

# HUMAN RIGHTS AND CIVIL JUSTICE IN UNRECOGNIZED STATES: THE FOCUS ON TRANSNISTRIA AND POST-SOVIET UNRESOLVED CONFLICT AREAS

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## **Abstract**

The violation of human rights in the territories of unrecognized states stems from several factors, particularly the unresolved debates surrounding their legal status. These issues significantly impact fundamental rights such as citizenship, freedom of movement, personal security, and access to legal protection. In the post-Soviet space, self-proclaimed states like Transnistria continue to face challenges in accessing international legal instruments and mechanisms. One of the most pressing issues is the recognition and enforcement of foreign court decisions, especially in their interactions with Moldova, which complicates the legal landscape for residents.

This article explores the complex challenges of human rights and civil justice in unrecognized states. The analysis includes a broader examination of unresolved conflict areas in the post-Soviet space, where similar legal and human rights challenges persist. It explores how unrecognized status complicates the enforcement of human rights, legal protections, and civil justice mechanisms. The study highlights the need for diplomatic solutions and the international community's role in addressing the legal limbo that affects millions of people living in these conflict zones.

Unrecognized states represent a unique anomaly in the international system, as they operate outside the framework of international treaties, yet remain subject to the fundamental principles of international law. This article aims to explore the strategies employed by Transnistria for legitimization in the absence of formal recognition. Additionally, relationship between the European Union and Transnistria are examined, highlighting its implications for sovereignty, identity, and the legal personality of such territories.

The study also assesses the extent to which individuals in unrecognized states are protected under the European Convention on Human Rights, both within the jurisdiction of recognized states and under the local legislation of these territories. This analysis provides valuable insight into the legal and human rights challenges faced by populations living in unrecognized states, highlighting the gaps in protection and enforcement that result from their unresolved political status.

## **Keywords**

non-recognized states, human rights, Eastern Partnership, Moldova, Transnistria, conflict, peacebuilding, European integration, negotiation process, civil justice, security.

## General Aspects

The phenomenon of unrecognized States occupies one of the important places in modern scientific and practical discussions.<sup>1</sup> Unfortunately, the theoretical and methodological approaches and assessments of this phenomenon between representatives of various scientific schools are diametrically opposed. Theoretically, the legal uncertainty in unrecognized States originates in the basic international legal documents, in which the contradiction between norms of international law such as the right of peoples to self-determination and the territorial integrity of the state has not yet been resolved.

Researchers have various definitions of territorial entities with a disputed status:<sup>2</sup> “de facto State,” “States with indeterminate status,” “territories with challenged status,” “disputed States,” “with deferred status,” “self-proclaimed States,” “insolvent,” “collapsing,” “failed States,” “defective, uncontrolled territory,” “pseudo-State,” “stateless zones,” “islands of transit statehood,” etc. For clarity, according to the terminology of the European Court of Human Rights, we refer here to entities that stand outside the international order of recognized statehood, such as Abkhazia, Transnistria, South Ossetia, and Northern Cyprus.<sup>3</sup>

The right of peoples to self-determination is the main international principle, legal institution and forms an integral part of an independent state. This problem is especially critical for the regions which withdrew their membership from the Soviet Union and now are seeking recognition of their sovereignty. Until the middle of the 20th century, the process proceeded against the background of global military conflicts, then in the context of the struggle with colonialism. Over the last three decades, it has been mostly associated with the collapse of totalitarian regimes in the world.<sup>4</sup>

The collapse of the Soviet Union and the Socialist bloc was a complex process of systemic disintegration across economic, social, and political spheres. It had a profound and lasting impact on the nature and future trajectory of international relations. To this day, there is no consensus among experts regarding the primary causes of the USSR's dissolution. Potential factors include rising nationalist movements, the authoritarian structure of Soviet society, the dominance of a single ideology, and failed attempts to reform the Soviet system, which ultimately led to economic stagnation and, eventually, the collapse of the political framework. The disintegration of the USSR and the Socialist bloc also marked the end of Russia's dominant role in European politics.

In the late 1990s, numerous pro-European and pro-Western political and economic blocs emerged or gained prominence, reinforcing ties between Western nations and fostering economic and political integration. The European Union (EU) expanded its influence by integrating Central and Eastern European countries, laying the groundwork for further expansion in the early 2000s. NATO (North Atlantic Treaty Organization) also extended its membership to former Warsaw Pact countries, solidifying its role as a key military alliance in Europe. The Council of Europe, which promotes democracy, human rights, and the rule of law, continued to grow by incorporating new members from Eastern Europe.

On the economic front, the Organisation for Economic Co-operation and Development (OECD), which supports democratic market economies, expanded its reach. The creation of the Stability Pact for South Eastern Europe in 1999 focused on promoting stability, development,

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<sup>1</sup> Caspersen (2011), Souleimanov, Abrahamyan and Aliyev (2018); Čech (2011).

<sup>2</sup> Coppieters and Sakwa (2003), pp. 78-89; Cotta and Best (2007), pp. 156-167; Crowther (1996), pp. 45-66.

<sup>3</sup> Caspersen and Stansfield (2010), pp. 11.

<sup>4</sup> Kvacheva (2017), pp. 56-65.

and integration of the Balkans with Europe. Additionally, APEC (Asia-Pacific Economic Cooperation) bolstered Western-led economic cooperation across the Asia-Pacific, further integrating Western economies with those in the East. These blocs reflected the growing political and economic convergence between Europe, the U.S., and other pro-Western regions during the late 1990s.

During this period of transition, Russia embarked on a new geopolitical and geo-economic path, seeking to define its own strategic direction. Various integration organizations emerged in the post-Soviet space, including the Commonwealth of Independent States (CIS), which was established to maintain cooperation among former Soviet republics, and the Eurasian Economic Union (EAEU), aimed at fostering economic integration among Russia, Belarus, Kazakhstan, and later other countries. Additionally, the Union State of Russia and Belarus was created to enhance political, economic, and military cooperation between the two nations.

On the political and military front, the Collective Security Treaty Organization (CSTO) emerged as a pro-Russian military alliance, providing a counterbalance to NATO's eastward expansion. The Community for Democracy and Rights of Nations, often referred to as the "CIS-2," was another bloc consisting of unrecognized or partially recognized states, that aligned with Russia. These blocs played a key role in cementing Russia's influence in the post-Soviet space, as a counterweight to the growing pro-European and pro-Western political and economic alliances, such as NATO, the EU, and the OECD, that were expanding their influence during the same period.

### **Post-Soviet 'Frozen Conflicts'**

The following so-called post-Soviet 'frozen conflicts' appeared before or immediately after the fall of the Soviet Union: Abkhazia, Nagorno-Karabakh, South Ossetia and Transnistria. Despite the lack of consensus over the definition, the term "frozen conflict" is often understood as a (formerly military) conflict in which active armed confrontation has been ended, but no peace treaty or other political framework resolves the conflict to the satisfaction of the combatants; the military conflict can thus legally start again at any moment.<sup>5</sup> Generally speaking, a frozen conflict means that as a result of a conflict which is not settled, certain post-Soviet states are unable to realize their sovereignty on the part of their own territory and the respective part of the territory is controlled by rebels. Some of these conflicts were motivated by ethnic and religious differences, while others were based on historical disputes. No UN member state has so far recognized Transnistria and eastern Ukraine. In the case of Abkhazia and South Ossetia, these territories have been recognized by Russia, Venezuela, Nicaragua, Nauru, and Syria.

### **Nagorno-Karabakh**

The Nagorno-Karabakh (NKR) conflict is one of the longest-standing territorial and ethnic disputes in the post-Soviet space, with deep historical roots between Armenia and Azerbaijan. The frozen conflict endured for decades, with occasional flare-ups and unresolved tensions. The conflict has seen multiple phases of escalation, most notably the First Nagorno-Karabakh War (1988–1994) and

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<sup>5</sup> Martin (2017), <https://nouvelleeuropeassociation.wordpress.com/2017/11/21/the-eus-eastern-partnership-post-soviet-frozen-conflicts-and-the-war-in-eastern-ukraine/> (Accessed on 25.09.2024).

the more recent 2020 war, which significantly altered the balance of power. In September 2023, Azerbaijan conducted a swift military operation, achieving full control over the region, marking a decisive shift in the conflict's trajectory. Samvel Shahramanyan, announced the dissolution of the NKR by January 1, 2024. This act symbolized the end of three decades of self-proclaimed independence for the Armenian enclave within Azerbaijan.

The dissolution of the Nagorno-Karabakh Republic and the exodus of its Armenian population marks a pivotal moment in the region's history. While Azerbaijan has achieved territorial consolidation, the humanitarian cost and potential for future instability remain high. The international community's response to these events will play a critical role in determining the long-term stability and security of the South Caucasus. For Moldova, this conflict also serves as a reminder of the unresolved territorial disputes in the post-Soviet space and their potential to impact broader European security dynamics.

### **The Georgian-Abkhaz Conflict**

The Georgian-Abkhaz conflict, a prominent example of interethnic tensions in the Caucasus, emerged as a significant regional dispute in the late 1980s, fueled by the growing instability and weakening central authority of the Soviet Union. The conflict is rooted in long-standing historical grievances between ethnic Georgians and Abkhaz, further exacerbated by political instability during the disintegration of the USSR.

The Georgian-Abkhaz conflict is an enduring ethnic and territorial dispute that began in the late 1980s as the Soviet Union weakened. Tensions between ethnic Georgians and Abkhaz escalated into armed conflict in 1992, resulting in Abkhazia's de facto independence, though it remained internationally unrecognized. Despite ceasefire agreements and peacekeeping efforts by the UN and the CIS, political settlement efforts between 1993 and 2008 failed to resolve the conflict.

A pivotal moment occurred in August 2008 during the Russo-Georgian War, when Russia recognized Abkhazia's independence. This move effectively ended ongoing negotiations and international peacekeeping missions, with Russian forces replacing them. As a result, Abkhazia became heavily reliant on Russia for military, economic, and political support, further isolating the region from the international community, which continues to view Abkhazia as part of Georgia under international law.

The Georgian-Abkhaz conflict remains frozen, with Abkhazia functioning as a de facto state dependent on Russia. The international community's continued non-recognition of Abkhazia and Russia's strategic involvement make reconciliation with Georgia unlikely in the near future, leaving the conflict unresolved. This situation underscores broader issues in post-Soviet territorial disputes and Russian influence in the region.

### **The South Ossetian Conflict**

The South Ossetian conflict, also known as the Georgian-South Ossetian conflict, is an ethno-political dispute that has persisted for decades, involving the central government of Georgia and the self-proclaimed Republic of South Ossetia. The conflict originated in the late 20th century as the Soviet Union disintegrated, when ethnic and territorial tensions escalated between the Georgian government and the Ossetian minority, leading to a complex geopolitical situation in the South Caucasus.

South Ossetia has existed as a de facto independent state since 1992, following the conclusion of violent clashes between Georgian forces and Ossetian separatists. The 1992 Dagomys Agreements, signed between Russia and Georgia, established a Mixed Peacekeeping Force to ensure stability in the region. This force, which included Russian, Georgian, and Ossetian components, was tasked with maintaining the fragile peace and preventing further escalations. Despite this arrangement, tensions continued, with sporadic violence and political unrest marking the subsequent years.

While South Ossetia declared itself independent, its status remained unrecognized by the international community. A small portion of its territory remained under Georgian control, creating a territorial dispute that would continue to fuel hostilities. The region's security was tenuous, with competing claims of sovereignty over the territory. The conflict reached its zenith in August 2008, when Georgia launched a military offensive to regain control over South Ossetia. This led to a full-scale war.

In the aftermath of the war, the Russian government formally recognized the independence of South Ossetia. This recognition was followed by a few other nations, including Nicaragua, Venezuela, Nauru, Tuvalu, and Syria. However, the majority of the international community continues to view South Ossetia as part of Georgia's sovereign territory, in line with international law.

## **Eastern Ukraine**

The war in Ukraine, which began in 2014 following Russia's annexation of Crimea, "Euromaidan"<sup>6</sup> and the rise of separatist movements in the Donbas, escalated dramatically with Russia's full-scale invasion in February 2022. The conflict has transformed from a regional crisis into one of the largest and most destructive wars in Europe since World War II, involving significant global repercussions.

The war has profoundly altered global geopolitics, with Russia facing severe sanctions that have isolated its economy. Energy markets, particularly in Europe, have been destabilized as European Union countries moved to reduce their dependency on Russian energy exports. Western nations, led by the United States and the EU, have provided Ukraine with advanced weaponry, intelligence support, and humanitarian aid. Conversely, Russia has strengthened ties with non-Western allies, including China, India, and Iran, signaling a realignment of global alliances. The war has also tested NATO's resolve, pushing the alliance to expand its defense posture in Eastern Europe and bringing previously neutral countries like Finland into NATO membership.

The humanitarian toll of the war is catastrophic, with tens of thousands of civilian casualties and the displacement of millions. Ukrainian infrastructure, including housing, energy systems, and transportation, has been severely damaged, particularly in cities like Mariupol, Kharkiv, and Bakhmut. The conflict has also led to reports of war crimes, including civilian targeting, torture, and forced deportations.

As of 2024, the war shows little sign of resolution, with Russia occupying significant portions of eastern and southern Ukraine. Diplomatic efforts for peace have stalled, with both sides

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<sup>6</sup> Renner A (2014) Euromaidan and Donetsk: Peace Paradigm analysis of the Actors, Causes, and Goals of Donbas, [http://www.academia.edu/9730203/Euromaidan\\_and\\_Donetsk\\_Peace\\_Paradigm\\_analysis\\_of\\_the\\_Actors\\_Causes\\_and\\_Goals\\_of\\_Donbas](http://www.academia.edu/9730203/Euromaidan_and_Donetsk_Peace_Paradigm_analysis_of_the_Actors_Causes_and_Goals_of_Donbas) (Accessed on 27.09.2024)

holding firm to their demands—Russia seeking to consolidate its territorial gains and Ukraine demanding full restoration of its sovereignty.

The war in Ukraine has fundamentally altered the security landscape of Europe, reinforcing the importance of NATO and the EU in regional defense. It has also demonstrated the global ramifications of regional conflicts, impacted global energy markets and reshaped geopolitical alliances. The humanitarian cost of the conflict is immense, with millions of lives disrupted and the future of Ukraine's sovereignty still uncertain. Continued military engagement and international support for Ukraine are likely to persist as long as Russian forces remain in the country, making a swift end to the conflict unlikely without significant diplomatic breakthroughs.

### **The Moldovan-Transnistrian Conflict**

The Republic of Moldova is a country situated in south-eastern Europe between Romania and Ukraine. On 27 August 1991, the Republic of Moldova declared its independence from the Soviet Union and became a sovereign State. Following its declaration of independence on 27 August 1991, and a short civil war in 1992 provoked by fears of unification with Romania, Moldova embarked on a series of political and economic reforms. Sandwiched between the Moldovan–Ukrainian border and the Dniester River a thin sliver of land has remained outside the control of Moldovan authorities. This territory, known as Transnistria, comprises 4,160 km<sup>2</sup> of land, has a population of more than half a million, and has most of the trappings associated with a regular state. Transnistria still lacks international recognition; de jure it remains an integral part of Moldova. Transnistria is one of group of statelike entities that lead a precarious existence in the limbo of international politics: the de facto states.

A wave of nationalist movement in late 80s, early 90s exerted a strong influence on the development of political events in Moldova. Constitutional acts and laws of the republic strengthened the emerging split in Moldovan society. The Transnistrian problem, as an internal political and geopolitical phenomenon is often described as a frozen conflict. Transnistria (also called Pridnestrovia, Pridnestrovian Moldavian Republic, Trans-Dniestr or Transdniestria) is de jure a part of Moldova, now a breakaway region controlled by Russia. It appeared out of the collapse of the Soviet Union because of the danger of Moldova joining Romania, the new language regime (transition from the Cyrillic to the Latin alphabet, de facto to Romanian language). All this led to the interethnic crisis in Soviet Moldova and the armed conflict in 1992, which lasted several months and was stopped by direct intervention of the Russian army under the command of General Lebed.

Pridnestroviae was proclaimed on 2 September 1990 with its capital in Tiraspol.<sup>7</sup> So far, most literature on Transnistria has focused on the unresolved conflict: either on its origins or on various formulas for solving it.<sup>8</sup> The phenomenon of Transnistria has many aspects and is unique in a sense. It is closer than other “frozen conflicts” of the post-Soviet area to the borders of the European Union, and there are no ethnic or religious factors in its base. The general framework of the “Transnistrian issue” is formed because of political circumstances, but economic interests have played an important role since its very beginning.

Transnistria has been functioning as a de facto separate pseudo-State entity for a number of years. It has all attributes of an independent State: its President, Parliament, elections, army (which

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<sup>7</sup> Petrescu (2001), pp. 36-49.

<sup>8</sup> Fischer (2016). pp. 25-30; Stefanick (2018) pp. 2-5.

is bigger than the Moldovan army), currency, and customs service. However, there is not a single country in the international community that recognizes Transnistria as an independent State including Russia. For different reasons, it is in Russia's interest to keep the current status quo. Transnistria constitutes a very convenient pressure point and bargaining card for the Russian ambition to re-install its dominant influence in the former Soviet Union belt.

Transnistria is often viewed as a separatist state which violated the principle of the territorial integrity of the Republic of Moldova.<sup>9</sup> It proclaimed the right to independence 34 years ago, referring to the international principle of equal rights and self-determination of peoples. Seven referenda have already been held where the absolute majority of residents voted for the independent development of Transnistria and also to be part of the Russian Federation. During its existence, Transnistria applied to become a member of the UN and the Eurasian Economic Union. But these statements had no practical consequences. Transnistria is only a member of the Commonwealth of Unrecognized States (the so-called CIS-2 or parallel CIS). The independence of Transnistria is currently recognized only by two partially recognized post-Soviet states, which, like Transnistria, are also zones of so-called "frozen conflicts:" South Ossetia and Abkhazia.

### **Models of Conflict Resolution**

Since the 2020 election of pro-European President Maia Sandu, Moldova has shifted strongly toward European integration, focusing on governance reforms and closer EU ties. This pro-EU trajectory was reinforced by the 2021 parliamentary elections, giving Sandu's party a mandate to pursue reforms aligned with European standards. Despite this shift, Moldova remains vulnerable to Russian influence, particularly in terms of energy dependency and the unresolved Transnistrian conflict.

Moldova's EU integration has progressed through key stages, including the 1998 Partnership and Cooperation Agreement (PCA) and its involvement in the 2004 European Neighbourhood Policy (ENP), which laid the foundation for deeper cooperation. The 2009 Eastern Partnership (EaP) further advanced political and economic ties. A major breakthrough came with the 2014 Association Agreement (AA) and Deep and Comprehensive Free Trade Area (DCFTA), granting Moldova access to the EU market and aligning its laws with European standards. Visa liberalization in 2014 facilitated greater mobility for Moldovan citizens. In 2022, Moldova achieved EU candidate status, securing enhanced financial support and technical assistance for governance, economic reforms, and institutional development. These agreements demonstrate Moldova's commitment to aligning with EU standards and advancing toward full membership.

The aims of Russia's policy towards Moldova relate to two main areas of key importance to Russia's international position: to establish the basis for the country's relations with the West in the field of security, and to permanently include Eastern Europe's post-Soviet states into the Russian zone of influence, which at the same time would mean winning the geopolitical rivalry with the European Union. The geopolitical vector of Transnistria was always directed towards Russia. The historical background of this region has some specific factors: the left bank territory of Dniester has never been a part of Romania. Transnistria did not belong to the Moldavian State in the past. From 1924 until 1940 Transnistria was a part of the Ukrainian Soviet Republic as an autonomous region.

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<sup>9</sup> Borgen (2006), p. 54.

The pro-Russian vector in Transnistria is observed in the social and economic spheres: Russia continues to provide significant humanitarian assistance to Transnistria. Many Russian citizens permanently reside in the territory of Transnistria. Also, Russia uses the Transnistrian gas debt (about \$7 billion) as a political weapon against Moldova.

The pro-Russian vector in Transnistria is present in military-strategic aspects: the inhabitants of Transnistria see the main guarantor of peace in the region coming from Russian peacekeeping forces. Currently, Transnistria hosts the Russian army. Security in the conflict zone is provided by the Joint Peacekeeping Forces of Russia, Moldova, Transnistria and military observers from Ukraine. According to experts, the peacekeeping operation in Transnistria is the most successful, productive and effective operation of this kind in the territory of the former Soviet Union. Because of the Russian military contingent present in Transnistria, the European Court of Human Rights considers Transnistria “under the effective authority or at least decisive influence of Russia”<sup>10</sup>. The legal basis for a peacekeeping operation is the “Agreement on Principles of a Peaceful Settlement of the Armed Conflict in the Transnistrian Region of the Republic of Moldova” dated from 21 July 1992.<sup>11</sup>

Russia, Ukraine and the OSCE Mission are mediators in a negotiation process aimed at finding a final, comprehensive, durable settlement of the Transnistrian conflict. The European Union and the United States joined the process as observers in autumn 2005; collectively the group (including the Sides) is known as the “5+2.” From the very beginning of the conflict the OSCE facilitates the negotiation process. In its Report No. 13 of November 1993, the first-time basic principles on a special status for Transnistria were laid out by the Mission. Since then, together with the other mediators, it has tabled various proposals on a final settlement and brokered agreements on confidence-building measures and on the fundamental basis of the relationship between the two sides. In July 1992, a Joint Control Commission (JCC) was established to supervise the ceasefire in the Security Zone,<sup>12</sup> i.e., the strip along the Dniestr River separating the two sides of the dispute. The JCC is the supervisory body for the Joint Peacekeeping Forces (JPF) and consists of delegations from the Russian Federation, Moldova and Transnistria.

The participants in the negotiation process proposed and considered a number of projects on the normalization of the Moldovan-Transnistrian relations during the conflict settlement process. In 1992, an important Agreement was signed on the principles of the settlement of the armed conflict in the Transnistrian region of the Republic of Moldova. In 1997, the model for building a “common State” was proposed by Evgenii Primakov and got the name “Primakov project”. The document included such terms as “state-legal relations between Moldova and Transnistria,” “mutually agreed decisions” and “mutually secured guarantees.” At the same time, the memorandum mentioned that the RM and the PMR are parties in the negotiations. The “Kuchma Plan” was presented in 2002 and was known as a plan for the federalization of the Republic of Moldova. The “Memorandum of Dmitriy Kozak” (by the name of the then Special Representative of the President of the Russian Federation) became the most famous project for the settlement of the Transnistrian conflict. It was presented in 2003, but was not realized because Moldovan

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<sup>10</sup> Hanly (2014), p. 24.

<sup>11</sup> Agreement on Principles of a Peaceful Settlement of the Armed Conflict in the Transnistrian Region of the Republic of Moldova. Dated from 21.07.1992, <https://gov.md/en/advanced-page-type/joint-control-commission> (Accessed on 27.09.2024).

<sup>12</sup> The Mission to Moldova has been taking part in the JCC since 1994 as an observer.



President Vladimir Voronin refused to sign the document. According to this plan, Moldova would have become an asymmetric Federation. Later, in 2005, at the GUAM summit, the “Yushchenko Plan” was proposed, assuming an associated membership in the union State and obtaining broad autonomy. In 2010, there were again several initiatives to resolve the conflict within the framework of the territorial integrity of the Republic of Moldova, in particular, the Russian President Medvedev's and the German Federal Chancellor Merkel's “Meseberg Memorandum.” At the end of 2013, the Socialist Party of the Republic of Moldova presented the “Concept of the Fundamental Principles of the Moldovan Federation.” The same project was promoted by the current President of Moldova. After the election of Igor Dodon, President of the Republic of Moldova in 2016, there has been a trend towards improving Russian-Moldovan relations. Mr. Dodon suggested a Federation of three subjects (Moldova, Transnistria and Gagauzia), a federal bicameral parliament consisting of the Senate and the House of Representatives, a common Government and election of the President by the population from all three regions.

Until today, the last important achievements inside the Negotiating Process were made in 2017 when the Sides signed the “Vienna protocol,” outlining the recent significant agreements: the opening of the bridge over the Dniester near the village of Gura Bikului, clarifying the status of apostilles on Transnistrian diplomas on education, gaining access to farm land in the security zone and the functioning of schools with Latin graphics in Transnistria, the registration of Transnistrian cars and license plates.

During Maia Sandu's presidency, the negotiation process with Transnistria has largely stalled, with no significant progress achieved in resolving the conflict. While Moldova has focused on internal reforms and strengthening ties with the European Union, dialogue with Transnistria has remained frozen, and there has been no breakthrough in addressing the long-standing issues related to the region's political status or reintegration into Moldova. The situation continues to be marked by deadlock, with both sides maintaining their positions without meaningful steps toward resolution.

## **Civil Justice**

Transnistria is designated by the Republic of Moldova as a Transnistrian autonomous-territorial unit with a special legal status. All UN member states consider Transnistria a legal part of the Republic of Moldova. South Ossetia and Abkhazia recognized Transnistria as a sovereign entity. Without exercising direct control over the territory of Transnistria, on 22 July 2005, the Moldovan government adopted the “Law on the main provisions of the special legal status of settlements on the left bank of the Dniester” establishing the territory of Transnistria as its territory. In fact, the territory of Transnistria has had its own legislation for 34 years, including a de facto judicial system.<sup>13</sup> Judicial power is exercised by the courts through constitutional, civil, administrative, criminal and arbitration proceedings. The judicial system in Transnistria is determined by law in accordance with its Constitution.

In connection with the specifics of the development of the states that have appeared in the post-Soviet space, including the unrecognized ones, the precedent practice of their judicial bodies in a number of cases is rather peculiar and unusual for international practice.

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<sup>13</sup> In this sense means as not recognized by Moldova authorities or any official member states of UN.

Civil justice includes both substantive and procedural aspects. Transnistria has its own Civil Code and procedural legislation such as a Code of Civil Procedure.<sup>14</sup> Moldova doesn't recognize Transnistrian legislation specifically its court decisions.

The validity of the documents of both sides (Moldova and Transnistria) was signed under the protocol on mutual recognition of by the leaders of Transnistria and the Republic of Moldova, Igor Smirnov and Vladimir Voronin. According to Paragraph 1 of the protocol, the following documents were recognized on the territory of Transnistria and Moldova: certificate of registration of acts of civil status; identity cards and passports; driver's licenses and certificates of registration of vehicles and license plates; educational documents, etc. Moldova refuses to comply and recently announced the annulment of the "Protocol of 16 May 2001 on mutual recognition of the validity of documents" issued by the competent authorities of the parties.<sup>15</sup> These declarations are based mostly on political slogans and usually appear before elections.

During the transition period, Transnistria extended the legislation of the former USSR and the Moldavian SSR to its territory, which it was a part of during the Soviet period. Transnistria tends to a great extent towards the Russian legal order, it is ready to become part of Russia, which is the reason for its efforts to carry out the unification of its national legislation with the Russian one, although it has its own approaches to resolving disputes in certain issues of judicial practice.<sup>16</sup> For example, in Transnistria, penalty interest cannot be charged on interest for using the loan for violation of the loan repayment period, unless otherwise established by law or by agreement between the parties (subparagraphs 4-5, paragraph 15 of the Resolution of the Plenary Session of the Supreme Court of Transnistria of 17 December 2004 No. 7 "On the practice of applying the provisions of the Civil Code on interest for the use of other people's monetary means".<sup>17</sup>)

Recognition and putting into effect, for example, on the territory of the Russian Federation, of foreign court decisions may be difficult or even impossible due to certain foreign policy factors. For example, looking at a case in Russian practice; a resident of the unrecognized Pridnestrovian Moldavian Republic tried to collect a loan with interest from a resident of Russia who permanently lived and worked in Moscow in accordance with a note of hand. The borrower was also had a place of residence on the territory of Transnistria, which gave the lender the right to initiate proceedings and get a decision in this republic.

However, such a foreign court decision was not automatically recognized on the territory of the Russian Federation and was subject to legalization through the procedure for issuing an execution writ. The complexity of the situation for the lender was due to the official position of the Russian Federation in relation to the unrecognized republic. The Russian Federation searches for solutions to the Transnistrian problem on the basis of respect for the sovereignty, territorial integrity and neutral status of the Republic of Moldova.

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<sup>14</sup> Civil Procedure Code of Transnistria, 2002, available at [in Russian]: <https://pravopmr.ru> (Accessed on 22.09.2024).

<sup>15</sup> Official TN news agency (2020).

<sup>16</sup> When Transnistria started creating its legal basement, the normative legal acts of the Russian Federation were taken as a basis. On the basis of Russian models of legislative acts, many legislative acts of Transnistria have been developed: codes (Civil, Criminal, Criminal Procedure, Customs, Labor), laws ("On Public Associations", "On Mass Media", "On State Tax Service", "On Protection of Consumer Rights", "On Currency Regulation and Currency Control", "On Auditing Activities", "On Accounting and Financial Reporting", "On the Basics of Compulsory Insurance" etc). Moreover, "The concept and the unified plan on harmonizing legislation of Transnistria with the legislation of the Russian Federation" has been adopted in June 2007.

<sup>17</sup> Resolution of the Plenary Session of the Supreme Court of Transnistria of 17.12.2004 No. 7 "On the practice of applying the provisions of the Civil Code on interest for the use of other people's monetary means" <http://vsud.gospmr.org/doks/dokumenty/category/39-2004> (Accessed on 25.09.2024).

The special status of Transnistria, as enshrined in paragraph 49 of the Foreign Policy Concept of the Russian Federation, approved by the President of the Russian Federation on 12 February 2013, and in clause 1 of the Decree of the President of the Russian Federation of 07 May 2012 No. 605 “On measures to implement the foreign policy course of the Russian Federation”.<sup>18</sup>

The Letter of the Ministry of Justice of Russia of 26 September 2014 No. 06/86999-MT “On the possibility of acceptance by Russian notaries for performing notarial actions of documents from state entities not recognized by the Russian Federation as independent subjects of international law”,<sup>19</sup> draws attention to the fact that international law does not prohibit states from recognizing the validity of certain legal acts of bodies exercising *de facto* power on the territories that are not controlled by an official power. Thus, as for the recognition in the Russian Federation of the validity of documents issued by the Transnistrian authorities, the Russian Ministry of Foreign Affairs notes that the Russian Federation recognizes the sovereignty and territorial integrity of the Republic of Moldova, therefore, it cannot have any official relations through legal assistance on a general rule with Transnistria, an unrecognized state entity. However, ignoring certain legal actions, such as registration of birth, death and marriage, can harm the inhabitants of a particular territory.

The question of one state executing court decisions of another state or international courts on its territory is very complicated and has clear legal prerequisites used for decision making. The problem inevitably arises from correlating state sovereignty with the possibility of applying not just foreign law on the territory of another state, but also ensuring foreign legal and procedural instructions by force of state coercion.

*Pacta sunt servanda* is a basic principle of civil law, canon law, and international law. Due to the non-recognition of Transnistria and Transnistria’s unilateral recognition of the provisions of a number of Conventions, a unilateral voluntary obligation has arisen for the fulfillment of international obligations by the Transnistrian side. The only monitoring mechanism for Transnistria was a number of visits by the UN Human Rights Senior Expert, Thomas Hammarberg.<sup>20</sup>

During his visits to Transnistria in 2012 and 2018, UN Senior Human Rights Expert Thomas Hammarberg assessed the human rights situation and provided several key recommendations. His focus was on improving conditions for vulnerable groups, such as people with disabilities, and addressing issues like domestic violence. Hammarberg's 38 recommendations covered areas including legal reform, social services, and the rights of detainees. By 2018, some progress had been made, particularly in protecting people with disabilities and enhancing social protection measures. However, despite these improvements, the current human rights situation in Transnistria remains fragile. Institutional protections are still weak, and there is no independent mechanism to address complaints about human rights violations. The region's unrecognized status also limits residents' access to international human rights bodies, leaving them without full recourse to justice at the international level. Many of Hammarberg’s recommendations have yet to be fully implemented, and significant challenges remain in ensuring comprehensive protection of human rights in the region.

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<sup>18</sup> Decree of the President of the Russian Federation of 07.05.2012 No. 605 “On measures to implement the foreign policy course of the Russian Federation, <http://kremlin.ru/acts/bank/35269> (Accessed on 25.09.2024).

<sup>19</sup> Ministry of Justice of Russia of September 26, 2014 No. 06/86999-MT “On the possibility of acceptance by Russian notaries for performing notarial actions of documents from state entities not recognized by the Russian Federation as independent subjects of international law” [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_173134](http://www.consultant.ru/document/cons_doc_LAW_173134) (Accessed on 25.09.2024).

<sup>20</sup> Hammarberg (2013) Report on Human Rights in the Transnistrian Region of the Republic of Moldova, [https://www.academia.edu/73193516/Report\\_on\\_Human\\_Rights\\_in\\_the\\_Transnistrian\\_Region\\_of\\_the\\_Republic\\_of\\_Moldova](https://www.academia.edu/73193516/Report_on_Human_Rights_in_the_Transnistrian_Region_of_the_Republic_of_Moldova) (Accessed on 26.09.2024).

## Human Rights Obligations and Unrecognized Status

De facto States are not State parties to international human rights treaties. Neither the legislation nor international obligations of the parent state protecting human rights may be referred to in the constitution of the de facto States. De facto States have enacted their own local legislation, which refers to international human rights, but institutional protections remain weak. If there is no independent and effective institution that can hear complaint on human rights violations, protection may in effect become illusory.

With regard to self-determined states, above mentioned problem has several dimensions:

- the absence of agreements on mutual recognition and enforcement of court decisions between the Republic of Moldova and Transnistria. The Transnistrian side has repeatedly initiated consideration in the issues of mutual recognition and enforcement of economic and civic justice decisions. These were rejected by Moldovan since the judicial system on the territory of Moldova is established by legislative acts of the Republic of Moldova and does not imply the existence of other judicial bodies outside Moldovan;
- the absence of agreements on mutual recognition and enforcement of court decisions between Transnistria and other states (with the exception of partly recognized Abkhazia and South Ossetia). The relevance of this situation is obvious based on the information that the Transnistrian justice authorities have regarding the legal contacts of Transnistria with foreign countries. At this stage, it was still not possible to agree on acceptable options for cooperation in this area with the specialized structures of Russia and Ukraine, although the corresponding proposals were repeatedly sent by the Pridnestrovian side to the Russian and Ukrainian colleagues with a proposal for specific mechanisms of interaction.
- the absence of agreements on the recognition and enforcement on the territory of Transnistria of decisions from international courts, in particular, the European Court of Human Rights and other bodies of international justice. Transnistrian citizens cannot protect their rights at the international level.

The mechanism for ensuring the fulfillment of obligations under international treaties is a complex legal phenomenon which includes a number of international legal institutions. Transnistria has unilaterally pledged to respect the UN Covenants on Human Rights, the European Convention on Human Rights, the Convention on the Rights of the Child and others. Transnistria has a positive obligation under Article 1 of the Convention to take diplomatic, economic, judicial or other measures that are within its power and in accordance with international law to secure applicants the rights guaranteed by the Convention. The European Court of Human Rights discussed in its *Ilascu* judgement and also Russia's extra-territorial jurisdiction, applies the test of 'effective control' to establish whether Russia provided military, economic and political support to the regime in Transnistria. Considering its military and political influence, including the presence of the Russian army on the territory and Russia's reluctance to prevent or put to an end to the violation of the applicant's rights, the Court found Russia responsible.

The same line was followed by the Court in the case of *Ivantoc and Others v Moldova and Russia*. The Court stated that Russia was responsible for the violations found in the case, which

took place in Transnistria. In a more recent decision, *Catan and Others v Moldova and Russia*, the Grand Chamber found Russia responsible for Convention violations.<sup>21</sup>

The implementation of European Court of Human Rights (ECHR) decisions by Russia has become even increasingly more complicated following Russia's withdrawal from the Council of Europe in 2022. This exit has undermined the legal framework through which ECHR rulings are enforced, leaving individuals in Russia and regions under its control, such as Transnistria, without access to this critical avenue for human rights protection. As a result, Russia is no longer bound to comply with ECHR judgments, significantly weakening accountability for human rights violations in these areas.

Transnistria opened an official representative office in Moscow in 2005. In accordance with Russian legislation, this office functions as a public organization (NGO) called The Fund for the Development of Social and Cultural Relations "Transnistria". This representation in the capital of the Russian Federation holds the legal status of an overseas office of Transnistria. It is considered a structural unit within the diplomatic service system of the unrecognized state. Its primary tasks include assisting Transnistrian residents with establishing cultural, humanitarian, socio-economic, and other connections, maintaining direct contacts with authorities in Moscow, interacting with public organizations, and facilitating the exchange of information. However, the office holds limited power and influence, primarily serving as a symbolic presence rather than a fully functional diplomatic mission.

## **Main Conclusions**

The unresolved conflict areas pose significant challenges both internally and on a broader geopolitical scale, affecting legal, political, and security domains. These regions often experience weakened governance, lack of rule of law, and persistent human rights violations, contributing to instability within their borders. The absence of international recognition further complicates legal and diplomatic efforts, creating grey zones where international law is difficult to enforce. On a larger scale, these conflicts disrupt regional security, fuel geopolitical rivalries, and strain relations between global powers, ultimately undermining efforts toward peace and stability in the affected regions and beyond.

The violation of human rights in the territories of unrecognized states is driven by various factors, particularly disputes over their political and legal status. This uncertainty has profound effects on basic rights, including citizenship, freedom of movement, personal security, and access to justice. In the post-Soviet space, the development of unrecognized states has led to the creation of unique judicial systems, which often operate outside of international legal norms. The precedents set by these judicial bodies are frequently unconventional and deviate from established international practices, further complicating the enforcement of human rights and legal protections for the residents of these territories. This legal ambiguity exacerbates the human rights situation, as individuals in these regions are left without access to consistent and recognized legal recourse.

There are still no universal international legal norms in international law that clearly define the principles and criteria for recognizing the independence and sovereignty of new States. Theoretically, the legal status uncertainty of unrecognized States came from the basic international

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<sup>21</sup> Case of *Ivanțoc and others v. Moldova and Russia* (Application no. 23687/05) Judgement, Strasbourg, 15.11.2011, [https://hudoc.echr.coe.int/fre#%7B%22itemid%22:\[%22001-107480%22%7D](https://hudoc.echr.coe.int/fre#%7B%22itemid%22:[%22001-107480%22%7D) (Accessed on 25.09.2024).

legal documents (the UN Charter of 1945, the UN Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation in accordance with the Charter of the United Nations, 1970, the Helsinki Final Act of the Conference on Security and Cooperation in Europe 1975 etc.), which still does not solve the contradiction between the norms of international law such as the right of peoples to self-determination and territorial integrity.

The institution of recognition has not yet been codified. The UN International Law Commission included the issue of recognizing the state and government in the list of subjects of priority codification in 1949, but this problem was never solved. There is a need for a modern international legal framework in the field of recognition of states that meets new criteria. Otherwise, the institution of recognition of the independence of states will remain an instrument of political speculation. There is of absence of any clear answer to the question: “How much recognition is necessary for a sovereign state to receive the full scope of its international legal personality?”

Moldova is a divided state which has an unresolved conflict with Transnistria. To date, Moldova continues to be between two geopolitical forces. On the one hand, the European Union, NATO and the US, on the other hand, the emerging Eurasian Union led by Russia. The Eastern vector of the Moldovan foreign policy is very complex. There are many problems, including the military presence of Russia in Transnistria.

At the same time the European perspective for Moldova is increasingly clear, as the country has made significant strides toward aligning itself with European Union standards and pursuing deeper integration with the EU. With its status as an EU candidate country, Moldova is committed to implementing reforms in governance, the rule of law, and economic development. These efforts reflect the country's strategic choice to prioritize closer ties with Europe, driven by the desire for political stability, economic growth, and access to the broader European market. Moldova's European trajectory is now widely recognized as the most viable path for its future development and regional stability.

Self-determined states in the post-Soviet space, and in particular Transnistria, are still deprived of full access to relevant legal instruments. The issue of the recognition and enforcement of foreign court decisions is one of the most difficult problems in relations between these states and the rest of the world, primarily in with Moldovan authorities. Chisinau avoids every possible meaningful discussion on this topic, believing that this may lead to the recognition of the Transnistrian legal personality. Due its incomplete legal status and the international legal personality of Transnistria, it is impossible to fully protect the rights of its citizens outside the borders and impossible to fully protect the rights and legitimate interests of Transnistrian economic entities and impossible to protect of the rights of foreign individuals and legal entities on the territory of Transnistria.

In the context of Moldova's prospects for European integration into the EU, resolving the issue of Transnistria is crucial and must be addressed, ideally through diplomatic negotiations. Moldova's accession to the EU while still having a conflict zone within its borders would pose significant security challenges not only for the country but for Europe as a whole. Ensuring a peaceful settlement of the Transnistrian conflict is essential to avoid creating instability in the region, and it remains a key factor in Moldova's successful integration into the European Union.

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