statement-spokesperson-so-called-presidential-elections-georgian-breakaway-region-abkhazia-2020-03-23_en> accessed 27 April 2025.
[157] Vladislav Ardzinba, in 'Russian-Georgian Relations: Perspective on Abkhazia (Tbilisi, Free Georgia Newspaper 2004) 27, cited in Roman Muzalevsky, 'The Russian-Georgian War: Implications for the UN and Collective Security' (2009) *7 Orta Asya ve Kafkasya Araştırmaları 29*, 31.
[158] *Taganova* (n27) para 3.
[159] President of the Russian Federation, Decree No 1260 on the Recognition of the Republic of Abkhazia (26 August 2008) <https://www.prlib.ru/en/node/432396> accessed 27 April 2025.
[160] To be exact these states are: Nicaragua, Venezuela, Nauru and Syria.
See Eurasianet, 'Syria Formally Recognizes Abkhazia and South Ossetia' (29 May 2018) <https://eurasianet.org/syria-formally-recognizes-abkhazia-and-south-ossetia> accessed 27 April 2025.
[161] Roman Muzalevsky, 'The Russian-Georgian War: Implications for the UN and Collective Security' (2009) *7 Orta Asya ve Kafkasya Araştırmaları 29*,32.
[162] IIFFMCG Report, vol II (n59) 134.
[163] Georgia, 'Amended Request for the Indication of Provisional Measures of Protection' (International Court of Justice, 2008) para 13 <https://www.icj-cij.org/node/104732> accessed 27 April 2025.

the Georgian Parliament passed a law officially declaring Abkhazia as 'occupied territory' and named the Russian Federation as a 'military occupier'.[164] Additionally, Georgia repeated this claim in its interstate applications to the ECtHR.[165] However, it's not just in Tbilisi that people view Russia as the aggressor and consider Abkhazia to be under occupation. The ECtHR has repeatedly confirmed Russia's control over Abkhazia, pointing to its military presence, political and economic support as key factors. The Court's judgments underline Georgia's territorial integrity and further strengthen its sovereignty.[166] The international community also largely shares this perspective, particularly describing parts of Georgian territories as occupied and recognising the significant influence Russia continues to have over the situation.[167]

This illegal occupation has critical legal implications regarding the rights of IDPs. Today, property issues remain some of the most sensitive and delicate challenges in Abkhazia. Politically, they are tied to questions of territorial control. At the same time, in public discourse, they are often emotionally charged, especially for displaced ethnic Georgians, for whom the loss of property represents not just material deprivation but also the erasure of home and identity. For victims, unresolved property claims are a constant reminder of displacement and injustice, hence, resolution becomes a crucial element for achieving any lasting settlement of the conflict.

[164] 'Law on Occupied Territories of Georgia' (adopted 23 October 2008) <https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2009)004-e#:~:text=Georgia%20is%20a%20sovereign%2C%20integral,voluntary%20consent%20expressed%20by%20th> accessed 27 April 2025.

[165] See *Georgia v Russia (II)* (n20) and *Georgia v Russia (IV)* App no 39611/18 (ECtHR, 9 April 2024)

[166] See *Georgia v Russia (II)* (n20); *Georgia v Russia (IV) (dec)* (n21); *Taganova* (n27).

[167] See Amnesty International, *Behind Barbed Wire: Human Rights Toll of "Borderization" in Georgia* (EUR 56/0581/2019, 2018) <https://www.amnesty.org/en/documents/eur56/0581/2019/en/>; Delegation of Georgia, *Human Rights in the Occupied Territories of Georgia: Information Note* (OSCE Review Conference, RC.DEL/186/10, Warsaw, 30 Sept–8 Oct 2010) <https://www.osce.org/files/f/documents/7/d/73289.pdf> accessed 28 April 2025.

As discussed in previous chapters, under international human rights law, displaced people maintain the right to return to their homes and reclaim property unlawfully taken during conflict.[168] Moreover, several UN General Assembly (hereinafter UNGA) resolutions reaffirm the right of all displaced persons from Abkhazia to return to their homes in safety and dignity.[169] These resolutions, supported by a majority of UN member states, particularly refer to demographic changes that are unlawful and result from displacement, thereby emphasising the protection of property rights.[170] However, despite these international assertions, displaced Georgians face hard challenges. The Russian Federation's continued occupation,[171] alongside the actions of the so-called 'Abkhaz authorities', has created systematic barriers to the realisation of the abovementioned rights.[172] In the aftermath of the conflict, Abkhazia experienced a chaotic and unregulated period where property was seized without any control and property rights were completely ignored.[173] Many Abkhaz people moved into homes left behind by ethnic Georgians and seized empty properties for their benefit.[174] Looting became widespread during this time, people claimed everything that was left and any empty building they could find.[175] A 2011 survey among IDPs shows that almost all (99%) of the respondents

[168] See Chapter 2.
[169] See UN General Assembly, *Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia* (29 May 2008) UN Doc A/Res 62/249;UN General Assembly, *Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia* (10 June 2016) UN Doc A/Res/70/265; UN General Assembly, *Status of internally displaced persons and refugees from Abkhazia, Georgia, and the Tskhinvali region/South Ossetia, Georgia* (7 June 2023) UN Doc A/RES/77/293.
[170] Ibid.
[171] See further *Georgia v Russia (IV)* (n165).
[172] See further Human Rights Watch, *Living in Limbo: Rights of Ethnic Georgian Returnees to the Gali District of Abkhazia* (15 July 2011) <https://www.hrw.org/report/2011/07/15/living-limbo/rights-ethnic-georgians-returnees-gali-district-abkhazia> accessed 28 April 2025.
[173] Thomas Hammarberg and Magdalena Grono, *Human Rights in Abkhazia Today* (July 2017) 39 <https://www.palmecenter.se/wp-content/uploads/2017/07/Human-Rights-in-Abkhazia-Today-report-by-Thomas-Hammarberg-and-Magdalena-Grono.pdf> accessed 28 April 2025.
[174] Ibid.
[175] Ibid.

owned houses in Abkhazia before the conflict, however, only 29% of them had documents that could confirm their ownership.[176]

Furthermore, almost half of the respondents knew that their dwelling was destroyed, 23% said that it is occupied by others without their consent, which means that in case of return, they would have to deal with those currently residing in their properties.[177] In addition to this, the so-called 'authorities' have implemented policies and discriminatory legal frameworks that effectively prevent IDPs from reclaiming their homes and properties. For example, without an 'Abkhaz passport', individuals cannot conduct property transactions, but the process for obtaining the document is both discriminatory and nearly impossible for ethnic Georgians.[178] Despite many controversial property cases being taken to court, the rulings vary and the enforcement of such judicial decisions is another part of the challenge.[179] However, since the conflict, Georgia has regarded property transactions in Abkhazia as illegal. Specifically, the 2008 Law on Occupied Territories declared all real estate deals 'concluded in violation of the Georgian law … void from the moment of conclusion' and hence it 'shall not give rise to any legal consequences'.[180]

[176] Magdalena Frichova Grono, *Displacement in Georgia: IDP Attitudes to Conflict, Return and Justice – An Analysis of Survey Findings* (Conciliation Resources, April 2011) 12 <https://rc-services-assets.s3.eu-west-1.amazonaws.com/s3fs-public/Displacement%20in%20Georgia_An%20Analysis%20of%20Survey%20Findings_201104_ENG.pdf> accessed 28 April 2025.
[177] Ibid.
[178] Human Rights Watch, *Living in Limbo* (n172).
[179] Hammarberg and Grono (n173) 40.
[180] *Law on Occupied Territories* (n164) clause 5.

CHAPTER 4: JURISDICTION IN DISPUTED TERRITORIES: THE EUROPEAN COURT OF HUMAN RIGHTS AND THE DOCTRINE OF EFFECTIVE CONTROL

For many of those displaced by the conflict, the loss of home and land has been followed by the absence of any real opportunity to reclaim them. In this legal vacuum, ECtHR has become the primary avenue for seeking recognition and redress. Understanding how the Court defines its jurisdiction and assumes responsibility for such cases is essential to seeing its broader role in post-conflict property disputes. The ECtHR is a supranational judicial body empowered by the ECHR[181], which 'is the most effective human rights regime in the world'.[182] Article 1 of Protocol No.1 serves as the primary legal basis for property claims as it grants everyone the right to peacefully enjoy their property and prohibits deprivation of possessions unless it is in the public interest and under legal provisions and the general principles of international law.[183] The Court has developed jurisprudence to address cases involving forced displacement and property deprivation and has an impactful approach to restitution as a remedy to violations concerning property claims. However, initially, it is essential to examine the extent of the Court's jurisdiction over claims arising in disputed territories, as the Court must first establish its jurisdiction before addressing the substantive issue of restitution.

[181] Ettore Asoni, 'Territory, Terrain, and Human Rights: Jurisdiction and Border Control Under the European Convention on Human Rights' (2023) 29(4) *Geopolitics* 1198.
[182] Alec Stone Sweet and Helen Keller, 'The Reception of the ECHR in National Legal Orders' in Alec Stone Sweet and Helen Keller (eds), *A Europe of Rights: The Impact of the ECHR on National Legal Systems* (OUP 2008) 3.
[183] Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) ETS 9, art 1.

There are numerous examples of contested territories, such as Abkhazia and Tskhinvali Region/South Ossetia in Georgia, Northern Cyprus, Nagorno-Karabakh and others, where sovereignty is disputed or where the recognised state lacks effective control over parts of its territory.[184] Since, as Mr Jean-Paul Costa, the President of the Court, stated, 'Europe is not a happy island, sheltered from wars and crises',[185] it comes as no surprise that similar circumstances can also be found in Europe and have become increasingly relevant in cases brought before the ECtHR. According to Article 1 of the Convention, the High Contracting Parties are obligated to guarantee the rights and freedoms outlined in the Convention to all individuals within their jurisdiction.[186] Hence, it is clear that jurisdiction serves as a fundamental criterion for establishing a state's responsibility for the alleged violation. Although it appears pretty straightforward, its practical application has proven to be challenging.[187] According to Brownlie's interpretation under international law, 'jurisdiction is an aspect of sovereignty and refers to judicial, legislative and administrative competence'.[188] In the case of the ECtHR, it mainly draws guidance from international law[189] and interprets state jurisdiction as primary territorial.[190] Some authors argue that even though extraterritorial application of ECHR is possible in exceptional cases, the initial *travaux preparatoires* did not support such notion and looked at jurisdiction strictly only in territorial sense.[191] However, in one of the most important cases on the Convention's extraterritorial application, *Loizidou v*

[184] Milanović and Papić (n9) 1.
[185] European Court of Human Rights, *Annual Report 2007* (Registry of the European Court of Human Rights, 2008) 29.
[186] European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) art 1.
[187] Milanović and Papić (n9) 1.
[188] Ian Brownlie, *Principles of Public International Law* (7th edn, OUP 2008) 299, cited in Dobrosława C Budzianowska, 'Some Reflections on the Extraterritorial Application of the European Convention on Human Rights' (2012) 2(1) *Wroclaw Review of Law, Administration & Economics* 51, 52.
[189] Dobrosława C Budzianowska, 'Some Reflections on the Extraterritorial Application of the European Convention on Human Rights' (2012) 2(1) *Wroclaw Review of Law, Administration & Economics* 51, 53.
[190] Banković and Others v Belgium and Others (Admissibility) [GC] App no 52207/99 (ECtHR, 12 December 2001) paras 59–63.
[191] Budzianowska (n189) 54.

Turkey, the Court clarified that while Article 1 sets limits on the Convention's scope, a State's jurisdiction under this provision is not limited to its territory.[192]

Bearing in mind the different categories and dynamic nature of the disputed territories that were analysed previously, it is challenging to give a clear and detailed explanation of how the Court applies the Convention in disputed territories. The Court's case law does not always follow a consistent or easily identifiable pattern. Consequently, it can be said that the Court determines ECHR's possibility to apply extraterritorially on a case-by-case basis, heavily depending on the specific facts and circumstances of each situation. For example, at first, the Court followed a simple approach referred to as 'the rebuttable presumption of jurisdiction',[193] meaning that jurisdiction extends over the entire territory of a State.[194] However, the presumption can be rebutted under certain conditions,[195] particularly if a State did not control part of its territory, it did not have jurisdiction over that area, hence no ECHR obligations.[196] In other words, it can be referred as the notion of effective control. The Court has acknowledged that a Contracting State can exercise extraterritorial jurisdiction when it gains effective control over a foreign territory, either through military occupation or with the consent, invitation or acquiescence of the local authorities and carries out public functions normally undertaken by the local government.[197]

In *Cyprus v Turkey*, Turkey was exercising effective control over the northern part of Cyprus, which equalled extraterritorial jurisdiction of Turkey and was sufficient to trigger obligations

[192] *Loizidou v Turkey (Preliminary Objections)* App no 15318/89 (ECtHR, 23 March 1995*)* para 62.
[193] Larsen (n11) 79.
[194] Ibid.
[195] Ibid 81.
[196] Milanović and Papić (n9) 794.
[197] *Chiragov* (n25) para 168.

under the Convention.[198] Hence, it can be concluded that in the cases of occupation jurisdiction mainly transfers from the primary state to the one who has effective control over the territory. The significant change in the Court's approach occurs in *Ilascu et al. v Moldova*, where for the first time, the Court ruled that even though a state lacks effective control over part of its territory due to occupation still has certain positive obligations under its jurisdiction.[199] The residual positive obligations are directly linked to the State's sovereignty over the territory.[200] The Court found that Moldova did not exercise authority over part of its territory, as it was under the effective control of the Moldovan Republic of Transnistria.[201] However, the Court still found that Moldova had positive obligations under Article 1 to uphold ECHR rights.[202] In its judgement, the Court puts a big emphasis on the limitation of exercising the state's authority in part of its territory, not fully extinguishing it.[203] Therefore, despite the situation in the Transnistrian region, Moldova did not lose its jurisdiction or its ECHR obligations. Instead, its jurisdiction was limited to certain specific positive obligations, which included taking measures to restore its control over the territory and protecting the applicants' rights.[204]

In conclusion, a Contracting State under the ECHR is presumed to exercise jurisdiction over its entire territory, but this can be challenged in exceptional cases. Even then, the State keeps limited obligations to protect human rights in the affected areas. The Court, through doctrines like effective control and continuing violation, made it possible for displaced individuals to bring claims that would otherwise be barred by jurisdictional or temporal limitations. However, as was discussed, while these tools expand access to justice, they raise questions about the

[198] *Cyprus v Turkey* App no 25781/94 (ECtHR, 10 May 2001*)* paras 77–78.
[199] Ganna Yudkivska, 'Territorial Jurisdiction and Positive Obligations of an Occupied State: Some Reflections on Evolving Issues Under Article 1 of the Convention' (SSRN, 2016) 4 <https://ssrn.com/abstract=2825208> accessed 16 March 2025.
[200] Milanović and Papić (n9) 794.
[201] *Ilascu* (n26) para 330.
[202] Ibid para 331-333.
[203] Ibid para 312.
[204] Ibid para 339, 340-346

Court's capacity to provide effective remedies in cases involving long-term displacement and unresolved territorial conflicts. These questions are especially relevant when the Court is asked not only to recognise rights but to enforce them, especially in the context of property restitution.

CHAPTER 5: SYMBOLIC JUSTICE OR EFFECTIVE REMEDY? THE EUROPEAN COURT OF HUMAN RIGHTS' CASE LAW ON PROPERTY RESTITUTION AFTER DISPLACEMENT

Questions of property restitution lie at the heart of many displacement cases brought before the ECtHR. The Court's decisions in such cases reveal how it interprets the right to property in the context of displacement and whether the Court prioritises restitution. Examining these rulings closely helps to understand the kind of justice the Court can offer to IDPs and where its limits lie.

In general, the Court's authority to grant reparations is outlined in Article 41, which states: 'If the Court finds that there has been a violation of the Convention or the protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party'.[205] This article puts an emphasis on the subsidiary nature of the Court while providing reparations, since the primary duty bearer happens to be the state, the Court lits 'the torch to show which path the state should follow'.[206] It is no surprise that under the 'just satisfaction' the Court has awarded various forms of reparations, including monetary compensation[207] or issued declaratory judgments with no monetary award,[208] however according to a scholarly opinion the Court sometimes indirectly referenced the general principle of international law, which favors restitution as the preferred remedy[209] and, notably, these cases primarily involve property

[205] ECHR (n186) art 41.
[206] Buyse (n87) 145.
[207] See *Papamichalopoulos* (n29).
[208] See *Marckx v Belgium* App no 6833/74 (ECtHR, 13 June 1979).
[209] Buyse (n87) 145.

disputes.[210] In the words of Buyse: 'The Court … kept emphasising that states could choose the means of implementation of judgments, it has developed the general principle that states should provide *restitutio in integrum* whenever possible, a clear reflection of general international law'.[211] Examining the Court's case law on property issues in post-conflict zones involving disputed territories enables an assessment of how effectively it delivers justice to IDPs.

5.1 *Loizidou v Turkey*

In the landmark case of *Loizidou v Turkey*, the applicant, a Greek Cypriot, was denied access to her property in Northern Cyprus following Turkey's military intervention in 1974.[212] This resulted in the government of Cyprus losing control over a portion of its territory due to the following occupation[213] and the Court found that the so-called Turkish Republic of Northern Cyprus (TRNC) does not qualify as a recognised state.[214] In detail, the Court held that Turkey exercised effective control over Northern Cyprus[215] and was thus responsible for the violations of the applicant's rights under Article 1 of Protocol No.1 of the Convention.[216] In analysing the court's approach to the restitution of property of displaced persons, the case of *Loizidou* is a good example, as it ruled that the violation of the right of peaceful enjoyment of property constituted a continuous one, thereby allowing the Court to assert jurisdiction despite the temporal limitations of the Convention.[217] Moreover, the ruling confirmed that the Greek-Cypriots, like Mrs Loizidou, remain the legal owners of their property, who are unable to have

[210] Ibid 153.
[211] Ibid.
[212] *Loizidou (Merits)* (n23) para 12.
[213] *Loizidou (Preliminary Objections)* (n192) para 63.
[214] *Loizidou (Merits)* (n23) para 44.
[215] Ibid para 57.
[216] Ibid para 64.
[217] *Loizidou (Preliminary Objections)* (n192) paras 102-105 and *Loizidou (Merits)* (n23) paras 39-47.

access to it.[218] This case established the principle that displacement does not extinguish property rights[219] and that states exercising effective control over a territory are accountable for ensuring the protection of those rights.[220] However, while the judgment may be interpreted as implying that restitution might be the more suitable remedy, the Court did not clearly state so and, in the end, chose to award compensation instead.[221] This can be referred to as 'imperfect remedy' since complete compliance with the judgment requires more than monetary compensation.[222] Turkey cannot fully address the violation identified by the Court unless it stops preventing access to the property and the owner's ability to enjoy it, while also providing assurances that the violation will not occur again.[223] Therefore, the judgment set a precedent by affirming the applicant's rights without enforcing them and recognising the legal claim while avoiding direct involvement with the underlying political conflict. Interesting to notice that this way of handling such cases became typical for the ECtHR in the years that followed.[224]

5.2 *Demopoulos and Others v Turkey*

The Court's evolving approach to property restitution became even more apparent in the 2010 decision of *Demopoulos and Others v Turkey*, a case brought by eight Greek Cypriot applicants who had been displaced from northern Cyprus.[225] This time, however, the Court declared the applications inadmissible, finding that domestic remedies provided by Turkey constituted an

[218] *Loizidou (Merits)* (n23) paras 46,47,62 and *Cyprus v Turkey* (n198) para 187.
[219] Ibid.
[220] *Loizidou (Preliminary Objections)* (n192) para 62.
[221] *Loizidou (Just Satisfaction)* (n32) para 34.
[222] Vassilis P Tzevelekos, 'Reparation of the Rights to Property and Home of Displaced Persons Arising from Armed Conflict under the European Convention of Human Rights: Falling Short of the Exigencies of International Law and the Humanistic Purpose of Human Rights?' in Elena Katselli (ed), *The Rights of those Displaced by Armed Conflict in the Theory and Practice of Contemporary International Law* (Routledge 2018) 4.
[223] Ibid.
[224] See *Xenides-Arestis v Turkey* App no 46347/99 (ECtHR, 22 December 2005); *Demades v Turkey* App no 16219/90 (ECtHR, 31 July 2003).
[225] *Demopoulos* (n24).

effective one and displaced people were expected to first apply for reparation through that process[226] or wait for a possible political resolution of the conflict.[227]

The decision led to considerable criticism of some scholars like Tzevelekos, blaming the Court for 'shifting from restitution to compensation for loss of property'.[228] In this case, the Court seemed to incline towards the notion that where *restitutio integrum* is not possible, compensation can be another alternative.[229] Some authors even call it the 'downgrading'.[230] This criticism arose because *Demopoulos* marked a departure from the Court's earlier position that prioritised restitution as the primary remedy for property violations. In other words, the shift from restitution to compensation was seen as a move that limited the reparative power of the Court, reducing its potential to fully address the injustice of unlawful property loss. Interestingly enough, the Court examined the notion of proportionality too,[231] claiming that the rights of Greek-Cypriots have to be balanced against the current occupants of their former homes.[232] This view is also reflected in the opinion of Williams, who believes that a key factor while considering restitution of property is how the rights of the original owners should be balanced with those of the new occupants, since when people leave their homes and property behind, others usually move in.[233]

Additionally, following previous discussion, the authors notice that shifting from restitution to compensation when situations concern loss of property during occupation is not in harmony with international law.[234] Moreover, *Demopoulos* was referred to as a decision which goes

[226] Ibid paras 103, 127.
[227] Ibid para 128.
[228] Ibid.
[229] Ibid para 114.
[230] Tzevelekos (n222) 24.
[231] Ibid 117.
[232] Ibid 116.
[233] Williams (n79) 52.
[234] Tzevelekos (n222) 18.

against both international law and the very purpose of human rights, which is to protect people and uphold their dignity worldwide.[235] It can be argued why the Court decided to take this approach. The one consideration which might have influenced the Court's judgment is the passage of time and practical difficulties, since the Court has acknowledged that over 35 years had passed since the properties were abandoned and imposing an obligation on the respondent State to effect restitution in all cases could be arbitrary and unreasonable, especially given the legal and practical difficulties, including the rights of third parties currently occupying the properties, since forcing people who had lived in certain homes for many years to suddenly leave them to return the property to its former owner could itself be a violation and a human rights problem.[236] Other than that, the Court mentioned that, from a Convention perspective, property is a material commodity that can be valued and compensated for in monetary terms.[237] Lastly, the Court justified the adequacy of the chosen form of redress by recognising that the choice of implementation of redress for breaches of property rights is for the respondent State, provided the remedy is effective and respects the rights of individuals.[238]

However, to the question of what criteria may lawfully justify the payment of compensation instead of restitution, the ECtHR case law still provides no sufficient answer.[239] Tzevelekos, in his paper, argues about the restitution as the 'appropriate form of reparation in case of forced displacement'[240] and that 'full reparation can be achieved through compensation complementing restitution'.[241] Author responds to the Court's attitude towards protecting the rights of the new owners of displaced's people's property and advocates that both the displaced

[235] Ibid.
[236] *Demopoulos* (n24) para 115-117.
[237] Ibid para 115.
[238] Ibid para 118.
[239] Tzevelekos (n222) 12.
[240] Ibid.
[241] Ibid 16.

persons and the new occupants are victims of the state which illegaly occupies foreign territory, consequently while displaced persons should have the right to peacefully enjoy their homes, secondary occupants should be compensated for the property they have to vacate.[242]

Turning back to the Court's approach, in *Demopoulos* it can be seen how the Court's decision in favor of compensation over the restitution was also intended for protecting its self-interests, own authority and the effectiveness of judgments,[243] since ordering physical restitution creates great enforcement issues and raises questions about the capability of fully implementation. For example, only after 26 years of issuing the judgment the Committee of Ministers of the Council of Europe, the responsible body for supervising the execution of the Court's judgments,[244] had closed its supervision of the execution of the ECtHR's judgment in the case of *Loizidou v Turkey*.[245] In *Demopoulos*, while it is true that the Court does not recognise the 'TRNC' as a State under international law and acknowledges Turkey's unlawful occupation of the northern part of Cyprus,[246] it overlooked the reasons behind the interference with the applicants' rights. It stated that 'this does not mean that when dealing with individual applications concerning interference with property, the Court must apply the Convention any differently'.[247]

The legitimacy of this approach can be open to debate. Property restitution for IDPs must be handled with sensitivity, with careful consideration of complex political, social and emotional dimensions involved, since such cases present not just a legal issue but involve post-conflict reconstruction and reconciliation efforts. Consequently, it may be unfair to subject those who

[242] Ibid 22.
[243] *Demopoulos* (n24) para 112.
[244] ECHR (n186) art 46.2.
[245] Committee of Ministers of the Council of Europe, 'Resolution CM/ResDH(2022)255 on the Execution of the Judgments of the European Court of Human Rights: *Loizidou v Turkey*' (22 September 2022) <https://search.coe.int/cm?i=0900001680a8353e> accessed 16 March 2025.
[246] *Demopoulos* (n24) para 107.
[247] Ibid para 114.

fled their homes due to violence to the same legal processes as people with ordinary property disputes.[248] The reason behind this is that, unlike typical civil disputes, IDPs often lack access to legal documents proving ownership, may face ongoing security threats in their areas of origin and are often affected by psychological trauma and socio-political instability. These conditions create significant structural disadvantages, making it unrealistic to expect them to meet the evidentiary and procedural burdens of standard property litigation. Holding them to the same legal standards as someone in a typical property disagreement does not reflect the reality of what they've been through.

Demopoulos illustrates how the Court's position evolved from strongly emphasising individual rights, as in *Loizidou*, toward a more flexible position that allows for practical compromises instead of insisting on full restitution. The decision reinforces the broader trend in the ECtHR's jurisprudence: the continued recognition of ownership rights alongside a growing hesitation to demand restitution in practice, especially in cases involving frozen conflicts and prolonged displacement.

5.3 *Chiragov and Others v Armenia*

Moving beyond the Cyprus context, the Court's approach in *Chiragov and Others v Armenia* offers an interesting perspective on how it responds to claims for restitution in other protracted conflicts involving displacement and contested territories. The applicants in *Chiragov*, six Azerbaijani nationals, were forcibly displaced during the early 1990s Nagorno-Karabakh conflict and had been unable to return to their homes for more than two decades.[249] A

[248] Sert (n78) 56.
[249] *Chiragov* (n25) para 32.

significant turning point in the case was the Court's conclusion that Armenia, despite denying direct responsibility,[250] exercised effective control over the territory of Nagorno-Karabakh through military presence and has significant influence over it.[251] This attribution of jurisdiction allowed the Court to assess the substantive complaints. It found that the applicants had suffered a continuing violation of their property rights,[252] as they remained unable to access or enjoy their homes and land with no effective remedies provided.[253] However, despite recognising the violation, the Court did not order restitution, nor did it strongly emphasise it as the preferred remedy.

Unlike *Loizidou*, where the absence of a remedy played a key role in the judgment or *Demopoulos*, where the existence of a local commission was considered sufficient, *Chiragov* fell somewhere in between. More precisely, in this judgment, one can notice how much importance the Court gives to effective domestic remedies when it comes to post-conflict reparation. The Court argued that, in the absence of a comprehensive peace settlement, establishing an accessible and fair property claims mechanism is especially important.[254] While, in an ideal scenario, a property claims mechanism would allow displaced individuals to reclaim their homes, the Court has acknowledged that even twenty years after the ceasefire, displaced people from Nagorno-Karabakh and the surrounding areas have still been unable to return.[255] Citing resolutions by the UNGA and the European Parliament, the Court observed that the conditions, including the ongoing presence of Armenian and Armenian-backed troops, repeated ceasefire violations along the Line of Contract and the continuing hostility between Armenia and Azerbaijan, make return not only unrealistic, but practically impossible in the

[250] Ibid para 119.
[251] Ibid para 186.
[252] Ibid paras 195-196.
[253] Ibid para 194.
[254] Ibid para 199.
[255] Ibid para 195.

absence of a political resolution.[256] This likely explains why the Court specifically stated that any such mechanism should allow the applicants and others in similar circumstances to restore their property rights and also receive compensation, but for the loss of enjoyment of their property rather than for the loss of the property itself,[257] as was the case in the Cyprus context.

The European Human Rights Advocacy Centre, which acted on behalf of the applicant in the corresponding case against Azerbaijan, in 2016 submitted a report under Rule 9(2) of the Committee of Ministers' Rules in which it interpreted the Court's decision to mention a compensation for the loss of enjoyment separately from the restoration of property rights as a clear indication that the Court viewed this form of compensation as a distinct element of an adequate remedy.[258] The latter argued that whether a person has their property returned or receives money to make up for its value, they should still be compensated separately for the fact that they could not use or benefit from their property during the years they were displaced.[259] While this interpretation remains open to debate, it is clear that the Court did not require Armenia to ensure return or physical restitution. Instead, the judgment leaned toward a declaratory finding of violation, leaving the question of practical enforcement to the state and the political process. This approach became especially clear in 2017 when the Court awarded only modest compensation to each applicant, while reiterating that there had been no genuine opportunity for applicants to return to their homes at any point during the relevant period, hence the Court considered that financial compensation is the most suitable form of just satisfaction in the circumstances.[260]

[256] Ibid.
[257] Ibid para 199.
[258] European Human Rights Advocacy Centre (EHRAC), Rule 9.2 communication in the case of *Chiragov and Others v Armenia*, 1 November 2016, para 44, <https://ehrac.org.uk/wp-content/uploads/2021/03/Sargsyan-Chiragov-Rule-9-submission-EHRAC-1-November-2016.pdf> accessed 10 May 2025.
[259] Ibid.
[260] *Chiragov and Others v Armenia (Just Satisfaction)* App no 13216/05 (ECtHR, 12 December 2017) para 59.

With this judgment, it is evident that the Court is adopting a more flexible remedial approach, one that considers the context of the conflict and the passage of time in determining what constitutes justice. In the broader context, the Court shifted away from the strong rights-based approach it adopted in *Loizidou* through the more cautious, procedure-focused approach in *Demopoulos* and reached a position that's more nuanced and politically aware, avoiding the explicit requirement of restitution in complex and long-standing territorial conflicts. This change shows both the Court's limited capacity to enforce its judgments and its increasing acknowledgement of political and practical challenges involved in delivering justice to displaced people in unresolved conflict situations.

5.4 *Taganova and others v Georgia and Russia*

Taganova and others v Georgia and Russia, among the cases discussed in this chapter, undoubtedly is the most directly relevant to the Georgian context, not only because it deals with displacement from Abkhazia, but also because it reflects the Court's most recent position on the issue of property restitution for IDPs. While *Loizidou*, *Demopoulos* and *Chiragov* each contributed to the development of the Court's approach, *Taganova* provides a clearer picture of how the Court now balance legal rights with political and practical realities.

Briefly, the applicants in *Taganova* were displaced from Abkhazia in the early 1990s and have been unable to return to or make use of their properties for over three decades.[261] The Court's analysis began, predictably, with the question of jurisdiction. Consistent with its established case law and doctrine of effective control, the Court found that Russia exercised effective

[261] *Taganova* (n27) paras 52, 72, 88.

control over Abkhazia, mainly through military presence, political backing and support to the so-called de facto 'authorities'.[262] Interestingly, this finding was already established in the interstate case of *Georgia v Russia (II)*[263] and admissibility decision in *Georgia v Russia (IV)*[264] and was extended to the individual claims in *Taganova*. This allowed the Court to hold Russia accountable for the human rights violations that occurred there.[265] Particularly, the ECtHR once again reaffirmed that displacement does not extinguish property rights[266] and the fact that the applicants cannot access or enjoy their homes for decades constitutes a continuing violation.[267]

The ruling is also interesting because, although it emphasised that Georgia has been unable to exercise effective control over the region since the 1990s, it highlighted that Georgia remains responsible for upholding the rights outlined in the Convention.[268] However, it comes as no surprise that while the Court recognised the ongoing violations, it did not go so far as to require Russia to return the properties or to establish any restitution process. Instead, the compensation was awarded as just satisfaction under Article 41 of the Convention.[269]

This aspect of the ruling is particularly noteworthy in defining the Court's attitude. Unlike in *Loizidou*, where restitution remained a visible element of the Court's reasoning and the Court at least left the door open for restitution as a principle or even in *Chiragov*, where the ECtHR acknowledged the complexity of the situation but still showed the importance of restitution mechanisms, in *Taganova* the judgment was suprisingly silent on restitution as a remedy. It is curious why the Court did not explicitly question whether restitution was possible or did it call

[262] Ibid para 216.
[263] *Georgia v Russia (II)* (n20) paras 174, 175, 295, 321.
[264] *Georgia v Russia (IV)(dec)* (n21*)* para 44.
[265] *Taganova* (n27) paras 317-321.
[266] Ibid para 288.
[267] Ibid para 310.
[268] Ibid paras 311-316.
[269] Ibid paras 411, 415.

for any form of institutional remedy, such as a property commission or claims process, as it has done in other contexts, as discussed earlier. The ruling treated compensation as the only practical remedy available and although the applicants were named as legal owners, the Court did not go further than awarding damages for the loss of use of the properties.[270]

The abovementioned vividly reveals the ECtHR's attitude and reflects a broader trend in its case law, which seems to be moving further away from restitution as the preferred solution. The language used by the Court suggests a lack of realistic possibility of return, which aligns with its reasoning in *Demopoulos*, where the feasibility of restitution was tied to broader political developments. In this way, it can be assumed that *Taganova* builds on the more restrained approach of recent years and favours compensation over return.

It is a debatable topic to view this judgment as one that reinforces the ECtHR's institutional limits when facing politically complex situations. It raises the same concern seen in earlier judgments: does affirming legal rights without requiring practical enforcement truly amount to justice?

However, it should be mentioned that the Court did highlight the absence of any effective domestic remedy and noted that the applicants had no legal avenues to seek compensation for what they lost or, more importantly, to return to the places they once called home and regain access to their properties.[271] This is an open door for future dialogue between states and the Committee of Ministers, potentially through structural reforms, even though Russia's

[270] Ibid para 412.
[271] Ibid para 306.

withdrawal from the Convention makes enforcement even more complex.[272] Nevertheless, the Court itself refrained from directing such a measure.

At the same time, *Taganova* confirms that the ECtHR is willing to recognise property rights even decades after displacement and attributes responsibility to states exercising effective control. However, as discussed, it also illustrates the Court's growing hesitation to treat restitution as an enforceable remedy, especially where return depends on broader geopolitical developments and may affect third-party occupants.

From the perspective of Georgian IDPs, this judgment offers long-awaited recognition, justice and hope. The Court's acknowledgement of their continued ownership rights, alongside Russia's clear responsibility, is a significant step forward. Minister of Justice of Georgia, Anri Okhanashvili, in a briefing after the judgment, expressed support for the ruling and stated that 'the Strasbourg Court's ruling once again confirms that Russia bears full responsibility for human rights violations in the occupied territories, as it continues to exercise effective control over Abkhazia'.[273] Even though the judgment does not order restitution, it reinforces the legal standing of displaced people and once again affirms that their rights have not been forgotten even decades after displacement. This recognition at the international level carries both

[272] European Court of Human Rights, 'Resolution on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights' (22 March 2022) <https://www.echr.coe.int/documents/d/echr/Resolution_ECHR_cessation_membership_Russia_CoE_ENG> accessed 11 May 2025.

[273] 1TV Georgia, 'Anri Okhanashvili: The Georgian Government Achieved Another Victory in Strasbourg, Assigning Full Responsibility to Russia for Property Rights Violations in Occupied Abkhazia' *(ანრი ოხანაშვილი - საქართველოს ხელისუფლებამ სტრასბურგში მორიგი გამარჯვება მოიპოვა, რომლითაც ოკუპირებულ აფხაზეთში საკუთრების უფლების დარღვევაზე სრული პასუხისმგებლობა რუსეთს დაეკისრა)* (17 December 2024) <https://1tv.ge/news/anri-okhanashvili-saqartvelos-khelisuflebam-strasburgshi-morigi-gamarjveba-moipova-romlitac-okupirebul-afkhazetshi-sakutrebis-uflebis-darghvevis-faqtebze-sruli-pasukhismgebloba-rusets-daekisra/> accessed 12 May 2025.

symbolic and practical value, especially in keeping their claims alive in future legal and political processes.

In conclusion, although the case law on this issue is still insufficient and not clear enough to define specific conditions for transitioning from restitution to compensation for lost property, a comparison across these cases shows that the Court systematically recognises the property rights of displaced persons. Each case shows a gradual shift. *Loizidou* emphasised the importance of strong legal principles and property rights. But in *Demopoulos* and *Chiragov*, the Court began leaning toward more practical, politically aware solutions. *Taganova*, the most recent and directly connected to Georgia, follows this trend. In every case discussed, the Court upheld the principles that displacement does not take away a person's legal ownership, that effective control is a precondition for responsibility and that the denial of access constitutes a continuing violation. However, in none of these cases did the Court go beyond awarding compensation.

CONCLUSION

Displacement caused by conflict does not end when the violence stops. For the hundreds of thousands of people forced from their homes in regions like Abkhazia, Georgia, it becomes a long-term struggle not just for return, but for recognition, justice, belonging. This thesis has examined the struggle through the lens of the ECtHR and addressed the complex topic of property restitution for IDPs in post-conflict zones with territories under foreign control.

Through analysing key judgments and connecting them with international human rights standards, it became clear that the property right survives displacement. The Court's judgments affirm that people do not lose ownership of their homes simply because they were forced to flee. It has also developed legal instruments, like the doctrine of effective control and the concept of continuing violations, to extend protection beyond state borders and into disputed territories. These are powerful legal principles, but as soon as it comes to enforcement, the Court reveals its limitations. Over time, through various cases analysed above, including the most recent one concerning Abkhazia, the ECtHR has acknowledged the violations but chosen compensation over restitution, in other words, legal recognition over practical redress.

The Court's careful approach may be legally defensible and wise from a diplomatic point, but it offers little in terms of effective justice for displaced people. To return to the core research question, the Court's case law reveals a paradox: strong legal principles paired with weak implementation. The ECtHR has succeeded in upholding the legal rights of IDPs by confirming their continued ownership and holding controlling states accountable for property-related violations in disputed areas. However, the remedies it affords do not fulfil the expectations of displaced populations. Moreover, the Court's jurisprudence is in tension with other

international instruments discussed above, which prioritise restitution as the primary remedy for displacement.

This limited remedial approach reflects the Court's institutional nature as a judicial, not political body. It also revealed the deeper problem: international courts alone cannot deliver meaningful justice in post-conflict situations without strong political commitment and international support. This pattern says something significant about the state of international law today. It shows how law can offer clarity, but not always solutions. It confirms rights, but does not guarantee return. For Georgian IDPs from Abkhazia, the *Taganova* judgment is a step forward, it recognises that their rights still exist and that Russia bears responsibility. This legal recognition by the ECtHR is significant, it matters not just legally, but symbolically, but it is not a replacement for a return that remains structurally and politically blocked. The fact that no mechanism for return was required and no restitution was ordered leaves the heart of the injustice unresolved.

In the end, the ECtHR's role in this kind of case is not about resolving the political conflict, but about ensuring that displaced people are not forgotten by law. This thesis aims to situate the situation in Abkhazia within the broader legal discussion on displacement and restitution. The Court's case law tells part of the story and helps explain what is legally possible and where the boundaries lie. However, the human impact of these judgments and the gap between recognition and reality continue to shape the experience of displacement for thousands of Georgians. This work aims to demonstrate that international law continues to play a role in this story. If at the moment it cannot end the conflict, it can set the terms of what justice should look like. And even though legal recognition is not enough, it can keep claims alive, strengthen political arguments and give people a platform to be heard, which is a step on the path to justice.

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