Организация Объединенных Наций A/75/727–S/2021/82

Генеральная Ассамблея
Совет Безопасности

Distr.: General
27 January 2021
Russian
Original: English

Генеральная Ассамблея
Семьдесят пятая сессия
Пункт 35 повестки дня
Затянувшиеся конфликты на пространстве ГУАМ и их последствия для международного мира, безопасности и развития

Совет Безопасности
Семьдесят шестой год

Идентичные письма Постоянного представителя Грузии при Организации Объединенных Наций от 26 января 2021 года на имя Генерального секретаря и Председателя Совета Безопасности

Имею честь проинформировать Вас о решении Европейского суда по правам человека по делу, касающемуся войны между Россией и Грузией в августе 2008 года, и препроводить Вам пресс-релиз Секретаря Суда (см. приложение I)[1] и заявление Министерства иностранных дел Грузии в связи с вышеупомянутым решением (см. приложение II).

Суд постановил, что во время войны в августе 2008 года Россия нарушила ряд статей Европейской конвенции по правам человека. Большая Палата в составе 17 судей постановила, что Россия несет ответственность за массовые нарушения, совершавшиеся в отношении грузинского населения в ходе осуществления ею эффективного контроля над Цхинвальским регионом и Абхазией.

Соответственно, Суд подтвердил, что неотъемлемые части Грузии — Цхинвальский регион и Абхазия — оккупированы Россией. Кроме того, признание Европейским судом этих нарушений подтверждает, что во время войны в августе 2008 года Россия проводила этническую чистку грузин.

Согласно решению Суда, Россия нарушила следующие права:

a) **Запрещение пыток (статья 3 Конвенции)**. Суд признал ответственность России за пытки грузинских военнопленных и гражданских лиц и бесчеловечное и унижающее достоинство обращение с ними. В частности, Суд постановил, что Россия несет ответственность за пытки грузинских военнопленных, а также за задержание около 160 грузинских гражданских лиц и за

[1] Приложение распространяется только на том языке, на котором оно было представлено.

бесчеловечное и унижающее достоинство обращение с ними в цхинвальском изоляторе временного содержания;

b) **Право на свободу и личную неприкосновенность (статья 5 Конвенции)**. Незаконное задержание грузинских граждан российскими силами и контролируемыми ими силами властей де-факто Цхинвальского региона также привело к нарушениям права на свободу и личную неприкосновенность;

c) **Свобода передвижения (статья 2 Протокола № 4 к Конвенции), право на уважение частной и семейной жизни (статья 8 Конвенции) и защита собственности (статья 1 Протокола № 1 к Конвенции).** Европейский суд согласился с аргументами правительства Грузии относительно этнической чистки, осуществлявшейся Россией, и признал Россию ответственной за преднамеренные поджоги, грабежи в грузинских селах в Цхинвальском регионе и прилегающих к нему районах и их уничтожение. В результате такой этнической чистки и в контексте продолжающейся оккупации тысячи грузин были насильственно выселены из своих домов, а их свобода передвижения, имущественные права и право на уважение семейной жизни до сих пор нарушаются;

d) **Право на жизнь (статья 2 Конвенции)**. Суд установил, что Россия несет ответственность за нарушение процессуальной части права на жизнь, поскольку она не расследовала убийства грузинского населения во время и после войны. Надзор за расследованием этих убийств будет осуществлять Комитет министров Совета Европы;

e) **Россия не сотрудничала с Судом (нарушение статьи 38).** Европейский суд также установил нарушение Российской Федерацией статьи 38 Конвенции в отношении обязательства сотрудничать с Судом. В отличие от Грузии Российская Федерация не сотрудничала с Европейским судом и не представила существенных доказательств активных военных действий, которые помогли бы установить дополнительные факты по этому делу.

Буду признателен Вам за распространение настоящего письма и приложений к нему в качестве документа Генеральной Ассамблеи по пункту 35 повестки дня и документа Совета Безопасности.

(*Подпись*) Каха **Имнадзе**
Постоянный представитель

Приложение I к идентичным письмам Постоянного представителя Грузии при Организации Объединенных Наций от 26 января 2021 года на имя Генерального секретаря и Председателя Совета Безопасности

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Press Release
issued by the Registrar of the Court

ECHR 028 (2021)
21.01.2021

Judgment in the case concerning the armed conflict between Georgia and the Russian Federation in August 2008 and its consequences

In today's **Grand Chamber** judgment[1] in the case of **Georgia v. Russia (II)** (application no. 38263/08) the European Court of Human Rights held:

by eleven votes to six, that the events occurring during the active phase of hostilities (8 to 12 August 2008) had not fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the European Convention on Human Rights;

by sixteen votes to one, that the events occurring after the cessation of hostilities (following the ceasefire agreement of 12 August 2008) had fallen within the jurisdiction of the Russian Federation;

by sixteen votes to one, that there had been an administrative practice contrary to Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;

unanimously, that the Georgian civilians detained by the South Ossetian forces in Tskhinvali between approximately 10 and 27 August 2008 had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1;

unanimously, that there had been an administrative practice contrary to Article 3 as regards the conditions of detention of some 160 Georgian civilians and the humiliating acts which had caused them suffering and had to be regarded as inhuman and degrading treatment;

unanimously, that there had been an administrative practice contrary to Article 5 as regards the arbitrary detention of Georgian civilians in August 2008;

unanimously, that the Georgian prisoners of war detained in Tskhinvali between 8 and 17 August 2008 by the South Ossetian forces had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1;

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

by sixteen votes to one, that there had been an administrative practice contrary to Article 3 as regards the acts of torture of which the Georgian prisoners of war had been victims;

by sixteen votes to one, that the Georgian nationals who had been prevented from returning to South Ossetia or Abkhazia had fallen within the jurisdiction of the Russian Federation;

by sixteen votes to one, that there had been an administrative practice contrary to Article 2 of Protocol No. 4 as regards the inability of Georgian nationals to return to their homes;

unanimously, that there had been no violation of Article 2 of Protocol No. 1;

unanimously, that the Russian Federation had had a procedural obligation under Article 2 of the Convention to carry out an adequate and effective investigation not only into the events which had occurred after the cessation of hostilities (following the ceasefire agreement of 12 August 2008) but also into the events which had occurred during the active phase of hostilities (8 to 12 August 2008);

by sixteen votes to one, that there had been a violation of Article 2 in its procedural aspect;

unanimously, that there was no need to examine separately the applicant Government's complaint under Article 13 in conjunction with other Articles;

by sixteen votes to one, that the respondent State had failed to comply with its obligations under Article 38; and

unanimously, that the question of the application of Article 41 of the Convention was not ready for decision and should therefore be reserved in full.

The case concerned allegations by the Georgian Government of administrative practices on the part of the Russian Federation entailing various breaches of the Convention, in connection with the armed conflict between Georgia and the Russian Federation in August 2008.

The Court found that a distinction needed to be made between the military operations carried out during the active phase of hostilities (from 8 to 12 August 2008) and the other events occurring after the cessation of the active phase of hostilities – that is, following the ceasefire agreement of 12 August 2008.

The Court had regard to the observations and numerous other documents submitted by the parties, and also to reports by international governmental and non-governmental organisations. In addition, it heard evidence from a total of 33 witnesses.

The Court concluded, following its examination of the case, that the events occurring during the active phase of hostilities (8 to 12 August 2008) had not fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention and declared this part of the application inadmissible. However, it held that the Russian Federation had exercised "effective control" over South Ossetia, Abkhazia and the "buffer zone" during the period from 12 August to 10 October 2008, the date of the official withdrawal of the Russian troops. After that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation indicated that there had been continued "effective control" over South Ossetia and Abkhazia. The Court therefore concluded that the events occurring after the cessation of hostilities – that is, following the ceasefire agreement of 12 August 2008 – had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention (obligation to respect human rights).

Principal facts

The application was lodged in the context of the armed conflict that occurred between Georgia and the Russian Federation in August 2008 following an extended period of ever-mounting tensions, provocations and incidents between the two countries.

In the night of 7 to 8 August 2008, the Georgian forces launched an artillery attack on the city of Tskhinvali, the administrative capital of South Ossetia. From 8 August 2008 Russian ground forces penetrated into Georgia by crossing through Abkhazia and South Ossetia before entering the neighbouring regions in undisputed Georgian territory.

A ceasefire agreement was concluded on 12 August 2008 between the Russian Federation and Georgia under the auspices of the European Union, specifying that the parties would refrain from the use of force, end hostilities and provide access for humanitarian aid, and that Georgian military forces would withdraw to their usual bases and Russian military forces to the lines prior to the outbreak of hostilities.

Owing to the delay by the Russian Federation in applying that agreement, a new agreement implementing the ceasefire agreement (the Sarkozy-Medvedev agreement) was signed on 8 September 2008.

On 10 October 2008 Russia completed the withdrawal of its troops stationed in the buffer zone, except for the village of Perevi (Sachkhere district), situated in undisputed Georgian territory, from which the Russian troops withdrew on 18 October 2010.

The Court found it appropriate to examine the military operations carried out during the active phase of hostilities separately from the other events occurring after the cessation of the active phase of hostilities.

Complaints, procedure and composition of the Court

The applicant Government submitted that:

- the military operations by the Russian armed forces and/or South Ossetian forces during the conflict had breached Article 2 (right to life);

- killings, ill-treatment, looting and burning of homes had been carried out by the Russian armed forces and South Ossetian forces in South Ossetia and the adjacent buffer zone, in breach of Articles 2, 3 (prohibition of torture and inhuman or degrading treatment) and 8 (right to respect for private and family life) of the Convention and Article 1 of Protocol No. 1 (protection of property);

- the South Ossetian forces had illegally detained 160 civilians (mostly women and elderly people) in indecent conditions for approximately fifteen days before releasing them all on 27 August 2008, and some of the detainees had also been ill-treated, amounting to a violation of Article 3 and Article 5 (right to liberty and security) of the Convention;

- more than 30 Georgian prisoners of war had been ill-treated and tortured by Russian and South Ossetian forces in August 2008, amounting to a violation of Article 3 of the Convention;

- the Russian Federation and the authorities of Abkhazia and South Ossetia had prevented the return of about 23,000 forcibly displaced ethnic Georgians to those regions, amounting to a violation of Article 2 of Protocol No. 4 (freedom of movement);

- Russian troops and the separatist authorities had looted and destroyed public schools and libraries and intimidated ethnic Georgian pupils and teachers, amounting to a violation of Article 2 of Protocol No. 1 (right to education); and

- the Russian Federation had not conducted any investigations into the events as regards Article 2 of the Convention.

Lastly, relying on Article 13 (right to an effective remedy), the applicant Government complained of a lack of effective remedies in respect of their complaints under Articles 3, 5 and 8 of the Convention, Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4.

On 11 August 2008 Georgia lodged an application with the Court against the Russian Federation and requested the application of an interim measure (Rule 39 of the Rules of Court). On 12 August 2008 the President of the Court decided to apply Rule 39, calling upon both High Contracting Parties to comply with their engagements, particularly in respect of Articles 2 and 3 of the Convention. The application of Rule 39 was extended several times.

The application was declared partly admissible on 13 December 2011. On 3 April 2012 the Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 23 May 2018.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Linos-Alexandre **Sicilianos** (Greece),
Jon Fridrik **Kjølbro** (Denmark),
Paul **Lemmens** (Belgium),
Yonko **Grozev** (Bulgaria),
Helena **Jäderblom** (Sweden),
Vincent A. **De Gaetano** (Malta),
Ganna **Yudkivska** (Ukraine),
Paulo **Pinto de Albuquerque** (Portugal),
Helen **Keller** (Switzerland),
Krzysztof **Wojtyczek** (Poland),
Dmitry **Dedov** (Russia),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Georgios A. **Serghides** (Cyprus),
Tim **Eicke** (the United Kingdom),
Lado **Chanturia** (Georgia),

and also Johan **Callewaert**, *Deputy Grand Chamber Registrar*.

Decision of the Court

As regards the assessment of the evidence and establishment of the facts, the Court referred to the principles summarised in the case of *Georgia v. Russia* (I). It relied on the observations and numerous other documents submitted by the parties. It also had regard to reports by international governmental and non-governmental organisations. It asked the parties to provide additional reports. The Court also had regard to the statements of witnesses and experts during a hearing held in Strasbourg from 6 to 17 June 2016. It heard evidence from a total of 33 witnesses.

Active phase of hostilities from 8 to 12 August 2008 - Article 2

The Court considered that in the event of military operations carried out during an international armed conflict, it was not possible to speak of “effective control” over an area. The very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos meant that there was no control over that area. This was also true in the present case, as the majority of the fighting had taken place in areas previously under Georgian control.

The Court therefore attached decisive weight to the fact that the very reality of armed confrontation and fighting between enemy military forces seeking to establish control over an area in a context of chaos not only meant that there was no “effective control” over that area, but also excluded any form of “State agent authority and control” over individuals. It thus considered that the conditions it had applied in its case-law to determine the exercise of extraterritorial jurisdiction by a State had not been

met in respect of the military operations it was required to examine in the present case concerning the active phase of hostilities in the context of an international armed conflict. That did not mean that States could act outside any legal framework; in such a context, they were obliged to comply with the very detailed rules of international humanitarian law.

The Court concluded that the events occurring during the active phase of hostilities (8 to 12 August 2008) had not fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention and declared this part of the application inadmissible.

Occupation phase after the cessation of hostilities (from the ceasefire agreement of 12 August 2008) - Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1

The Court found that the Russian Federation had exercised "effective control", within the meaning of its case-law (*Loizidou v. Turkey*, *Cyprus v. Turkey*, *Ilaşcu and Others v. Moldova and Russia*, *Al-Skeini and Others v. the United Kingdom*, and *Catan and Others v. the Republic of Moldova and Russia*), over South Ossetia, Abkhazia and the "buffer zone" during the period from 12 August to 10 October 2008, the date of the official withdrawal of the Russian troops. After that period, the strong Russian presence and the South Ossetian and Abkhazian authorities' dependency on the Russian Federation indicated that there had been continued "effective control" over South Ossetia and Abkhazia.

The Court concluded that the events occurring after the cessation of hostilities (following the ceasefire of 12 August 2008) had fallen within the jurisdiction of the Russian Federation for the purposes of Article 1 of the Convention.

The Court observed that the information appearing in sources including reports by the EU Fact-Finding Mission, the OSCE, the Council of Europe Commissioner for Human Rights, Amnesty International and Human Rights Watch was consistent as regards the existence, after the cessation of active hostilities, of a systematic campaign of burning and looting of homes in Georgian villages in South Ossetia and the "buffer zone". Such information was also consistent with satellite imagery from 9 October 2008 showing that the houses in question had been burnt. That campaign had been accompanied by abuses perpetrated against civilians, and in particular summary executions. Three Georgian witnesses heard by the Court had also mentioned burning and looting of houses by South Ossetian militias while their villages had been under Russian control, and abuses perpetrated against Georgian civilians.

The Court reiterated that an administrative practice was defined not only by a "repetition of acts", but also by "official tolerance": "illegal acts are tolerated in that the superiors of those immediately responsible, though cognisant of such acts, take no action to punish them or to prevent their repetition; or that a higher authority, in face of numerous allegations, manifests indifference by refusing any adequate investigation of their truth or falsity, or that in judicial proceedings a fair hearing of such complaints is denied" (see, for example, *Georgia v. Russia* (I)).

Although some witness statements indicated that at times Russian troops had intervened to stop abuses being committed against civilians, in many cases Russian troops had been passively present during scenes of looting. Despite the order given to the Russian armed forces to protect the population and carry out peacekeeping and law-enforcement operations on the ground, the measures taken by the Russian authorities had proved insufficient to prevent the alleged violations. This could be deemed to be "official tolerance" by the Russian authorities, as was also shown by the fact that the latter had not carried out effective investigations into the alleged violations.

The Court held that it had sufficient evidence in its possession to enable it to conclude beyond reasonable doubt that there had been an administrative practice contrary to Articles 2 and 8 of the Convention and Article 1 of Protocol No. 1 as regards the killing of civilians and the torching and looting of houses in Georgian villages in South Ossetia and the "buffer zone". Having regard to the seriousness of the abuses committed, which could be classified as "inhuman and degrading treatment" owing to the feelings of anguish and distress suffered by the victims – who had been targeted as an ethnic group – the

Court found that this administrative practice had also been contrary to Article 3 of the Convention. The rule of exhaustion of domestic remedies did not apply where the existence of an administrative practice was established.

There had therefore been a violation of Articles 2, 3 and 8 of the Convention and Article 1 of Protocol No. 1, and the Russian Federation was responsible for that violation.

Treatment of civilian detainees and lawfulness of their detention - Articles 3 and 5

The Court noted that it was not disputed that 160 Georgian civilians, most of whom were fairly elderly and one-third of whom were women, had been detained by South Ossetian forces in the basement of the "Ministry of Internal Affairs of South Ossetia" in Tskhinvali between around 10 and 27 August 2008. Since the Georgian civilians had been detained mainly after the hostilities had ceased, the Court concluded that they had fallen within the jurisdiction of the Russian Federation.

The testimonies of Georgian civilians concerning the conditions of their detention were consistent with the information in the various sources available to the Court. The head of the "detention centre" had acknowledged at the witness hearing that the basement of the "Ministry of Internal Affairs of South Ossetia" had not been designed to accommodate so many detainees. Men and women had been detained together for a certain amount of time, there had not been enough beds and basic health and hygiene requirements had not been met.

Even though the direct involvement of the Russian forces had not been clearly demonstrated, the fact that the Georgian civilians fell within the jurisdiction of the Russian Federation meant that the latter had also been responsible for the actions of the South Ossetian authorities. Although they had been present at the scene, the Russian forces had not intervened to prevent the treatment complained of.

The Court concluded that there had been an administrative practice contrary to Article 3 as regards the conditions of detention of some 160 Georgian civilians and the humiliating acts to which they had been exposed, which had caused them undeniable suffering and had to be regarded as inhuman and degrading treatment. In accordance with the Court's case-law, the rule of exhaustion of domestic remedies did not apply where the existence of an administrative practice was established.

There had therefore been a violation of Article 3 of the Convention, and the Russian Federation was responsible for that violation.

According to the respondent Government, the Georgian civilians had been detained for their own safety owing to potential attacks from South Ossetians seeking to take revenge on Georgians for the attack on Tskhinvali. That justification, which moreover was factually disputed, was not accepted as a ground for detention. Furthermore, the detainees had not been informed of the reasons for their arrest and detention.

The Court concluded that there had been an administrative practice contrary to Article 5 as regards the arbitrary detention of Georgian civilians in August 2008, and that the Russian Federation was responsible for the resulting violation.

Treatment of prisoners of war – Article 3

The Court observed that cases of ill-treatment and torture of prisoners of war by South Ossetian forces had been mentioned in the various sources available to it. At the witness hearing in Strasbourg, two witnesses had described in detail the treatment that had been inflicted on them by the South Ossetian and also the Russian forces.

The Court considered that it had sufficient evidence to enable it to conclude that Georgian prisoners of war had been victims of treatment contrary to Article 3 of the Convention inflicted by the South Ossetian forces. Even though the direct involvement of the Russian forces had not been clearly demonstrated in all cases, the fact that the prisoners of war fell within the jurisdiction of the Russian Federation meant that the latter had also been responsible for the actions of the South Ossetian forces. Although they had been present at the scene, the Russian forces had not intervened to prevent the treatment complained of.

The Court found that the ill-treatment inflicted on the Georgian prisoners of war had to be regarded as acts of torture within the meaning of Article 3 of the Convention. Such acts were particularly serious given that they had been perpetrated against prisoners of war, who enjoyed a special protected status under international humanitarian law.

The Court concluded that there had been an administrative practice contrary to Article 3 of the Convention as regards the acts of torture of which the Georgian prisoners of war had been victims. There had therefore been a violation of Article 3, and the Russian Federation was responsible for that violation.

Freedom of movement of displaced persons – Article 2 of Protocol No. 4

The information in the different sources available to the Court was consistent regarding the refusal of the South Ossetian and Abkhazian authorities to allow the return of many ethnic Georgians to their respective homes, even if some returns in the region of Akhalgori had been authorised. Negotiations were under way in Geneva with a view to finding a political solution. In the meantime, the *de facto* South Ossetian and Abkhazian authorities, and the Russian Federation, which had effective control over those regions, had a duty under the Convention to enable inhabitants of Georgian origin to return to their respective homes.

The Court concluded that there had been an administrative practice contrary to Article 2 of Protocol No. 4.

The situation regarding the inability of Georgian nationals to return to their respective homes had still been ongoing on 23 May 2018, the date of the hearing on the merits in the present case.

There had therefore been a violation of Article 2 of Protocol No. 4 at least until 23 May 2018, and the Russian Federation was responsible for that violation.

Right to education – Article 2 of Protocol No. 1

The Court considered that it did not have sufficient evidence in its possession to conclude beyond reasonable doubt that there had been incidents contrary to Article 2 of Protocol No. 1. There had therefore been no violation of that Article.

Obligation to investigate – Article 2

The Court concluded that the Russian Federation had had an obligation to carry out an adequate and effective investigation not only into the events occurring after the cessation of hostilities, but also into the events occurring during the active phase of the hostilities.

Having regard to the seriousness of the crimes allegedly committed during the active phase of the hostilities, and the scale and nature of the violations found during the period of occupation, the Court found that the investigations carried out by the Russian authorities had not satisfied the requirements of Article 2 of the Convention.

There had therefore been a violation of Article 2 of the Convention in its procedural aspect.

Effective remedies – Article 13

In view of the above conclusions, the Court held that there was no need for a separate examination of the applicant Government's complaint under Article 13 in conjunction with Articles 3, 5 and 8 of the Convention and with Articles 1 and 2 of Protocol No. 1 and Article 2 of Protocol No. 4.

Article 38

After examining the documents submitted to the Court at its request by the applicant Government, the Court found that the applicant Government had complied with their obligation to cooperate under Article 38 of the Convention.

The respondent Government had refused to submit "combat reports", on the grounds that the documents in question constituted a "State secret", despite the arrangements proposed by the Court for the submission of non-confidential extracts. Nor had they submitted any practical proposals to the Court that would have allowed them to satisfy their obligation to cooperate while preserving the secret nature of certain items of information. The Court therefore found that the respondent Government had fallen short of their obligation to furnish all necessary facilities to the Court in its task of establishing the facts of the case, as required under Article 38 of the Convention.

Just satisfaction (Article 41)

The Court held that the question of the application of Article 41 was not ready for decision and consequently reserved it in full.

Separate opinions

Judge **Keller** expressed a concurring opinion; Judge **Serghides** expressed a partly concurring opinion; Judges **Lemmens**, **Grozev**, **Pinto de Albuquerque**, **Dedov** and **Chanturia** each expressed a partly dissenting opinion; Judges **Yudkivska**, **Pinto de Albuquerque** and **Chanturia** expressed a joint partly dissenting opinion; and Judges **Yudkivska**, **Wojtyczek** and **Chanturia** expressed a joint partly dissenting opinion.

The judgment is available in English and French.

Press contacts
During the current public-health crisis, journalists can continue to contact the Press Unit via echrpress@echr.coe.int.

Denis Lambert
Tracey Turner-Tretz
Inci Ertekin
Neil Connolly

Приложение II к идентичным письмам Постоянного представителя Грузии при Организации Объединенных Наций от 26 января 2021 года на имя Генерального секретаря и Председателя Совета Безопасности

Заявление Министерства иностранных дел Грузии в связи с решением Европейского суда по правам человека по делу, касающемуся войны между Россией и Грузией в августе 2008 года

Министерство иностранных дел Грузии ссылается на историческое решение Европейского суда по правам человека по делу о войне между Россией и Грузией, в котором юридически установлена ответственность Российской Федерации за нарушения основополагающих норм международного права и прав человека во время войны в августе 2008 года и в период дальнейшей оккупации Россией грузинских территорий.

Решение Страсбургского суда является беспрецедентной международной победой грузинского государства и первой международно-правовой оценкой военной агрессии России в 2008 году. В нем постановляется, что Российская Федерация несет ответственность за нарушения, совершенные во время войны в августе 2008 года, а также после нее, в период оккупации. Европейский суд по правам человека однозначно установил ответственность Российской Федерации за нарушения основных прав человека, такие как: лишение права на жизнь; пытки, бесчеловечное и унижающее достоинство обращение; этническая чистка; нарушение права на свободу и личную неприкосновенность; посягательство на право на свободу передвижения, право на уважение частной и семейной жизни и на имущественные права. Страсбургский суд признал Российскую Федерацию ответственной за преднамеренные поджоги, грабежи в грузинских селах и их уничтожение, а также за нарушение прав сотен тысяч ВПЛ и беженцев на возвращение в свои дома.

Что чрезвычайно важно, Европейский суд по правам человека постановил, что Российская Федерация незаконно оккупирует неотделимые от Грузии регионы — Абхазию и Цхинвальский регион/Южную Осетию — и осуществляет эффективный контроль над ними и нарушает Соглашение о прекращении огня от 12 августа 2008 года. Примечательно, что Страсбургский суд также подтвердил тот факт, что война в августе 2008 года велась между двумя государствами — Российской Федерацией и Грузией — и что Россия вторглась на территорию Грузии.

Решение Европейского суда по правам человека вновь подтвердило основанную на международном праве твердую позицию международного сообщества в поддержку суверенитета и территориальной целостности Грузии в рамках ее международно признанных границ.

Решение Страсбургского суда является важнейшей международно-правовой основой для успеха дальнейших усилий Грузии и международного сообщества, направленных на защиту прав людей, затронутых российско-грузинским конфликтом. Это решение подчеркивает важность справедливой и мирной

борьбы Грузии, идущей по пути укрепления суверенитета и территориальной целостности страны. Грузия продолжит проводить политику мирного урегулирования российско-грузинского конфликта, используя все имеющиеся дипломатические и правовые инструменты для достижения деоккупации неотделимых от Грузии регионов, примирения и укрепления доверия между разобщенными войной общинами, а также объединения и мирного развития нашей страны.