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Constitutional Framework of the Conflict Regions in Georgia and the Latest Attempts for their Regulation¹

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Abstract

There are several frozen territorial conflicts in the post-Soviet space that have intensified since the dissolution of the Soviet Union. These include: the Transnistrian conflict, Nagorno Karabakh and the breakaway regions of Georgia - *de facto* regimes in Abkhazia and in the Tskhinvali region (so-called South Ossetia). The territorial conflicts in the post-Soviet space also include, peculiarly, *de facto* regimes of the Donetsk People's Republic and Luhansk People's Republic in Ukraine. The annexation of Crimea also belongs to these categories of territorial conflicts.

The present article analyzes and revises the constitutional status of the Georgian regions - Abkhazia and Tskhinvali region, taking into account current constitutional and international law regarding the conflict regions, in terms of conflict resolution and conflict management.

Russia plays a key role in the emergence and continuation of territorial conflicts in Georgia. Russia is, in fact, a party to the conflict. However, nationalism is strong in Abkhazia in particular, and it is unlikely that the Abkhazians will agree to full assimilation with Russia and the factual annexation process that is already under way.

It is legitimate to speak of expanded autonomy within Georgia in context of the Abkhazian people's right to political self-determination (within the context of internal self-determination). This must be agreed between the Georgian and the Abkhaz people under a federal territorial agreement (in case of federation). Asymmetrical regionalism as a form of territorial division

¹ This article was produced within the context of the following research project: "The concept of expanded autonomy for Abkhazia and Tskhinvali region (so-called South Ossetia)". The research was carried out in the Georgian Institute of Public Affairs (GIPA), at School of Law and Politics, in the "Law & Society Research Center in a Global Context". The author thanks the following students of GIPA for their support with the empirical research: Beka Lezhava, Irakli Mikiani, Madona Keshikashvili, Nunu Gogberashvili, Salome Urushadze and Nanuli Khechikashvili.

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can also be adapted. The result will be asymmetrical federalism or regionalism. The same regional model (expanded autonomy) also applies to the Tskhinvali region (South Ossetia), which currently does not have regional status recognized in the Constitution of Georgia of 1995. This concept of conflict resolution should be part of the Georgian strategy for reintegration of the conflict regions.

Key Words: Territorial Conflicts, Post-soviet space, Nationalism, Self-determination, Secession, Federalism, Regionalism, Abkhazia, South Ossetia, Occupation, Annexation, Russia, Georgia.

I. Preface

There are several frozen territorial conflicts in the post-Soviet space³ that have intensified⁴ since the dissolution of the Soviet Union.⁵ These include: the Transnistrian conflict, Nagorno Karabakh and the breakaway regions of Georgia - *de facto* regimes in Abkhazia and in the Tskhinvali region (so-called South Ossetia).⁶ The territorial conflicts in the post-Soviet space⁷ also include, peculiarly, *de facto* regimes of the Donetsk People's Republic and Luhansk People's Republic in Ukraine.⁸ The annexation of Crimea⁹ also belongs to these categories of territorial conflicts.¹⁰

The present article analyzes and revises the constitutional status of the Georgian regions - Abkhazia and Tskhinvali region, taking into account current constitutional and international law regarding the conflict regions, in terms of conflict resolution and conflict management.

³ A. Nußberger, Völkerrecht im Kaukasus: Postsowjetische Konflikte in Russland und in Georgien, in: EuGRZ 2008, p. 457-466.

⁴ Compare: Belarus - ein Land im Umbruch: Volksaufstand im Osten Europas, Renovabis, Solidaritätsaktion der Deutschen Katholiken mit den Menschen in Mittel- und Osteuropa [Herausgebendes Organ], Zentralkomitee der Deutschen Katholiken, Regensburg 2021.

⁵ T. Erkvania, Verfassung und Verfassungsggerichtsbarkeit in Georgien, Diss., Nomos 2017, p. 25.

⁶ D. Sagramoso, Russian imperialism revisited: from disengagement to hegemony, London 2020, p. 112 et seq.

⁷ See in detail: O. Schmies (Ed.), NATO's Enlargement and Russia: a strategic challenge in the past and future; with a foreword by Vladimir Kara-Murza, Stuttgart 2021.

⁸ See F. Slaveski, Remaking Ukraine after World War II: the clash of local and central Soviet power, Cambridge, 2021, pp. 121-146.

⁹ See L. David G, Russia's new authoritarianism: Putin and the politics of order, Edinburgh 2020, pp 139-160.

¹⁰ See Chr. Marxsen, The Crimea Crisis - An International Law Perspective, in: ZaöRV 74 (2014), 367-391.

Having won the March 22 repeat 'presidential' election,¹¹ Aslan Bzhania is now the Moscow-backed¹² fifth leader of separatist Abkhazia for a five-year term. Bzhania was the first presidential hopeful in Abkhazia to give an interview to the Georgian media during the election campaign. Speaking with Interpressnews on January 16¹³ and several times afterwards,¹⁴ he and the new Secretary of the Security Council of separatist Abkhazia - Sergei Shamba, declared the necessity for direct Georgian-Abkhaz dialogue,¹⁵ aside from the talks occurring within the Geneva International Discussion format since 2009.

In addition, Aslan Bzhania, signed a decree in early December 2020 approving Abkhazia's "foreign policy concept". The goals include "Resolving the Georgian-Abkhazian conflict and normalizing relations with Georgia" and "Strengthening peace and stability in the Caucasus".¹⁶ It is not clear what idea the proposed dialogue can have and how it should be carried out, but without a dialogue with the Abkhazians the conflict in the region cannot be resolved.

On 27 September 1993, the Head of the Council of Ministers (and Security Council) of the Autonomous Republic of Abkhazia - Zhiuli Shartava, who directed the operation for protection of the government house, was taken hostage (together with other Georgian fighters) and shot by an Abkhazian separatist group. 27 September marks the day of the fall of Sokhumi... 27 years have elapsed since then.

It is self-evident how difficult it is to talk about a dialogue with Abkhazians in this context, especially as Abkhazians also died in this war.

Apart from this and notwithstanding the direct involvement of Russia in the conflict, it is essential to establish a dialogue with the Abkhazians, for the very first phase of eliminating the preconditions of the conflict. Dialogue is necessary, first and foremost, to discuss the regional status of Abkhazia (nationalism is much stronger in Abkhazia compared to South Ossetia). This has to be an expanded autonomy, within the framework of asymmetrical regionalism or asymmetrical federalism,¹⁷ despite the fact that the Abkhaz separatist government has started an illegitimate secession process. From the Georgian side, discussions offering the specific

¹¹ See, "Aslan Bzhania Becomes New Abkhaz Leader", www.civil.ge, accessed on October 30, 2020.

¹² T. Lundstedt, The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law, in: S. Morris (Ed.), Russian Discourses on International Law, sociological and philosophical phenomenon, p. 197.

¹³ See, "Aslan Bzhania: There should be dialogue between Sokhumi and Tbilisi", www.interpressnews.ge, accessed on October 30, 2020.

¹⁴ See, "Aslan Bzhania: We do not ask Georgia to recognise Abkhazian state, but non-use of force agreement will allow us to engage in a dialogue", www.1tv.ge, accessed on October 30, 2020.

¹⁵ See, "Changes in the Separatist Abkhazian Government and Implications for Relations with Tbilisi", www.jamestown.org, accessed on October 30, 2020.

¹⁶ See "Abkhazia Adopts 'Foreign Policy Concept'", www.civil.ge, accessed on 6 January 2021.

¹⁷ See V. J. Vanberg, Föderaler Wettbewerb, Bürgersouveränität und die zwei Rollen des Staates, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität, 2016, p. 23-43.

model of autonomy need to begin. The passage of time does not favor the Abkhaz, Ossetian and Georgian peoples. These frozen conflicts only serve the interests of the Kremlin.

In this context, it is evident how relevant it is to conduct scientific research into the constitutional status of Abkhazia and Tskhinvali region.¹⁸ The status of the regions¹⁹ must be identified and taken into account, of course, with the challenges of current constitutional and international law.²⁰

The article attempts to describe the extent to which constitutional instruments can be relevant to conflict resolution.²¹

II. Historical retrospectives (short reminders)

The Abkhazian narrative about the Georgian-Abkhazian history and processing of political events differs considerably from the Georgian narrative. Abkhazia considers Russia a strategic ally which always extends military, financial and political assistance when Georgia plays out its chauvinistic "Kartvelisation politics".²² Abkhazians also underline that Russia was not responsible for the forced resettlement of the indigenous people (including Abkhazians) of the Caucasus ("Muhajiroba"), especially to the Ottoman Empire in the 19th century. In their narrative, Abkhazians were deported to Islamic countries and Georgians were resettled in Abkhazia. Historically, statistics on Abkhazian and Georgian populations in Abkhazia have also been manipulated. In some cases, the western Georgian region of Samurzakano²³ is represented as a Georgian or an Abkhazian area.

During the centuries (including Middle Ages) the Abkhazians, Georgians and Mingrelians had local identities, and the western part of Georgia the Nation was not ethnically homogeneous. In 1918, peasant uprisings, of a more social character, took place in Georgia (in Abkhazia and in

¹⁸ See P. Malanczuk, *Region und unitarische Struktur in Großbritannien*, 1984, p. 7-25.

¹⁹ See P. Huber, *Selbstbestimmung in Europa*, in: Feld/A. Köhler/Schellenbach (Hrsg.), *Föderalismus und Subsidiarität*, 2016, p. 23-43.

²⁰ See R. Vaubel, *Sezessionen in der Europäischen Union*, in: Feld/A. Köhler/Schellenbach (Hrsg.), *Föderalismus und Subsidiarität*, 2016, p. 43-65.

²¹ "Constitutional issues lie at the heart of many intra-state conflicts. In widely differing circumstances, constitutional issues played a dominant role in peace processes in Bosnia and Herzegovina, Burundi, the Central African Republic, El Salvador, Guatemala, Nepal and South Africa, among many other parts of the world." See description of "Constitutions and peace processes", Event on 28 January 2021, Berghof Foundation: www.berghof-foundation.org.

²² G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 28-29.

²³ Historic site in western Georgia, on the territory of modern Abkhazia.

Shida Kartli in modern South Ossetia). Apart from that, the Georgian army fought against them. Russia tries to portray these as national uprisings against Georgia...

After the 1917 Russian Revolution and the end of the First World War, many Eastern European countries²⁴ declared themselves independent, founding democratic republics and passing their first constitutions. Among them were the following: the first Constitution of Estonia of 1920, the first Constitution of Latvia of 1922²⁵, the first Constitution of the Republic of Lithuania of 1922, and the first Constitution of the Georgian Democratic Republic of 1921.²⁶

To elaborate: after the events of the Russian Revolution of 1917, Georgia proclaimed independence on 26 May, 1918.²⁷ In 1920, Russia itself recognized Georgia's independence *de jure*. This happened after the signing of the treaty of May 7, 1920, between the two countries, which contributed to the increase in respect for the sovereignty of the young state. By extending *de jure* recognition to the Georgian republic not only did Russia relinquish all sovereign rights over it, but it also affirmed both Abkhazia and Tskhinvali Region/South Ossetia (of which the latter, prior to 1922, was not an administrative district in any form) as parts of Georgia.²⁸

On February 21, 1921, facing the onset of Soviet aggression, the Constituent Assembly adopted a constitution of the Democratic Republic of Georgia, the first modern fundamental law in the nation's history. The Constitution of 1921 belongs to the first threshold of the constitutional

²⁴ Among the Eastern European states here are the so-called Baltic States, the countries of the Eastern Partnership (EaP) of the EU and Russia.

²⁵ This is the oldest Eastern or Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world.

²⁶ Other Eastern European states declared themselves independent, but had no capacity to pass first democratic constitutions: Armenian National Council declared the independence of Armenia on 28 May 1918; Azerbaijan Democratic Republic was founded by the Azerbaijani National Council in Tbilisi on 28 May 1918 after the collapse of the Russian Empire; Ukrainian People's Republic, or Ukrainian National Republic, a predecessor of modern Ukraine, declared independence on 10 June 1917 following the February Revolution in Russia. It initially formed part of the Russian Republic, but proclaimed its independence on 25 January 1918; in February 1918, the Moldavian Democratic Republic declared independence and then integrated into Romania later that year following a vote of its assembly; in the aftermath of the 1917 Russian Revolution, Belarus declared independence as the Belarusian People's Republic. All these states were occupied and Sovietized by Russia in the 1920s or 1940s. They declared themselves independent again after the collapse of the Soviet Union. The majority of these states passed new constitutions in the 1990s, with the exception of Latvia. On May 4, 1990 the Supreme Council of the Republic of Latvia passed the declaration on the Restoration of Independence of the Republic of Latvia, declaring the 1940 Soviet annexation of Latvia illegal (due to the 1922 Constitution of Latvia being ignored), and therefore the Constitution of Latvia of 1922 and Republic of Latvia have been restored *de jure*.

²⁷ See in detail: F. Liszt, Die Völkerrechtliche Stellung der Republik Georgien, ein Gutachten, 8. August 1918; G. Matschabelli/M. Tseretheli, Einführung in das kaukasische Problem, Berlin 1915; M. Tseretheli, Les droits du peuple géorgien, 1916; M. Tseretheli, Die Rechte Georgiens, Berlin 1917; the same, Georgien und der Weltkrieg, Zürich 1925; I. Tsérételli, Séparation de la Transcaucasie et de la Russie et indépendance de la Géorgie, Paris 1919, p. 31; Z. Avalishvili, Independence of Georgia in international Politics 1918 – 1921, London 1981; K. Kautsky, Georgia: A Social-Democratic Peasant Republic – Impressions And Observations, 1921; J. Braunthal, Vom Kommunismus zum Imperialismus, Bilder aus dem bolschewistischen Georgien, Wien 1922 etc.

²⁸ G. Kandelaki, "100 Years Ago Today Soviet Russia Recognized Georgia. That Agreement Still Matters", available at: www.civil.ge, [last accessed 11 January 2021].

process, which spread in Europe after the First World War (Weimar Republic, Austria, Baltic States, etc.).²⁹

According to Art. 107 of the Georgian Constitution of 1921, the regions of Georgia - Abkhazia (Sokhumi district), Batumi district and Zaqatala³⁰ district enjoyed autonomous status.

Interestingly, Georgian Social Democrats communicated with the Abkhaz elite in the years 1918-1921 during which discussions about the autonomous status of Abkhazia ensued. It should be emphasized that the Georgian security services in Abkhazia in the years 1920-1921 were headed by the Abkhazian named Taraskhan Eshba³¹. Abkhazian MPs, elected to the Georgian Constituent Assembly from the cadre of the Social Democratic Party, also worked on the commission set up to determine the type of government in Abkhazia. On the other hand, there was the Bolshevik group of Abkhazians led by Nestor Lakoba³², who fought for the integration of Abkhazia into the Soviet Union.

The Leninist policy of "back in the roots", which professed that Marxism should be understandable in all languages in the Soviet Union, is noticeable in the 1920s. This period also saw a clear attempt to use the Abkhaz language as a literary language. Several elementary schools (up to the fourth grade, the Abkhaz language was not highly developed for other grades) were founded in the Abkhaz language. However, Russian remained the dominant language because the Abkhaz language was not highly developed at the time.

On February 25, 1921, during the Russian Civil War, the Red Army advanced into Georgia and brought the local Bolsheviks to power. The Georgian army was defeated and the Social Democratic government fled the country.

After the occupation of the First Georgian Republic, the creation of the Soviet Socialist Republic of Abkhazia was announced on March 31, 1921.³³ On December 16, 1921, an alliance

²⁹ Influenced by the social democratic political elites, the constitution includes a majority of the norms concerning the socio-economic guarantees of individual citizens. In this respect, the Constitution of 1921 provides an interesting source of social democratic motivated constitutions and is one of the first constitutional texts to standardize fundamental social rights at the constitutional level.

³⁰ Zaqatala district was part of the Transcaucasian Democratic Federative Republic between 1917 and 1918 and the Georgian Democratic Republic between 1918 and 1921 before passing to Azerbaijan in March 1922.

³¹ Taraskhan Eshba (1886-1923), a key official in the Georgian security services in Abkhazia during the First Republic. From 1920-21 he was the head of a special unit of the Abkhaz commissariat. Eshba was shot by the Bolsheviks in 1923.

³² See G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 42 et seq.

³³ About the past: in the 8th century, the principality of Abkhazia was founded, which united all of western Georgia. The new political entity was called the "Kingdom of Abkhazia" and had its capital in Kutaisi. According to the Abkhazian narrative, the Abkhazian Kingdom united the Abkhazians and was by no means a Georgian kingdom. The Georgian historians claim that the Abkhazian king Leon II was Georgian, the Abkhazian historians - against: claim that Leon II was an Abkhazian king. In the 9th-10th centuries, Abkhazia was part of the unified Georgian Kingdom in the form of a principality.³³ After Georgia divided into kingdoms, an independent principality of Abkhazia was established at the beginning of the 17th century, which was formally part of the

agreement was signed between Georgia and the Soviet Socialist Republic of Abkhazia, after which Abkhazia became part of Georgia. In February 1922, the first Congress of the Abkhaz Soviets ratified the treaty with the Georgian Soviet Socialist Republic. Abkhazia joined the Transcaucasian Soviet Socialist Republic in March 1922 as part of the Georgian Soviet Socialist Republic. In the Constitution of the Soviet Union of 1924, Abkhazia was designated as an autonomous republic. On July 5, 1926, the Constitution of the Soviet Socialist Republic of Georgia was passed, which provided that the Soviet Socialist Republic of Abkhazia was part of the Soviet Socialist Republic of Georgia on the basis of the alliance treaty. Some nine months later, a new Soviet constitution was passed on April 23, 1927. On February 11, 1931 by the resolution of the VI. Congress of the Abkhazian and Georgian Soviets, Abkhazia became part of the Soviet Republic of Georgia, as an autonomous Soviet Socialist Republic.

Modern-day interpretation of the status of Abkhazia in the years 1921-1931 is different: portraying Abkhazia as an independent republic. Abkhazians underline that Abkhazia has always been an independent state and remained independent in 1921-1931.

In 1931, Lavrenti Beria (Georgian Bolshevik and Soviet politician) joined the Bolshevik government, giving Abkhazia an autonomous status. However, Beria could not control Abkhazian politician Nestor Lakoba (communist leader). Lakoba was close to Stalin, and there is speculation that he tried to wrest Abkhazia out of Soviet Georgia and join Russia. Furthermore, Lakoba stopped the collectivization process in Abkhazia (fearing a loss of social basis among the Abkhazian population). In 1931, the Nestor Lakoba started to lose his political power.

During the Soviet Union and even before Sovietization, nationalism was potent in Abkhazia. Soviet Russia took advantage of this to exacerbate the situation in the Caucasus. Relations between Georgians and Abkhazians deteriorated, especially after the death of Nestor Lakoba in 1936.³⁴ His death is the subject of speculation to this day. According to the Abkhazian version, he was poisoned by Lavrenti Beria and thus murdered. After Lakoba's death, Soviet security forces arrested his wife Saria and their 14-year-old son Rauf. Over a period of several months, Saria was summoned for questioning, arrested, tortured, and finally shot in 1939 for membership of right-wing counter-revolutionary organizations. And Rauf was sentenced to death in 1940... Lakoba was counted as an 'enemy of the nation'. His supporters were arrested and repressed...

Kingdom of Imeretia in the 17th and 18th centuries. In 1810, the chief of Abkhazia received Russian patronage. In 1864, the Russian government abolished the Abkhaz principality and established the Sukhumi Military Division.

³⁴ See in detail: T. K. Blauvelt, Clientelism and Nationality in an Early Soviet Fiefdom - The Trials of Nestor Lakoba, 2021.

The facts speak for themselves, but these events were brought about by the Georgian Bolsheviks who also fought against Georgian sovereignty (against the first Democratic Republic of Georgia in the 1920s and after). Moreover, the Abkhazians' perception is that the Georgians did it all... The process of homogenization of the Georgian nation in Abkhazia began in the 1930s: Abkhaz schools were closed, the Abkhaz alphabet was abolished and replaced by the Georgian alphabet. However, Beria and Stalin did not come to represent the Georgian nation and its democratic will. Being Bolsheviks they represented the Russian Bolshevik government and the occupying regime...

In 1954 the hypothesis of Pavle Ingorokva³⁵ was published³⁶, which claimed that Abkhazians were not indigenous to the area. Instead, it classified Abkhazians as a people who came through the North Caucasus in the Middle Ages. The book caused great polarization between the Abkhazians and Georgians and provided a theoretical basis for the founding of Georgian nationalism. In the 1950s, an opposite sentiment also emerged: that Abkhazia is exclusively the country of Abkhazians.

In 1978, movements began in Abkhazia demanding the protection of the Abkhazian language and for the establishment of the Abkhaz sector. This period saw the formation of the the Abkhaz national identity. The repression of Beria in the 1930s³⁷ and Pavle Ingorokva's 1954 theory contributed significantly to the formation of the Abkhazian national identity.

Abkhaz nationalism and Russia have become situational allies,³⁸ and over time, as a result of Georgia's foreign policy, the alliance between Abkhazia and Russia has grown more and more. In November 1988, the draft state program for the Georgian language (approved in August 1989) was published, which provided for the protection of the constitutional status of the Georgian language throughout the Georgian SSR, including the Abkhaz ASSR and the Autonomous South Ossetia region. The deliberations about this project in the Georgian SSR became the occasion for the establishment of socio-political organizations in November-December 1988 in the South Ossetian autonomous region "Adamon Nikhas" and in Abkhazia - "Aidgilara". It is in this period that modern Abkhaz nationalism begins to take shape.³⁹

³⁵ Pavle Ingorokva (1893-1983) was a Georgian historian, philologist, and public benefactor.

³⁶ See Pavle Ingorokva, chapter 4 in: „Giorgi Merchule“, 1954.

³⁷ Compare M. Junge/B. Bonwetsch (Hrsg.), *Bolschewistische Ordnung in Georgien, Der Große Terror in einer kleiner kaukasischen Republik*, Berlin 2015, p. 157 et seq.

³⁸ See T. K. Blauvelt, "From words to action!" Nationality policy in Soviet Abkhazia (1921-38), in: St. F. Jones (Ed.), *The Making of Modern Georgia, 1918-2012, The first Georgian Republic and its successors*, p. 232 et seq.

³⁹ According to the official position of Abkhazians today: "Abkhaz is North-West Caucasian language; Speakers of Proto-North-West Caucasians came from the south, and Abkhaz probably developed on the territory of Abkhazia, just as the sister languages (Ubykh and Circassian) developed in situ once their ancestral speakers had continued moving north over the Caucasian mountain-range, and it was only after the great migrations in the closing decades of the 19th century that non-Abkhazians first appeared in Abkhazian soil (though the precise

Following the collapse of the Soviet Union, nationalist movements of both Georgians and Abkhazians, started to gain momentum. The collective memory of Abkhazians is built on the repression of Beria in the 1930s and the war in the early 1990s.

In 1991, a referendum was held in Georgia, in which the entire population living on the territory of Georgia took part, including Abkhazia and South Ossetia. A large majority of the population took part in the referendum and 90% of the participants voted for Georgia's independence.

On March 18, 1989 in the village of Likhni in Gudauta district, 30,000 Abkhazians, constituting a third of the population of the Abkhaz ASSR, gathered and demanded the secession of Abkhazia from the Georgian SSR and the restoration of the status of an allied republic that had existed in Abkhazia in 1921. The meeting's decision was published in the form of "Likhni's Appeal". This led to violent clashes between Abkhazians and Georgians during the April protests in Tbilisi and to calls for the abolition of Abkhazian autonomy. In this context, the Abkhazians were ready to declare independence in the early 1990s.

Then the events of April 9, 1989, the declaration of independence on April 9, 1991, the coup of Zviad Gamsakhurdia and his death in unknown circumstances (most likely murder), then the arrival of Eduard Shevardnadze on March 7, 1992. Shevardnadze is in Tbilisi, but by 1992 the real power belongs to Tengiz Kitovani and Jaba Ioseliani. Meanwhile, due to the frequent thefts on the railway, Georgian troops enter Abkhazia⁴⁰ and start a war that lasted 13 months...

Interestingly, this war was not adequately covered by the Western press which was preoccupied with the Balkan war. The West did not want to confront Russia because of Georgia and its national "excitements".

Following the war in Abkhazia, the Georgian side attempted a normalization of relations with Russia. After the collapse of the Soviet Union, 12 former union republics, with the exception of the Baltic states, were to join the Commonwealth of Independent States (CIS). In the first years, under Gamsakhurdia's leadership, Georgia refused to join the CIS. Following this, the civil war broke out and both sides (Georgians and Abkhazians) were provided weapons by Russia.

demarcation between Abkhazia and Mingrelia will have fluctuated, depending on the comparative power of these two princedoms at different times in history); Abkhazia suffered political repression to the advantage of Georgia in years 1918-1921 and again under Stalin and Beria, when falsification of Abkhazian history reached its apogee in the work of Ingoroq'va; whereas the Kremlin recognized these errors after Stalin's death, took steps to see that Tbilisi made amends, and allowed the publication of scholarly works presenting an accurate history of Abkhazia and the Abkhazians, it failed to rectify Stalin's major decision of 1931 to subordinate Abkhazia to Tbilisi and refused to remove Abkhazia from Georgian jurisdiction for fear of the consequences that would stem from an enraged Tbilisi." Quoted from G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 68.

⁴⁰ Later in his interviews (e.g. in 1998), Shevardnadze underlined that the Georgian Army entered in Sokhumi against his will.

Georgia joined the CIS during Shevardnadze's tenure in 1993 and officially left the CIS on August 18, 2009. Shevardnadze made multiple concessions to Russia including the appointment of pro-Russians Igor Giorgadze and Vardiko Nadibaidze to head the state security and defense ministries. However, Shevardnadze became the target of terrorist attacks. Realizing that a policy of favouring Russia cannot solve domestic political problems, he adopted a pro-Western policy in 1995, which remains in place to date.

On October 12, 1999, based on the 1999 referendum, the Act of Independence of the Republic of Abkhazia was adopted. Accordingly, till 1999, separatist Abkhazia considered itself officially as a part of Georgia citing this as the legal basis.

After the Rose Revolution in 2003, the chances that the Georgian government could find a common language with Abkhazia became apparent: Sergei Shamba⁴¹ was in Tbilisi and was walking through the capital. Later, he was with the Georgian politician David Bakradze (who belonged to the United National Movement (UNM), the party of Mikheil Saakashvili⁴²) in Italy, in South Tyrol and tried to get acquainted with the autonomy of South Tyrol.

Meanwhile, the recognition of Kosovo as an independent state began to gain importance. At the same time, at a security conference in Munich, Russian president Vladimir Putin promises Abkhazians and Ossetians that if Georgia joins NATO, Russia would recognize their independence... Relations with Abkhazians and Ossetians came to be further neglected by the military rhetoric of Mikheil Saakashvili.

Today, the occupation of Abkhazia and South Ossetia is being replaced by annexation: Military cooperation and alliance agreements are signed with Russia and a large part of the funding comes directly from Russia.

From an Abkhazian perspective, the efforts of the Georgian authorities to portray the Abkhaz-Georgian conflict as a Russian-Georgian conflict are unfounded and represent an attempt to shirk criminal responsibility. According to the official position of the Abkhazian separatist government, Georgia bears full responsibility for the outbreak of war in Abkhazia in 1992 and the tragic events in South Ossetia in 2008. Additionally, it considers Georgia's demand from Russia — to revoke the recognition of Abkhazian independence and end the occupation of Georgia — as unrealistic.

The preamble of the second and current constitution of the Democratic Republic of Georgia from 1995, which was adopted after the declaration of independence on 9 April 1991 (shortly before the collapse of the Soviet Union in 1991), declares "the historical and legal legacy of the

⁴¹ Events in Tbilisi, on April 9, 1989, when an anti-Soviet, pro-independence demonstration was brutally suppressed by the Soviet Army, killing 21 people and injuring hundreds.

⁴² Third President of Georgia – 2004-2007, 2008-2013.

constitution of 1921". Accordingly, regarding the state succession practice to the Soviet Union, Georgia has chosen the way characterized by the Baltic states.⁴³

Today Abkhazia is an autonomous republic in Georgia. Since 1993, the entire region of Abkhazia (with the exception of the Kodori Gorge until 2008) has been under the control of the separatist regime.⁴⁴

And in relation to the Ossetians: there are different views on the ethnogenesis of the Ossetians, their political history and migration. The stages of Ossetian settlement and establishment in Georgia are the subject of particularly heated controversy. Georgian historians claim that the South Ossetians are a people who came to Georgia a few centuries ago. In contrast to the Abkhazians, the Ossetians never had a principality in Georgia during the feudal period.⁴⁵

The Georgian Kingdom of Kartli-Kakheti, part of which included the major territory of modern South Ossetia, was annexed by the Russian Empire in 1801. Following the Russian Revolution, the area of modern South Ossetia became part of the Democratic Republic of Georgia.

For the first time in the 19th century, an Ossetian administrative unit appeared in Georgia (Ossetian Mazra). The term "South Ossetia" first appeared in the press in the 1830s. The situation in Ossetia is less homogeneous. Lowland Ossetians had much more in common with the Georgians than with the North Ossetians. Interestingly, the young independent government of Georgia had to quell the Ossetian uprising three times in 1918-21. These social uprisings, which resulted in some casualties, are perceived by pro-Russian Ossetians as the national genocide of Ossetians... The contribution of the events of the 1920s to the demonization of Georgians is significant. It must be noted that these were not spontaneous uprisings. On April 27, 1920, Azerbaijan was occupied by Red Russia, at a time when there was a Bolshevik uprising in Mountain Ossetia. The so-called South Ossetia Autonomous District was a result of these events. There were more Ossetians living in Georgia outside this district, but pursuant to the orders of an imperialist Kremlin, an autonomous district was created.

⁴³ See K. Korkelia, *State Succession in Respect of International Treaties in Post-Independent Soviet Union: Some Reflections of the Status of Georgia*; (in co-authorship), *Journal of International Law*, Tbilisi State University, III, NI-II, 1998.

⁴⁴ See L. Broers, *Unpacking the meta-conflict: claims to sovereignty, self-determination and territorial integrity in the Georgian-Abkhazian conflict*, in: Jones, Stephen F.(Ed.), *The Making of Modern Georgia, 1918-2012, The first Georgian Republic and its successors*, p. 263 et seq.

⁴⁵ M. Sterio, *The Right to Self-determination under International Law, "Selfistans", secession, and the rule of the great powers*, NY 2013, P. 143 et seq.

On April 22, 1922, after the occupation of the first Democratic Republic of Georgia, the Autonomous Region of South Ossetia was founded. South Ossetia was part of Georgia within the Soviet Union. The situation changed in the 1990s and the following events unfolded:⁴⁶

- On August 10, 1990, the Council of People's Deputies of South Ossetia passed the "Declaration of Sovereignty" declaring South Ossetia a Soviet Republic (i.e. *de facto* secession from the Soviet Republic of Georgia).
- At the next meeting on September 20, 1990, the Council of People's Deputies of South Ossetia officially declared the sovereignty of South Ossetia.
- After unsuccessful protests on November 22, 1990, the Supreme Council of the Republic of Georgia revoked the decision to increase the sovereignty/status of South Ossetia.
- On December 9, 1990, despite protests by the Georgian central government in South Ossetia, elections for a new Supreme Council took place, with “Adamon Nikhas” (“People's Assembly” in Ossetian) holding a majority in the council.
- On December 11, 1990, four months after the adoption of South Ossetia's declaration of sovereignty, the newly elected Georgian Supreme Council decided to abolish the autonomy of South Ossetia.
- On December 21, 1991, the Supreme Soviet of the Republic of South Ossetia adopted the Declaration of Independence of South Ossetia.

Nationalism was never as strong in South Ossetia as it was in Abkhazia. The abolition of the autonomous status of South Ossetia by the Georgian Supreme Council in 1990 was, maybe, a mistake of the Georgian government at the time, notwithstanding the fact that the Ossetians never had a principality in the Kingdom of Georgia and the creation of an autonomous area was an unconstitutional intervention on the part of the Bolshevik Russian government.

During the Soviet era, the integration of the Ossetians in Georgia was well underway. The Ossetian nation is one of the most integrated nations in Georgia. But in the late 1980s there were orchestrated gatherings of around 200-300 individuals in South Ossetia. Holding Soviet flags (instead of South or North Ossetian flags), the demonstrators claimed that Ossetia was always Soviet. It was a small isolated group not representing the express will of Ossetians. In 1990, Georgians arrived in Tskhinvali by bus to hold a counter-demonstration. It was a mistake to bring more attention to the small group people and legitimize them as yet another “side”. The ethno-nationalist rhetoric of a part of the Georgians at the time is well known: that

⁴⁶ 10 August 1990. Protocol of the thirteenth session of the District Council of People's Deputies of the XX convocation of South Ossetia. Newspaper "Soviet Union", 13 August 1990.

Ossetians had to be expelled to where they originated from... This period left a deep mark on the collective memory of the Ossetian people...

It is common knowledge that boundaries are formed by geographical indication. The so-called South Ossetian Autonomous District had one geographical boundary — the ridge divided the Ksani and Aragvi valleys. It was a logical boundary. The border is nowhere else, it was superficially drawn on the map by Soviet Russia. The current reality is as follows: a few years after the August war⁴⁷, the occupying forces continue to use the so-called Borderization process (creeping occupation).

It should be underlined, that the Government of Abkhazia, the Supreme Council of Abkhazia, and the Administration of South Ossetia are continuing their activities in displacement. Not much has changed within the government-in-exile over the years; there have been no new elections and no fundamental structural reforms. At the same time, the average age of the members is increasing from year to year, which calls into question the long-term existence of these institutions.⁴⁸

After the August⁴⁹ war⁵⁰ in 2008, Russia recognized⁵¹ Abkhazia and South Ossetia as independent states.

Despite all the above, the reality today is that there is a conflict, but that conflict is not between Abkhazia and Georgia, South Ossetia and Georgia, it is between Russia and Georgia. The *de facto* government of Abkhazia and the *de facto* government of South Ossetia are puppet regimes and, from the point of view of international law, cannot be viewed as subjects (not only subjects of international law, but also subjects of the conflict) because they are subordinate to Russia.

In 2017, the Committee of Ministers of the Council of Europe adopted a document⁵² which, for the first time in Georgian history, established that Georgia and Russia are parties to the conflict. The document states that there is a conflict between the member states of the Council of Europe. The member states do not include Abkhazia and South Ossetia, so we are talking about Georgia

⁴⁷ There were many casualties and tragic events during the 2008 war, which are hard to forget. For instance, during the 2008 Russia-Georgia war, a Georgian military official, Giorgi Antsukhelidze, was captured and tortured to death by Ossetian separatists, ostensibly because he refused step on the Georgian flag.

⁴⁸ T. Zurabashvili, Governmental Entities of Abkhazia and the Former Autonomous District of South Ossetia in Tbilisi: Power and Legitimacy in Exile, Working Paper, Georgian Institute of Politics (GIP), March 2021/#12.

⁴⁹ See D. Batashvili, August 7: How Russia Prepared and Launched the 2008 Invasion of Georgia, Georgian Foundation for Strategic and International Studies, Opinion Paper, 2018 available at: <https://www.gfsis.org/publications/view-opinion-paper/103>, [last accessed 3 January 2021].

⁵⁰ See J. Kranz, Der Kampf um den Frieden und sein besonderer Facilitator, in: Archiv des Völkerrechts, Bd. 46 (2008), p. 481-501; L. McConnell, Extraction Accountability from Non-State Actors in International Law: Assessing the scope for direct regulation, 2017, p. 72.

⁵¹ See O. Luchterhandt, Völkerrechtliche Aspekte des Georgien-Krieges, in: Archiv des Völkerrechts, Bd. 46 (2008), p. 435-480.

⁵² CM/Del/Dec(2017)1285/2.1.

and Russia. Despite these developments, some Georgian experts are proposing to recognize Abkhazia and South Ossetia as parties to the conflict.

The UN recognizes the Georgian authorities as the legitimate government of Abkhazia and the Tskhinvali region. These regions are widely considered as occupied territories by scholars,⁵³ various international organizations (e.g. EU,⁵⁴ CoE) and NGOs.

III. Constitutional status of Abkhazia and South Ossetia within Georgia – the relevant Georgian legislation at a glance

1. Law of Georgia on Occupied Territories from 2008

After the restoration of independence on April 9, 1991, Georgia passed the second constitution on August 24, 1995. This last and current constitution of Georgia from 1995 was amended several times. Substantial constitutional reforms were implemented in 2004, 2010 and 2017-2018. The most extensive of these three constitutional reforms was the last, the constitutional reform of 2017-2018.⁵⁵

Abkhazia, along with the Tskhinvali region, was given the status of occupied territory under Georgian law in 2008.⁵⁶

According to the preamble, Art. 1, Art. 2 and Art. 3 of the Law of Georgia on Occupied Territories from 2008, “Georgia is a sovereign, unified, and indivisible state, and the presence of the armed forces of any other state on its territory without explicit and voluntary consent of the State of Georgia is an illegal military occupation of the territory of a sovereign state according to the Hague Regulations of 1907, Fourth Geneva Convention of 1949 and the norms of customary international law; This Law aims to define the status of territories that have been

⁵³ E. Benvenisti, *The International Law of Occupation*, Second edition, 2012, 61; Y. Dinstein, *The International Law of Belligerent Occupation*, 2019, xiii,13; N. Kalandarishvili-Mueller, *Occupation and Control in International Humanitarian Law*, 2020, 70-74 etc.

⁵⁴ European Parliament resolution of 14 June 2018 on Georgian occupied territories 10 years after the Russian invasion (2018/2741(RSP)).

⁵⁵ The current constitution of Georgia, renovated by the last constitutional reform, has been the best version since 1995. Apart from that, the legitimacy of the 2017-2018 constitutional reform is, unfortunately, deficient. Only the ruling party has mostly participated in the drafting and passing of the constitution. Again, the opportunity was not taken to put the 1921 constitution into effect (to bring a modified and modernized version of this constitution into effect, similar to what happened in Latvia). The most problematic issues according to the constitutional changes are: introduction of the proportional electoral system only since 2024 and not for the parliamentary elections in 2020; introduction of the standards of the Parliamentary Republic with a monocameral parliament, without reforming the territorial division system in Georgia (vertical separation of powers).

⁵⁶ Compare L. Bültermann, *Das Völkerrecht als Mittel zur Lösung ethnischer Konflikte*, Diss., 2017.

occupied as a result of military aggression by the Russian Federation, and to establish a special legal regime for these territories. For the purpose of this Law, the occupied territories and maritime zones ('the occupied territories') shall be:

- a) the territories of the Autonomous Republic of Abkhazia;
- b) Tskhinvali region (the territories of the former South Ossetian Autonomous Region);
- c) on the Black Sea: the inland waters and the territorial sea of Georgia, their bed and subsoil falling within the water area along the state border with the Russian Federation, to the South of the Psou River up to the administrative border at the influx of the Enguri River into the Black Sea, over which Georgia exercises its sovereignty, as well as the following maritime zones: the adjacent zone, the special economic zone, and the continental shelf, where, according to the norms of the legislation of Georgia and the international law, in particular the UN Convention on the Law of the Sea of 1982, Georgia exercises fiscal, sanitary, immigration and taxation rights in the adjacent zone, and sovereign rights and jurisdiction – within the special economic zone and on the continental shelf;
- d) the air space over the territories provided for in paragraphs (a-c) of this article.”

According to Art. 4 of the Law of Georgia on Occupied Territories from 2008, “The emergency rule and special legal regime shall apply to the occupied territories for the validity period of this Law. This implies restrictions on free movement, conducting economic activities, and concluding transactions regarding real property in the occupied territories and with respect to other issues defined under this Law.”

The Law contains the provisions on property rights in the occupied regions of Georgia: according to the Art. 5 of the Law, “Any transaction regarding real property that is concluded within the occupied territories in violation of the legislation of Georgia shall be deemed void from the time of its conclusion and shall have no legal implications. The right of property within the occupied territories shall be protected and shall be regulated under the legislation of Georgia.”

The Law also restricts economic activities in the occupied territories (Art. 6)⁵⁷ and contains norms about cultural heritage and human rights (Art. 7) in the occupied areas.⁵⁸

The Law on Occupied Territories from 2008 also includes regulations about illegal bodies ((officials) Art. 8): “A body (official) shall be illegal if it is not established (appointed/elected) under the procedures determined by the legislation of Georgia, and/or if in any form it actually

⁵⁷ See Art. 6 of the Law on Occupied Territories from 2008 here: www.matsne.gov.ge.

⁵⁸ Compare H.-J. Heintze, Are De Facto Regimes Bound by Human Rights? In: OSCE Yearbook 2009, Vol. 15, 2009, p. 267.

performs legislative, executive, or judicial functions or other activity in the occupied territories that fall within functions of the State or local self-government bodies of Georgia. Any act issued by the bodies defined in the first paragraph of this article shall be deemed void and shall have no legal implications, except when the act is used to issue a neutral identity card and/or neutral travel document as determined by the legislation of Georgia. The possibility of establishing facts of civil significance in the occupied territories shall be ensured under the Law of Georgia on Civil Acts.”

According to the regulations described, the Law of Georgia on Occupied Territories from 2008 has the purpose of recognizing the areas as occupied areas and does not contain any norms in the context of the political autonomy of either region.

2. Constitutional status of the Autonomous Republic of Abkhazia

According to the Georgian Constitution of 1995, Abkhazia has the status of an autonomous republic. According to Art. 7, para. 3 of the Georgian Constitution, “the state territorial arrangement of Georgia shall be revised by a constitutional law of Georgia on the basis of the principle of the separation of powers after the complete restoration of the jurisdiction of Georgia over the entire territory of the country.”

According to Art. 7, para 6 of the Georgian Constitution, “The powers of the Autonomous Republic of Abkhazia and the Autonomous Republic of Ajara, and procedures for exercising such powers, shall be determined by the constitutional laws of Georgia that are an integral part of the Constitution of Georgia.”

Therefore, the constitutional law on the Abkhaz Autonomous Republic does not exist and the territorial arrangement has not yet been revised since Georgia gained independence in 1991. In this context, it is necessary to define which form of territorial arrangement is acceptable for Georgia given the status of the conflict regions. Georgia is currently a unitary state with regional autonomies.⁵⁹

The constitutional status of the Abkhazian Autonomous Republic is regulated by the Constitution of the Abkhazian Autonomous Republic of 1978, which was adopted by the Supreme Council of the Abkhazian Autonomous Republic.

At the same time, there is the constitution of the Abkhaz separatist regime from 1994, which Georgia does not recognize. On October 9, Moscow-backed Abkhaz leader Aslan Bzhania

⁵⁹ Compare R. Wolfrum, Nation- and State-Building: Gleichlaufende oder möglicherweise auch gegenläufige Prinzipien am Beispiel des Südsudan, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität, 2016, p. 143-150.

signed a decree on the formation of a constitutional reform commission, aimed to develop amendments to the Abkhaz “constitution,” involving reform of the state power and governance system.⁶⁰

According to Art. 2 of the Constitution of the Abkhazian Autonomous Republic, “The Autonomous Republic of Abkhazia independently solves problems within its administration in accordance with Georgian legislation. The powers of the Autonomous Republic of Abkhazia are set out in the Constitution of Georgia, this Constitution and other legal acts. The Autonomous Republic of Abkhazia exercises powers which, under Georgian law, are not part of the special powers of the state authorities and the exercise of which is not excluded from the powers of the Autonomous Republic of Abkhazia under Georgian law.”

The rights of the region and the way to demonstrate these rights are set out by decree issued by the Parliament of Georgia on February 24, 1995 “on the Supreme Authority of the Autonomous Republic of Abkhazia”. The decree states that the Supreme Council of Abkhazia “carries out its activities in accordance with the Abkhazian Constitution”.

The decree of the Georgian parliament of March 10, 1994 gives the Abkhazian Council of Ministers the status of “temporarily displaced” and recognizes it as the highest organ in the region until new elections are held.⁶¹ This is the only document approved by the Georgian parliament on the subject of the Council of Ministers of Abkhazia. Detailed responsibilities and rules for carrying out its activities are set out in the laws and legal acts of the Council of Ministers itself.

Apart from these statements, the Constitution of the Abkhazian Autonomous Republic of 1978 does not specify which powers are included under Abkhazian autonomy. By comparing the Georgian Constitution and Georgian legislation in general, the conclusion to be drawn is that the autonomy of Abkhazia is very weak and can almost be equated with the functions of local self-government.

After the 2008 war, the Georgian government managed to include representatives of the displaced government of Abkhazia in the international Geneva discussions. The same practice continued during the rule of the “Georgian Dream”, and representatives of the displaced government units continue to participate in the Geneva negotiations.⁶²

⁶⁰ See, “Constitutional Reform Commission Formed in Abkhazia”, www.civil.ge, accessed on December 28, 2020.

⁶¹ T. Zurabashvili, Governmental Entities of Abkhazia and the Former Autonomous District of South Ossetia in Tbilisi: Power and Legitimacy in Exile, Working Paper, Georgian Institute of Politics (GIP), March 2021/#12.

⁶² Ibid.

3. Constitutional status of the Tskhinvali Region (so-called South Ossetia)

Today Tskhinvali region does not enjoy autonomous status in Georgia. The status of South Ossetia is regulated by the law "on the Creation of Suitable Conditions for the Peaceful Settlement of the Conflict in the Former Autonomous Region of South Ossetia" (Parliament of Georgia, 2007). According to Art. 1 of this law, "This law defines the form and the procedure for the implementation of temporary state governance in the territory of the former Autonomous Region of South Ossetia until the Georgian jurisdiction over this area is fully restored. The aim of this law is the peaceful settlement of the conflict, the restoration of constitutional order in the territory of the former Autonomous Region of South Ossetia and the protection of the rights and freedoms of people and ethnic groups living in the former Autonomous Region of South Ossetia, to promote and create appropriate conditions."

A temporary administrative and territorial unit on the territory of the former Autonomous Region of South Ossetia will be established and abolished by the Georgian Parliament upon submission of a resolution of the Georgian government.

In order to exercise governance in the area of the temporary administrative-territorial unit, the administration of the temporary administrative-territorial unit is established, the rules and scope of its activities are laid down by this law and a resolution of the Government of Georgia.

The rights and powers of the region are contained also in the Ordinance of the President of Georgia of May 10, 2007 "On the establishment, functions and limits of the provisional administrative-territorial unit in the territory of the former Autonomous District of South Ossetia". The legal status of the administration of South Ossetia continues to be based solely on legislation and is not supported by the Georgian Constitution.

In relation to the Tskhinvali region, a law also applies "on the return of property and compensation to victims of the conflict in the former Autonomous Region of South Ossetia on the territory of Georgia" (Parliament of Georgia, 2006). The aim of this law is to restructure the property of people affected by the conflict in the former Autonomous Region of South Ossetia on the territory of Georgia, to provide adequate (replacement) real estate or to compensate for property damage.

According to the regulations described, South Ossetia has no autonomous status and the temporary administrative unit is only temporarily set up for conflict management.

The administration of South Ossetia participates in the Geneva international discussions.

IV. Georgia before the international courts: ICJ, ECtHR, ICC

1. Georgia before the ICJ: Georgia versus Russia

On August 12, 2008, the Georgian government filed an application against Russia with the International Court of Justice (ICJ) in The Hague.⁶³ The application concerns the facts of ethnic cleansing committed by Russia in 1999-2008 on the territory of Georgia. The lawsuit was based on the 1965 United Nations Convention on the Elimination of All Forms of Racial Discrimination (CERD). Before the factual hearing of the ICJ, the Russian Federation filed preliminary objections, the main purpose of which was to prove that the jurisdiction of the Court did not include the Georgian case - first, there was no dispute between Tbilisi and Moscow, and Russia was not a party; secondly, in accordance with the procedures set out in Art. 22 of the CERD, Georgia had to negotiate the matter directly with Moscow prior to filing a complaint with the ICJ.

The ICJ did not examine Russia's first objection and recognized Russia as a party to the dispute, but it did grant its second objection. The Court stated that prior to filing a lawsuit in bilateral negotiations with Russia, the Georgian side should consider issues related to the CERD that are directly related to the violated articles of the Convention before referring again to the ICJ. The Court set the procedures for Georgia and stated that after negotiations have been completed with Russia over the CERD articles, which the Georgian side considers violated, Georgia can continue the dispute before the ICJ.⁶⁴

The previous government commenced these procedures and the responsibility for pursuing them rests with the current government and continues.

2. Georgia before the ECtHR (inter-state cases): Georgia versus Russia I and II

a) Georgia versus Russia I

⁶³ Case Concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v Russian Federation) Preliminary Objections, Judgment, 1 April 2011, available at: <https://www.icj-cij.org/en/case/140>. [last accessed 2 January 2021].

⁶⁴ See P. Okowa, The International Court of Justice and the Georgia/Russia Dispute, in: Human Rights Law Review 11:4 (2011), 739-757; N. Lucak, Georgia v. Russia Federation: A Question of the Jurisdiction of the International Court of Justice, 27 Md. J. Int'l L. 323 (2012).

On March 26, 2007, the Georgian government filed an inter-state application against Russia in the Strasbourg Court alleging that Russia had persecuted and deported ethnic Georgians living in the Russian Federation in autumn 2006. The complaint illustrated up to 130 individual cases. On July 3, 2014, the dispute essentially ended with Georgia's victory and procedures to compensate the victims were initiated.⁶⁵

The Court found that in the fall of 2006, the Russian Federation implemented a coordinated policy of arrest, detention and deportation of Georgian citizens, which was an administrative practice. The Court also found that Georgian citizens had been illegally detained and deported in violation of Art. 3 and 5, para. 1 and 4 of the ECHR. An effective remedy was not available to the victims of the above-mentioned violations, resulting in a contravention of Art.13 read in conjunction with Art. 3, 5 (1), (4) and Art. 4 of Protocol IV.⁶⁶

By noting these violations, Russia is legally required to compensate Georgia for contravening the rights listed above. The Justice Ministries of Georgia and Russia had 12 months to agree on the amount of compensation, and if an agreement could not be reached, the parties were instructed to provide written comments on the matter. The proceedings for the enforcement of the decision of the Grand Chamber of the Strasbourg Court continues in the Committee of Ministers of the Council of Europe.

b) Georgia versus Russia II

On December 19, 2011, the European Court of Human Rights (ECtHR) declared Georgia v. Russian Federation (II)⁶⁷ admissible and handed it over to the Grand Chamber for examination. The statement alleges violations of the European Convention on Human Rights (ECHR) in the area under the effective control of the Russian Federation by Russian soldiers and members of the puppet regime during the hostilities and subsequent occupation in August 2008.

Georgia applied to the ECtHR on August 11, 2008, one day before the signing of the ceasefire agreement with Russia and submitted a complete application on February 6, 2009 with accompanying documents and up to 700 pieces of evidence.

The last oral hearing before the Grand Chamber of the ECtHR was held on May 23, 2018. The Court heard a total of 33 witnesses in the case, 16 of whom were summoned by the Georgian

⁶⁵ Case of Georgia v. Russia (I), Application Nr.13255/07.

⁶⁶ See Y. Ioffe, Case of Georgia v. Russia (I) (Just Satisfaction), in: American Journal of International Law, Volume 113, Issue 3 (2019), 581 - 586.

⁶⁷ Case of Georgia v. Russia (II), Application no. 32863/08.

government, 11 by the government of the Russian Federation and six witnesses directly by the Court.

The ECtHR published its decision on this case on January 21st.⁶⁸ The court hearings ended with victory for Georgia. In this regard, the most notable consequence of this decision is the confirmation of the occupation of the regions of Georgia (South Ossetia and Abkhazia) by Russia after the conflict of 2008 and the ethnic cleansing carried out there.⁶⁹ The ECtHR has ruled that Russia continues to exercise "effective control" over these regions since 12 August 2008. The most important question concerns the part of the court decision that excluded the legal assessment of the period August 8-12, whether the Court had the opportunity to avoid it and assess it. This is a matter for future research.

Accordingly, under international law, Georgia can contest Russia as an occupying state for failure to fulfill international obligations and address the question of Russia's responsibility. This decision set a precedent in imposing such a responsibility on Russia, and at the same time serves as a practicable instrument to achieve the desired outcome.

Apart from the legal leverage, this decision sends a clear political message, that the normalization of the ongoing secession process is practically excluded.⁷⁰

c) Georgia before the ICC

On October 13, 2015, Prosecutor of the International Criminal Court (ICC), Fatou Bensouda, appealed to judges to open an investigation into the crimes committed in Georgia in August 2008 during the conflict between the country's armed forces, the separatist South Ossetian militia and Russian armed forces.⁷¹

Shortly after the week-long armed conflict ended on August 15, 2008, an investigation into alleged crimes committed during the war was launched as part of a so-called "preliminary investigation". At the time of the investigation, the prosecution did not have the authority to conduct a thorough investigation. It therefore relied on materials received from governments, including the Georgian and Russian authorities, as well as information provided by intergovernmental and non-governmental organizations.

⁶⁸ Georgia v. Russia (II) [GC] - 38263/08, Judgment 21.1.2021 [GC].

⁶⁹ See Press Release issued by the Registrar of the Court: Judgment in the case concerning the armed conflict between Georgia and the Russian Federation in August 2008 and its consequences, ECHR 028 (2021), 21.01.2021.

⁷⁰ See M.N. Shaw, *International Law*, Eighth Edition, 2017, 189 et seq.

⁷¹ No.: ICC-01/15 Date: 13 October 2015, PRE-TRIAL CHAMBER I, Request for authorisation of an investigation pursuant to article 15 (ICC-01/15-4 13-10-2015 2/160 EO PT).

Georgia ratified the Rome Statute on September 5, 2003. Accordingly, the jurisdiction of the Court extends to the territory of Georgia or to criminal offenses committed against Georgian citizens since September 5, 2003.

Article 15 of the Rome Statute enables the prosecutor to initiate a preliminary investigation (*proprio motu*) into alleged crimes committed under the jurisdiction of the Court.

The time of the alleged criminal offenses from July 1 to October 10, 2008, is specified on the prosecutor's application for approval. Georgia, especially South Ossetia and the surrounding area, has been identified as a crime scene.

It should be noted that on January 27, 2016, the First Pre-Trial Chamber of the ICC granted the prosecution's request to open an investigation into alleged war crimes and crimes against humanity that were taking place on the territory of Georgia, in particular, from July 1 to October 10, 2008, in South Ossetia and the surrounding area.⁷² It should be noted that the terms "Tskhinvali Region" or "South Ossetia Region/Tskhinvali Region" are not used by the Court to indicate the relevant location, although the decision clearly recognizes that South Ossetia is considered a Georgian Territory and not an independent state.

The Russian Federation is not a member of the ICC. Not only did Russia fail to ratify the Rome Statute, it also withdrew from signing the Statute in 2016, sending a clear signal to the Court that it has no plans to deal with it in the current situation in Ukraine or in Georgia or to collaborate.

It should be noted that under the Rome Statute, the principle of complementarity applies, which means that the state investigates the case first and the ICC is not involved in that investigation. At the same time, the ICC regularly receives information on the conduct of investigations by a Member State.

The Ministry of Justice of Georgia sent a letter to the ICC in 2016 and handed over the investigation into the principle of complementarity. This made it clear that Georgia could not conduct the investigation because it had no access to the occupied territories. This act of the state is incomprehensible and wrong for two reasons. First, even if the ICC is investigating the delegated issues, the Court is usually only interested in high-ranking officials, and these are individuals. Under the complementarity principle, the Court's policy is precisely aimed at assisting the state in carrying out internal investigations and even in prosecuting the remaining individuals. The second reason is that the ICC is interested in a particular situation, factual circumstances and cases as it moves to the investigation. Whatever information the Court

⁷² No.: ICC-01/15, Date: 27 January 2016, PRE-TRIAL CHAMBER I, Situation in Georgia, Decision on the Prosecutor's request for authorization of an investigation (ICC-01/15-12 27-01-2016, 2/26 EO PT).

gathers and includes in the investigation phase is solely a matter of its interest. Hence too many circumstances remain uninvestigated.

These are the conditions under which the ICC's investigation into the August war in Georgia is ongoing.

V. People's right to political self-determination and its internal dimension

It is obvious that the aspirations of the Abkhazians⁷³ should have a legitimate basis and the status of Abkhazia must be determined within the framework of current international law/constitutional law.

As such, it is important to understand the right of peoples⁷⁴ to political self-determination⁷⁵ and the prerequisites for exercising this right.⁷⁶ The notion of expanded autonomy for Abkhazia and the Tskhinvali region should be seen as a result of the implementation of this right.

The right of peoples to political self-determination in the modern sense developed in the 20th century. In the early 1900s, the right of all peoples to political self-determination gained international support, followed by successful secessionist movements during the First and Second World Wars and the period of decolonization in the 1960s.

The right of peoples to political self-determination as a political principle in the early stages of development encompassed the doctrine of nationalism, which was implemented in the French and American revolutions.⁷⁷ During the First World War, the Allies viewed the right to political self-determination as the goal of peace. As part of his 14-point program, US President Woodrow Wilson saw the right of peoples to political self-determination as an important goal for the period after World War II. The result was the collapse of the Austro-Hungarian and Ottoman empires and the formation of the Baltic States. The United Nations' predecessor, the League of Nations, also recognized this principle, but the United Nations is the organization that has relatively fully defined this right.

⁷³ See B. Harzl, *Der Georgisch-abchasische Konflikt, eine rechtliche und politische Analyse*, Baden-Baden 2016, p. 346 ff.

⁷⁴ See J. Castellino, *International Law and Self-Determination, Peoples, Indigenous People and Minorities*, in: *Self-Determination and Secession in International Law*, Edited by Chr. Walter, A. v. Ungern-Sternberg and K. Abushov, Oxford 2014, p. 27-44.

⁷⁵ M. Melandri, *Self-Determination, International Law and Post-Conflict Reconstruction, A Right in Abeyance*, 2019, p. 110.

⁷⁶ Compare J. Eichler, *Reconciling Indigenous People's Individual and Collective Rights: Participation, Prior Consultation and Self-Determination in Latin America*, 2019, p. 13.

⁷⁷ M.N. Shaw, *International Law, Eighth Edition*, 2017, 198 et seq.

The right of peoples to self-determination emphasizes the legal right of the people to determine their own political fate⁷⁸ according to international law. The right of peoples to political self-determination is an important principle of international law, which is derived from customary international law, but is also recognized as an essential legal principle and is defined at the level of international treaties. For example, the right to political self-determination is recognized in the United Nations Charter and in Art. 1 of the two Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights (1966). Furthermore, the Friendly Relations Declaration of the UN General Assembly (1970)⁷⁹ recognizes the right to self-determination, which entails the right of all peoples “freely to determine, without external interference, their political status and to pursue their economic, social and cultural development” (Principle 5). The modern perception of this right includes the "internal" and "external" dimensions.⁸⁰ The "internal" context of political self-determination focuses on the social and political rights of the state (the question of granting so-called expanded autonomy for Abkhazia can only be discussed in this context), while the "external" context focuses on the possibility of achieving state independence in general.

Accordingly, the UN Charter recognizes two types of peoples' political self-determination.⁸¹ First, people have the right to political self-determination, including the right to choose the political system in a political, economic, social and cultural context. Secondly, the right to political self-determination is defined as the right of peoples to constitute themselves within the existing state or to realize it in any other form based on free choice, which is statistically linked to the existing state. Both versions have their roots in the United Nations Charter (Article 2.1; Article 55.1).

Although the ICJ has recognized peoples' right to political self-determination as part of *ius cogens*, there is still no definitive political consensus on what the right to self-determination should mean in post-colonial realities, such as the case of Kosovo or Crimea.

Peoples' right to political self-determination can be exercised without secession.⁸²

⁷⁸ Compare J. M. Welsh, Turning Words into Deeds? The Implementation of the “Responsibility to Protect”, in: A. J. Bellamy/S. E. Davies,(Ed.), Global Responsibility to Protect, Vol. 2, No. 1-2, 2010, p. 149-154.

⁷⁹ See for more Chr. Walter/A. v. Ungern-Sternberg, Self-Determination and Secession in International Law – Perspectives and Trends with Particular Focus on the Commonwealth of Independent States, in: Walter/v. Ungern-Sternberg/Abushov (Ed.), Self-Determination and Secession in International Law, Oxford 2014, p. 2.

⁸⁰ F. Duncan (Ed.), Statehood and self-determination: reconciling tradition and modernity in international law, Cambridge 2013, pp. 229-249.

⁸¹ See G. Anderson, Unilateral Non-Colonial Secession and Internal Self-Determination: a right of newly seceded peoples to democracy? - Arizona Journal of International and Comparative Law, Vol. 34, Nr. 1, 2017, p. 1-64.

⁸² G. Khubua, "Yes" - self-determination, "No" – secession (in Georgian), 28.10.2014, www.interpressnews.ge, accessed on February 22, 2021. See also G. Khubua, Federalism (in Georgian), 2000, 423 et seq.

After the decolonization processes, international law has not yet agreed on the extent to which the right of peoples to political self-determination (see also Article 1 of the 1966 International Covenant on Civil and Political Rights) can include the possibility of secession.

The origins of secession as a legal category have historically been associated with an era of decolonization, in which territorial boundaries were often reconsidered during the liberation movements in conquered countries as part of the right of the people to political self-determination. In other cases, secession is a response to serious domestic human rights violations. Secessionists often appeal to cases of violence that can occur in the context of an armed conflict (remedial secession).⁸³ In the case of Georgia, there were no similar cases by the Georgian central government to legitimize the secession of Abkhazia and the Tskhinvali region.⁸⁴

Most constitutions are silent or do not recognize the possibility of secession. This standard applies equally to unitary and federal states. This is the case with the Constitution of Georgia of 1995. An example of secession being regulated under a constitutional mandate is the separation of Montenegro from the Union of Serbia and Montenegro in 2006. This became possible because in this case Article 60 of the Constitutional Charter of the Union of Serbia and Montenegro of 2003 provided for the possibility of secession.⁸⁵

The question of the relationship between the right to political self-determination and the right to secession is relevant to the example of separatist movements in the world.

A noteworthy case is, maybe, Kosovo, whose independence has been legally recognized by the United Nations Court of Justice (Kosovo, Advisory Opinion, 2010), but without mentioning the question of secession and in what context it relates to political self-determination. Serbia's actions against Kosovo have lost their legitimacy on the territory of Kosovo due to ethnic cleansing, genocide and crimes against humanity. The situation is very different for Abkhazia and the Tskhinvali region. On the contrary, in the case of Abkhazia, ethnic cleansing of Georgians has taken place and a large number of Georgian citizens have been displaced from both regions. In addition, the 1974 Socialist Federal Constitution of Yugoslavia included the

⁸³ "It is increasingly suggested in literature that a right to unilateral secession, stemming from the right to self-determination of peoples, may arise as *ultimum remedium* in case of serious injustices suffered by a people." Quoted from S. F. van den Driest, *Remedial secession: a right to external self-determination as a remedy to serious injustices?* Cambridge [u.a.]: Intersentia, 2013; About the remedial secession see also D. Lefkowitz, *Philosophy and international law: a critical introduction*, Cambridge 2020, pp. 213-214.

⁸⁴ See G. Bolton, *International responses to the secession attempts of Kosovo, Abkhazia and South Ossetia 1989–2009*, In D. French (Ed.), *Statehood and Self-Determination: Reconciling Tradition and Modernity in International Law*, Cambridge 2013, pp. 109-138.

⁸⁵ Chr. Tomuschat, *Secession and Self-Determination*, in: M. G. Kohen (Ed.) *Secession – International Law Perspectives*, 2006, 23 et seq.

possibility of secession. For these and many other reasons, the case of Kosovo is considered *sui generis* in international law, which cannot be applied to other separatist movements, including Abkhazia and the Tskhinvali region, in terms of results and legal precedent.

The question of secession, despite its clear international legal context, remains clearly a constitutional issue. Secession is directly related to the legal basis on which the current state is based, not only on territorial borders, but also on constitutional and functioning state institutional structures. The same context includes peoples' right to political self-determination. The status of Abkhazia and the Tskhinvali region should therefore be discussed in this context. This is logical, even in a constitutional context.

Regarding the federalization perspective of Georgia, G. Hewitt writes: "... the offer of a confederal arrangement for Abkhazia would almost certainly have avoided war there. Whether a tighter federative relationship would have been acceptable to the Abkhazians in the conditions existing in the summer of 1992 is less clear and poses a tantalising question that can probably never be definitely answered."⁸⁶ In this context, it was key to have worked on this question in Georgia and conceptualize future federalization.

VI. The latest attempts of the conflict regulations - a broad concept of autonomy

In the 1990s and beyond, in Georgia (first attempts initially in 1991, then in 2001 within the so-called "Boden Plan",⁸⁷ the most comprehensive project in 2004 and in 2005 with the economically determined project of Irakli Alasania⁸⁸) different politicians and social groups attempted to discuss the issue of granting Abkhazia a special status (expanded autonomy, to some degree), but all attempts at dialogue ended in failure. Among them there were cases where the Abkhaz side agreed to the conditions while the Georgian side did not. Unlike Abkhazia, the Tskhinvali region has never been offered anything similar.

It should be emphasized that, with the joint efforts of the Georgian and Abkhaz sides, the meeting of the Supreme Council of Abkhazia on July 9, 1991 passed a new electoral law — the Law on the Election of Deputies of the Supreme Council of the Abkhaz ASSR. On August 27,

⁸⁶ G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 115

⁸⁷ "The principles for division of competences between Tbilisi and Sokhumi", a document developed by Dieter Boden, Special Representative of the Secretary General of the United Nations for Georgia, 20 November 2001. The Boden Plan is available at: http://www.iccn.ge/files/boden_document_2002.pdf. [last accessed 14 January 2021].

⁸⁸ Between 2005-2006 Alasania was chairman of the Tbilisi- based Abkhazian government-in-exile. On February 15, 2005, Saakashvili also made him his aide in the Georgian-Abkhaz peace talks.

1991, the Supreme Council of Abkhazia passed constitutional amendments (the so-called Gamsakhurdia-Aleksidze Law⁸⁹, „28-26-11“). With this, the 65 seats in the Supreme Council were distributed among ethnically elected constituencies. Abkhazians (17% of the population) won 28 seats, Georgians (47% of the population) 26, other nationalities — 11. This distribution ensured that neither side could achieve a qualified majority and resolve constitutional issues, including that of the status of Abkhazia. Without the consent of the Georgians and Abkhazians, it was not only impossible to resolve the status issue legitimately, but also to hold a referendum and appoint members of the government. These steps required the decision of a qualified majority of the Board of Governors. The two seats on the Board of Governors and other senior positions were distributed according to ethnicity. In particular, an Abkhazian should have been elected chairman of the Supreme Council and a Georgian as the first deputy. Similarly a Georgian is supposed to be the chairman of the government of Abkhazia, operating with an Abkhazian as the first deputy.

Abkhazia also implemented significant constitutional changes. In the Abkhazian constitution, for example, the term “Georgian SSR” has been replaced by the term “Republic of Georgia”, a major compromise. With this change, Abkhazia constitutionally confirmed that if it was previously part of Georgia that was part of the Soviet Union, it was now part of the independent Republic of Georgia.

These constitutional changes and quotas have sparked protests among the Georgian population in the 90s. People questioned why the Georgian majority population in Abkhazia were granted fewer quotas compared to their Abkhazian counterparts. Another contentious issue was the categorization of individuals as "Abkhazian" "Georgian"? Such ethnic connotations could prove problematic legal implications. However on December 22nd, 1991, the tense situation in Tbilisi turned into an armed confrontation and a coup d'état and the aforementioned changes never came to be materialised.

The Boden Plan (2001) was supported by Nr. 1393 resolution of the United Nations Security Council (UNSC). The plan was not accepted by either side (Abkhazian and Georgian people), because neither side was ready for that.

The most comprehensive project was essentially the "Concept on the Special Status of Abkhazia in the Georgian State",⁹⁰ which was published on June 30, 2004, in the Georgian newspaper

⁸⁹ After Levan Aleksidze (1926-2019), an internationally renowned Georgian lawyer.

⁹⁰ A public version is available at: http://iccn.ge/files/concept_abkhazia_in_georgia_state_2004_eng.pdf [last accessed 8 January 2021].

"24 Hours".⁹¹ The concept was elaborated over several months by a group of Georgian experts⁹² with extensive experience in the issues of the Georgian-Abkhaz conflict, who also had to work with international experts⁹³ on a number of issues.

According to the authors, this document was drawn up for a year, but takes into account three years of experience with Abkhazians. It is a political rather than a legal document, but it also has a legal context and is based on the principle of federalism. This is not an official document from the state. The Georgian state has not expressed its position on this document and has not made it the subject of discussion with the Abkhazians. The authors have submitted this document to the state authorities for review.

The document consists of five parts and two appendices.⁹⁴ It should be noted that only the last and fifth part of the concept has been published and is officially available. This last section describes the general objectives and requirements for a federation. The full version of the concept was only sent to the government.

The principle of the concept is based on federal relations and the federal model of the state. According to this model, Georgia is a federal state and includes the subjects of the federal government, in this case Abkhazia. The special status of Abkhazia is also reflected in the fact that it is the subject of the Federation. The peculiarity of Abkhazia is reflected in the fact that its existence and its status as a federal unit do not depend on the will of the federal government. Abkhazia has its own legitimacy in this project, that is, its own government sources. In addition, Abkhazia has its own characteristics of statehood, such as: its own territory, its own people who elect its government, and its own government which exercises its powers over that territory.

According to the concept, the powers of Abkhazia and the federal government are separated. The federal government has special powers in the areas necessary to maintain the unity of governance, internal integration and the boundaries of a single federal state. All decisions in these areas are made by the Federation and no entity (including federal agencies) has the right to deviate from or violate them. In the event of a dispute (dispute between jurisdictions), the final decision will be made by the Constitutional Court of Georgia. According to the draft, the

⁹¹ Newspaper 24 hours, June 30, 2004, No. 153 (702). The concept was released on June 30th. As soon as the concept was released, it caught public attention. Discussions took place in the newspaper 24 Hours, January 12, 2005, No. 5 (865). Later, in 2007, the book "Answers to Frequently Asked Questions about the Concept of Abkhazia Special Status in the State of Georgia" was published. Editors: Nino Kalandarishvili, Lawrence Browsers, Paata Zakareishvili. The book in question-and-answer format contains some explanations of the concept published in the newspaper.

⁹² Expert group: Konstantine Kublashvili, Archil Gegeshidze, Ivliane Haindrava, Paata Zakareishvili.

⁹³ The following international experts participated in the work on the project: Prof. em. Dr. iur., Dr. h. c. Thomas Fleiner (University of Fribourg) and Prof. Dr. Alexander Blankenagel (Humboldt University Berlin).

⁹⁴ See the document – „Concept on the Special Status of Abkhazia in the Georgian State“, p. 5 et seq.

norms of federal law will have the highest legal force in their special areas. These are special areas: border protection, defense, state security, issuance of money and so on - all the powers required for the state to function as a unit.

According to the concept, as a federal unit, Abkhazia is an equal and independent partner in its relations with the federal government. This means that it has the characteristics of the state. It is assumed that the existence of Abkhazia does not depend on the will of the Federation. The Federation cannot terminate it unilaterally. Abkhazia exists and maintains an independent relationship with the federation, which is defined by a federal agreement. The federal agreement then becomes part of the constitution and that agreement is reached by both parties.

In this context, it should be underlined that, according to this concept, the Abkhaz people enjoy the right to self-determination as a people. The Georgian and Abkhazian peoples are considered to be the founders of the Federation.

The concept also contains very interesting and important aspects related to the so-called “Abkhaz citizenship”, according to which „the constitutional law and the Constitution of Abkhazia may stipulate that permanent residents of Abkhazia held Abkhazian citizenship and have a document identifying their citizenship – a personal identity card. At the same time citizens of Abkhazia would automatically also be citizens of the federal state of Georgia“.

The other most important aspects of the concept are additional political guarantees for Abkhazians: Abkhazian representatives⁹⁵ in the upper chamber of the parliament and in the senate, the system of high quorums, guarantees related to military service, guarantees related to the national currency, restrictions on the purchase of real estate in Abkhazia, issues of property restitution etc.

The Alasania project (2005) concerned the settlement of the conflict in Abkhazia by the exertion of economic methods. However, this project was not successful due to the absence of political will from both sides.

During Mikheil Saakashvili's presidency, he sometimes spoke about asymmetrical regionalism,⁹⁶ but the concept was never made concrete.

With regard to Georgia's state strategy for resolving conflicts, the impression remains that there is no single strategy. Georgia has taken some steps over the years to foster human relations and these are certainly positive steps. However, the dynamic is about whether that positive attitude has changed something, for example in terms of attracting young people to education or in terms

⁹⁵ What is meant here is not a representation based on ethnicity as in 1991, but rather the representation of the candidates elected in the Abkhaz region.

⁹⁶ G. Hewitt, *Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts*, Leiden – Boston 2013, p. 204 et seq.

of finding free medical care in general, when all of this has consequences.⁹⁷ In today's reality it will be possible to just talk about the goals so that the state can develop a unified strategy. However, the vision of the Georgian side is not enough to determine the position of either party to resolve the conflict.⁹⁸

It should be noted that the majority of the Georgian experts interviewed are in favor of asymmetrical federalism/regionalism and bilateral political formats with Abkhazians and Ossetians, parallel to the Geneva format.⁹⁹

In this context, the above-described but thoroughly modernized concept about expanded autonomy for Abkhazia (2004) could be useful for further negotiations.

Russia is a party to the conflict in both regions, there are puppet regimes in Abkhazia and South Ossetia, all facts which are internationally recognized. Regardless, though, Abkhazians and Ossetians are first and foremost peoples, who have the right to political self-determination (especially to the internal context of this right – internal self-determination). This right has to be recognized from the Georgian side and after that it is necessary to begin at least informal dialogue with the Abkhazians about the granting an expanded autonomy within Georgia in the context of asymmetrical regionalism or federalism. A similar model of dialogue has to be created for the Ossetians.

VII. Conclusions and remarks

Russia plays a key role in the emergence and continuation of territorial conflicts in Georgia. Russia is, in fact, a party to the conflict. However, nationalism is strong in Abkhazia in particular, and it is unlikely that the Abkhazians will agree to full assimilation with Russia¹⁰⁰ and the factual annexation process that is already under way.

⁹⁷ This data is based on public Information provided by Ministry of Science and Education of Georgia and Ministry of Health, Labour and Social Affairs of Georgia.

⁹⁸ On June 24, 2021, the Cabinet of Ministers of Georgia set up a government commission to develop and implement a state strategy for deoccupation and peaceful settlement of the conflict. The Ministry of Foreign Affairs chairs and coordinates the commission.

⁹⁹ Interview with Giorgi Kanashvili, Expert, conducted on 28.01.2021; Interview with Prof. Giorgi Kverenchkhiladze, Tbilisi State University, conducted on 20.01.2021; Interview with Prof. Beka Kobakhidze, Ilia State University, conducted on 4.01.2021; Interview with Prof. Tornike Sharashenidze, GIPA, conducted on 16.12.2020; Interview with Levan Meskhoradze, Head of the Department of State Representation in International Courts of the Ministry of Justice of Georgia in 2008-2016, conducted on 29.01.2021; Interview with Nodar Kharshiladze, Founder of the Georgian Strategic Analysis Center, conducted on 22.01.2021; Interview with Prof. Paata Zakareishvili, Gr. Robakidze University of Georgia, conducted on 30.12.2020; Interview with Ivliane Haindrava, Independent Expert, conducted on 30.12.2020.

¹⁰⁰ Iv. Haindrava, Regarding the "red lines" and more, Expert Opinion, Georgian Foundation for Strategic and International Studies (GFSIS), 2020, 5-7.

In view of all of the above, Georgia must use all its resources to enter into a dialogue with Abkhazians. Launching a dialogue with Abkhazia does not mean a change of the policy of non-recognition or the revision of the so-called Geneva format and the exclusion of Russia as a party to the conflict (main actor). The beginning of the dialogue marks the start of the discussion about the implementation of the right to political self-determination (so-called internal context of the right), which is currently taking place illegally as part of the secession process in Abkhazia and South Ossetia.

It is legitimate to speak of expanded autonomy within Georgia in context of the Abkhazian people's right to political self-determination (within the context of internal self-determination). This must be agreed between the Georgian and the Abkhaz people under a federal territorial agreement (in case of federation). Asymmetrical regionalism as a form of territorial division can also be adapted. The result will be asymmetrical federalism or regionalism. The same regional model (expanded autonomy) also applies to the Tskhinvali region (South Ossetia), which currently does not have regional status recognized in the Constitution of Georgia of 1995. This concept of conflict resolution should be part of the Georgian strategy for reintegration of the conflict regions.

References

- Nußberger A. (2008), Völkerrecht im Kaukasus: Postsowjetische Konflikte in Russland und in Georgien, in: EuGRZ;
- Erkvania, T. (2017), Verfassung und Verfassungsgerichtsbarkeit in Georgien, Diss., Nomos;
- Sagramoso, D. (2020), Russian imperialism revisited: from disengagement to hegemony, London;
- Schmies, O. (Ed.) (2021), NATO's Enlargement and Russia: a strategic challenge in the past and future; with a foreword by Vladimir Kara-Murza, Stuttgart;
- F. Slaveski (2021), Remaking Ukraine after World War II: the clash of local and central Soviet power, Cambridge;
- Marxsen, Chr. (2014), The Crimea Crisis - An International Law Perspective, in: ZaöRV 74;
- Lundstedt, T. The Changing Nature of the Contemporary Russian Interpretation of the Right to Self-Determination under International Law, in: S. Morris (Ed.), Russian Discourses on International Law, sociological and philosophical phenomenon;
- Vanberg V. J., Föderaler Wettbewerb (2016), Bürgersouveränität und die zwei Rollen des Staates, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität;
- Huber, P. (2016), Selbstbestimmung in Europa, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität;
- Malanczuk P. (1984), Region und unitarische Struktur in Großbritannien;
- Hewitt (2013), Discordant Neighbours – A Reassessment of the Georgian-Abkhazian and Georgian – South Ossetian Conflicts, Leiden – Boston;
- Luchterhandt, O. (2008), Völkerrechtliche Aspekte des Georgien-Krieges, in: Archiv des Völkerrechts, Bd. 46;
- Benvenisti (2019), The International Law of Occupation, Second edition, 2012, 61; Y. Dinstein, The International Law of Belligerent Occupation;
- H.-J. Heintze, Are De Facto Regimes Bound by Human Rights? In: OSCE Yearbook 2009, Vol. 15, 2009;
- Wolfrum, R. (2016), Nation - and State-Building: Gleichlaufende oder möglicherweise auch gegenläufige Prinzipien am Beispiel des Südsudan, in: Feld/A. Köhler/Schellenbach (Hrsg.), Föderalismus und Subsidiarität,;
- Castellino J. (2014), International Law and Self-Determination, Peoples, Indigenous People and Minorities, in: Self-Determination and Secession in International Law, Edited by Chr. Walter, A. v. Ungern-Sternberg and K. Abushov, Oxford;
- Shaw, M.N. (2017), International Law, Eighth Edition;

Duncan, F. (Ed.) (2013), *Statehood and self-determination: reconciling tradition and modernity in international law*, Cambridge;

Lazian Army of the Lazic War (541-562 CE)

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Abstract: Lazic War (541-562 CE) is one of the largest conflicts ever happened in the Caucasus, between the most powerful empires of late antiquity – Byzantine empire and Sasanian Iran. Lazica, the modern western part of Georgia, was under Byzantine influence, but the Sasanians, after the occupation of the Iberian (Kartlian) kingdom in the first half of the 6th century, tried to conquer Lazica to gain a strategic position on the shores of the Black sea against their main rivals, the Byzantines. Lazian kingdom, which at this time was under the influence of the Byzantine empire, stood between the two major powers of the Mediterranean and the middle east. Mostly as the Byzantine allies, the Lazi fought against Iran and only in certain circumstances they were under the Sasanian banner. The article examines the Lazian army before and during the Lazic War, their numbers, armament, and organization.

key words: Lazica, byzantines, Sasanians.

The Kingdom of Lazica, which arose in late antiquity period on the territory of modern West Georgia and, according to Byzantine historians, considered itself the heir of the ancient Colchians, found itself in a difficult geopolitical situation in V-VI centuries. Military units of the interested parties - Byzantines and Iranians - were often deployed on its territory. The Lazian kings changed their political orientation depending on which side was stronger during the specified period.

Naturally, the Lazi did not have the proper human and economic resources to fight the empires on their own for a long period of time, but without an alliance with them, the empires also could not easily establish their influence on such an inaccessible region with difficult terrain and scarce resources, as the Southwestern Caucasus in the Late Antiquity period. The Lazian army participated in a number of important military operations, mostly side by side with the Byzantines against the Iranians. With a good knowledge of the terrain and fighting experience in these conditions, they were precious allies in Lazica for the military leaders sent by the Byzantine Emperor Justinian to fight the Iranians. The article will discuss the history of the Lazian army in V-VI centuries based on historical sources of Late Antiquity – numerical strength, resources, organization, armament, tactics and command. The examination of these issues in general is important for the study of such a large-scale late antiquity conflict, as the Lazic War.

The Kingdom of Lazica

In the 5th-6th centuries CE, the territory of the Kingdom of Lazica mainly included modern western Georgia. The borders of the Kingdom looked something like this: they started from present-day north Abkhazia and ended at the extreme southern part of modern Adjara. Its borders are almost equal to the borders of historical Colchis, which, according to Procopius of Caesarea, the Lazi people considered their ancestor and boasted about the name of the Colchians. “Colchis, as a historical and geographical region, includes entire West Georgia. Its physical and geographical boundaries are: Caucasus high mountains from the north; the Lesser Caucasus (or Anti-Caucasus), Adjara-Lazeti highland from the south; Surami or Likhi ridge from the east, and the Black Sea from the west” (Gamkrelidze, 1993, p. 24). There are different opinions about the borders of the Kingdom of Lazica, namely about the southern border, the difference between which is small and is not given much importance when discussing the area of war.

By the fifth century, the Lazians had become the dominant people in Western Transcaucasia, where other peoples of the region were creating the Empire of Lazica. It is true that the creation of the Empire of Lazica is not reflected in our sources, but it can be quite clearly seen that emerged with the consent of the emperor himself. The main outcome of this was that Colchis was replaced by Lazica (Braundi, 2014, p. 398). In Lazica, apart from the Kingdom of Lazica, there were two dependent principalities - the Abazgians and the Svani. They bordered on Lazica from the northwest and north. The Abazgians were settled on the territory of modern-day Abkhazia, and the Svani - on the lands of both modern Svaneti and adjacent territories. There were a lot of them, and as can be seen, their obedience to the king of Lazica was rather fragile, as well as that of the Abazgians¹. Their participation in the battle against the Byzantines or Iranians, together with the army of the Kingdom of Lazica, is not found anywhere in historical sources. On the southwestern coastal strip, where the name of the Lazians was first attested, Pontus Polemoniacus was located under the direct rule of the Byzantines (Braundi, 2014, p. 405). The south-western Georgian tribe, the Tzanoi, closely related to the Lazi, used to live to the east of Pontus Polemoniacus. They often served in the Byzantine army and were notable for their special fighting ability². From the north, the nomadic peoples of the steppe, the Huns and Alans, were neighbors of the vassals of Lazica - Svanians and Abazgians. After the Kingdom of Iberia was abolished in the east, Sasanian Iran became a direct neighbor of Lazica that allowed Shah Chosroes to take a hard line in order to gain dominance over Lazica for the war with Byzantium. At the same time, Iran strengthened the hands in the Iranian part of Armenia, Persarmenia, where, unlike Iberia, larger forces could be deployed and supplied³.

In the second half of the 5th century, when Goubazes I ruled in Lazica, and Marcian in Byzantium, a military clash took place between Byzantium and Lazica. Opposing Byzantium, Lazica fell under the influence of Iran. Its kings had to go to Ctesiphon for receiving

¹ As can be seen from the Iranian-Byzantine Treaty of 422, the rulers appointed by the Lazians in Svaneti from that time were approved by the Romans (Braundi, 2014, p. 389). The Empire of Lazica, along with the Svani, included their mountain neighbors, the Scymni, as well as the Apsilii, who lived to the west of the Abazgians, and the Misimians, who lived to the north and east of the Apsilians (Braundi, 2014, p. 404).

² In this place from the beginning lived barbarians, the Tzanoi people, subject to no one, called Sanoi in early times. They made plundering expeditions against the Romans who lived there. Sittas had defeated them in battle before this war, after which by many kind words and deeds he had been able to win them over completely. For they changed their manner of life to a more civilized sort, enrolled themselves among the Roman soldiery, and from that time they have gone forth against the enemy with the rest of the Roman army. They also abandoned their own religion for a more pious faith, and all of them became Christians. Such, then, was the history of the Tzanoi" (Prokopios, 2014, p. 39; Georgika, II, 1965, p. 54).

³ According to Procopius, there were the fortresses of Bolon and Pharangion, in which the Iranians "dig for gold and bring it to the king" (Georgika, II, 1965, p. 52), so Persarmenia was important to the Iranians in this regard as well.

investiture, Zoroastrianism had a quasi-official status in the country, although Christian missions were active as well (Evans, 2000, p. 92). After 522, the situation in this respect improved, in which a significant contribution was made both by the visit of Tzathes to Constantinople, at the court of Justin I, and Christian baptism. Usually the Byzantine emperor sent royal insignia to his vassal, the King of Lazica. Almost the entire reign of Tzathes son Goubazes II falls on the Lazic War, during which he was mostly under Byzantine influence, though he also had a period of alliance with Iran. As the historian David Braund notes, due to Iran's long reign in Iberia and the fact that Iran tried with great zeal to intervene militarily in Lazica, the alternative of an alliance with Byzantium this time was a more realistic choice for the kings of Lazica (Braundi, 2014, p. 389).

Strategic Advantages of Lazica

The difficulties of crossing the border of Lazica were a serious problem for the warring parties. The 5th-century Byzantine author Priscus notes how inaccessible Lazica was from the sea, since it did not have any ports. This moment was outlined in the middle of the 5th century, during the Lazic-Byzantine War (the war between Goubazes I and Emperor Marcian)⁴. The same thing happened in the Lazic War, when in the early 40s of the 6th century Lazica defected to the side of Sasanian Iran and opened the way for the Iranians to capture Petra and rule over Lazica; the Byzantines could not gain a foothold there until the king of Lazica, Goubazes, won over to their side gain. The Byzantines duly appreciated the help received from the local people:

“Certainly, we also needed the Colchian army, not only because the Colchians, knowing more about these places than those not knowing these places, would give us useful advice, but also because, since we would have to fight warriors seated in fortified places and heavily armed, as well as those who might come to their aid from Mukhirisi, the Colchians would also help us, fight with us” (Georgika III, 1936, p. 149) – noted the Byzantine Rusticus at the trial, on which the Byzantine commanders were tried for the murder of King Goubazes. These words were retained by Agathias Scholasticus. This section clearly shows the basic advantage of the alliance with the Lazians - their good knowledge of the area and experience of acting on their terrain.

⁴ “They were discussing which way to set out on the march: the same way, or to start a war by way of Persia's neighboring country, Armenia, and to win over the Parthian king beforehand. By sea, in their opinion, it was impossible to sail along almost impassable places, since Colchis did not have any port” (Georgika I, 1961, p. 254).

Apart from the impregnable borders of Lazica, it was also protected by strong fortresses. The important fortresses of the Lazi people and their vassals were Petra, Archaeopolis, Sarapanis, Skanda, Phasis, Rhodopolis, Uchimerion, Kotayon, Onoguris, Trachea, Sebastopolis and Pitius⁵. Most of these fortresses were former Greek colonies or Roman fortresses and often had Byzantine garrisons. All of these points were of strategic importance and were built at key points of the country.

According to Procopius, the Byzantines controlled the Caucasus passes through the Lazians: “He carefully guarded the borders of this country (the Byzantine Empire) together with his subjects so that hostile Huns would not invade the lands of the Romans, passing through Lazica from the Caucasus Mountains bordering with them (the Lazi)” (Georgika II, 1965, pp. 72-73). Attention should be drawn to one important point here, which is also noted by David Braund: The Caucasus was not as insurmountable as was often imagined. The presence of the passes in the hands of Transcaucasians could only be one of the important factors in diplomatic relations with the nomads. But that was more diplomacy than control. In case of the failure of diplomacy, the Transcaucasians had no guarantees that they would be able to repel and repulse an attack from the north (Braundi, 2014, p. 93).

As a result of examination of this issue, we can conclude that the Lazian army, using its impregnable borders, local resources and strategic positions on its territory, could effectively make short-term resistance even to powerful empires, although a long war with Byzantium and Iran was impossible for it.

Lazian Army of 5th-6th Centuries

Historical sources provide very scarce material for defining such details as: types of armies, armament, and combat tactics in the Kingdom of Lasica. Unfortunately, we do not have contemporary local sources, so even in these cases we have to rely on Byzantine authors, Procopius of Caesarea and Agathias Scholasticus.

The types of the Lazian army can be seen in the Prokopian description of the battle at Tskhenistskali (Hippis) River. The army was divided into cavalry and infantry units. “First of all, the Lazi cavalymen drew up opposite the enemy” (Georgika II, 1965, p. 149), points out

⁵ Further to the east, Byzantium had two fortresses, both restored by Justinian: Pitius (modern Bichvinta) and Sebastopolis (near today's Sukhumi), which adjoined the coast of Abazgia (Evans, 2000, p. 92). It is also worth noting the port of Bathys Limen (Portus Altus), which was supposed to be located on the site of modern Batumi.

the Byzantine author. It seems that there were not so many of them and they were not heavily armed, since they could not dare to confront the well-armed Iranian cataphractaries - “when they suddenly met with the front enemy troops, they could not face them, they immediately turned their horses around, turned back in disorder, and rushed to the Romans to join them” (Georgika II, 1965, p. 150). The Laz infantry can also be seen in the second section: “At the end, the Lazi king Goubazes and the Roman commander Dagisthaeus followed with their infantries, with the thought that if the cavalry retreated, they could easily survive with their help” (Georgika II, 1965, p. 149).

The Byzantine and Lazi cavalry, united with the Lazi-Byzantine infantry, formed up a tight and deep rank of infantry - a phalanx against the Iranians: “The infantry, lined up in a deep phalanx, stood in front of the enemy and aimed spears at them” (Georgika II, 1965, p. 152). The military historian Hans Delbruck rightly noted that when the infantry moved in orderly tight rows, the cavalry could not destroy them, and if they were dispersed, even a weak cavalry would defeat them [Delbruck, 1996, p. 294-296]. The phalanx was mainly organized in 8 rows, which created a balance between the length of the front and the number of soldiers. During the late Roman Empire, preference was given to the 16-row phalanx. Perhaps it was considered that it was necessary to increase the depth of the phalanx due to the lack of fighting spirit in order to retain its strength. Each row was given its own task - the first four rows took part in hand-to-hand combat, so it was more heavily armed, the middle rows kept their formation and threw javelins at the enemy, and archers stood behind them. Moreover, the front ranks were also often armed with bows and arrows, and when the enemy fired an arrow from a distance, they put their spears on the ground and fired back arrows themselves. If the enemy approached, they took their spears and again formed up a defensive formation. This moment is clearly visible in the battle at Tskhenistskali: “and so they all resorted to their bows, emboldened by the hope that by a rain of missiles they would easily rout their enemy. The Romans and all the Lazoi began to do exactly the same. So from each side the arrows were flying thickly into both armies, and on both sides many men were falling” (Prokopios 2014, pp. 478-479; Georgika II, 1965, p. 152).

From a fragment of the battle at Tskheniskali, we get a general outline of the Lazian army - light cavalry, infantry and archers, armed with hand-to-hand combat weapons. We also see

that the Lazians had some tactical knowledge⁶, thanks to which they formed up a phalanx together with the Byzantines and successfully fought against the Sasanians.

Agathias Scholasticus also provides important data on the Lazi Royal Guard: “Before they came to the land of their subjects, [the Lazians and the Byzantines] handed over all the governance to Varazes the Armenian and Pharsant the Colchian, who did not surpass other fighters either in bravery in battles or other virtues, on the contrary, they were even inferior to some.” One of them, Varazes, was considered Lokhagos, and the other commanded the royal detachments of the Lazi King: he was a *magistros* in position; even among these barbarians this position was called the same; but he did not have such an ingenious mind as to bravely lead the Roman army”(Georgika III, 1936, pp. 156-157). The existence of the Royal Guard and the fact that its commander could lead the Laz-Byzantine army indicates the proper strength and influence of the Royal Guard. This military unit should not have been especially plentiful, but the Guard has always been considered an elite, well-armed and politically distinct part of the society of Late Antiquity or the early Middle Ages.

We rarely meet in historical sources, but it is likely that the kings of Lazica had the opportunity, if necessary, to hire nomadic peoples, Huns and Alans living in the North Caucasus and often mentioned by Byzantine authors of the Late Antiquity period (Procopius, Agathias, Zacharias Rhetor, Priscus, etc.), and use them in battle.

Most of the Lazian army was to be a people's, raised from the free population, just as in Iberia; and a small number of noblemen made up the best armed part of it. The population of Lazica must have been much smaller compared to Iberia. This is clearly seen in the light of historical sources. Consequently, the armed forces of the Lazians were small in number and could not have much influence on the outcome of the war between the two empires, but their fighting experience in local conditions, a good knowledge of the environment gave them a considerable advantage, especially since the presence in the army of loyal Lazi guides and

⁶ We have another data about the military cunning of the Lazians. The 10th century Byzantine dictionary Suda has preserved it for us: “The Lazi, having dug pits and securely fixed spears within them, concealed the openings of the holes with frames of reeds and material that has no firm foundation but would give way to any load placed upon it; and having thrown earth on top and tilled the ground to either side and sown wheat, they put the Romans to flight”(Rance 2015, p. 852) The Byzantines seem to have crossed over the place where the Lazi set the trap, and suffered greatly. Historian Philip Rance has carefully examined this detail in his article “A Roman-Lazi War in the Suda: a fragment of Priscus?”, he compared the style of the works of late antique authors with a specific fragment of the Suda. According to Rance, from the linguistic, stylistic and historical points of view, the Lazian stratagem should have been an excerpt from the work of the fifth century author, Priscus of Panium. The original of this fragment was lost, but remained thanks to the Suda. Philip Rance also believes that this fragment describes the first unsuccessful period of the war with the Lazians during the reign of Emperor Marcian in Byzantium (450-457) (Rance, 2015, pp. 852-867).

soldiers was beneficial to both Byzantines and Iranians. Such fact as the battle at Tskhenistskali allows us to roughly imagine the average number of the main forces of the Lazi on the battlefield. It is difficult to finding real numbers in historical sources. The combined army of the Lazians and Byzantines reached 14 thousand in 550-551.

They should not have suffered heavy casualties in the destruction of 5,000 people of the Iranian commander Phabrizos (before the Battle of Tskhenistskali) because they managed to launch a surprise attack at night. Procopius notes that Goubazes and Dagisthaeus closed the Iberian-Lazian passes and left a lot of Lazi warriors to protect the territory so that the Persians could not bring food from there again or did not make an attack. Since these passes were mostly narrow and difficult to pass, large troops would not be required to protect them, and their units could be temporarily called out and joined to the main forces as soon as they received information about Chorianes march. It can be concluded that the military forces of the Byzantines and Lazi at Tskhenistskali should have been about the same number as in the resistance with Chorianes - that is, up to 13-14 thousand warriors. Based on the materials provided by Procopius, most of them were Dagisthaeus's warriors. And the Lazic army probably did not exceed 4-5 thousand people. I believe that the total military strength of the Kingdom of Lazica can be defined on average by 8-10 thousand warriors.

References

Braundi D. (2014). sakartvelo antikur khanashi. batumi: batumis shota rustavelis sakhelmtsipo universiteti. ბრაუნდი დ. (2014). საქართველო ანტიკურ ხანაში. ბათუმი: ბათუმის შოთა რუსთაველის სახელმწიფო უნივერსიტეტი.

Gamkrelidze G. (1993). istoriul-topoarkeologiuri ziebani. Tbilisi: metsniereba. გამყრელიძე გ. (1993). ისტორიულ-ტოპოარქეოლოგიური ძიებანი. თბილისი: მეცნიერება.

Georgika II (1965). tekstebi kartuli targmanit gamostsa da ganmartebebi daurto s. kaukhchishvilma. tbilisi: sakartvelos ssr. metsnierebata akademiis gamomtsemloba. გეორგიკა II (1965). ტექსტები ქართ. თარგმ. გამოსცა და განმარტებები დაურთო ს. ყაუხჩიშვილმა. თბილისი: საქართველოს სსრ. მეცნიერებათა აკადემიის გამომცემლობა.

Georgika III (1965). tekstebi kartuli targmanit gamostsa da ganmartebebi daurto s. kaukhchishvilma. tbilisi: sakartvelos ssr metsnierebata akademiis gamomtsemloba. გეორგიკა III (1965). ტექსტები ქართ. თარგმ. გამოსცა და განმარტებები დაურთო ს. ყაუხჩიშვილმა. თბილისი: საქართველოს სსრ. მეცნიერებათა აკადემიის გამომცემლობა.

Evans J. (2000). The age of Justinian: the circumstances of imperial power. London; New York: Routledge.

Prokopios (2014). The Wars of Justinian. Translated by H. B. Dewing, Revised and Modernized, with an Introduction and Notes, by Anthony Kaldellis. Indianapolis, Ind. : Hackett.

Rance P. (2015). „A Roman-Lazi War in the Suda: a fragment of Priscus?" *The Classical Quarterly*, Volume 65, Issue 2.

Дельбрюк Г. (1996). *История Военного Искусства в Рамках Политической Истории*, т. II. Санкт-Петербург: Наука Ювента.

The Impact of the Proportional Electoral System on the Democratization of South American Countries

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Abstract

The paper discusses the impact of a proportional electoral system on the quality of democracy. In the paper, data was collected from Latin American countries in South America. The data of Polity 5, which is one of the most relevant and reliable sources, is used to determine the degree of democracy in the sample countries. The following study did not find a strong causal link between the degree of democracy and the proportional electoral system, although it is noticeable that the change of the electoral system was often accompanied by other democratic processes. This finding is significant in terms of that the electoral system can be an important indicator of democratization.

Keywords: Democratization, Electoral Systems, South America, Reforms, Proportional Electoral System;

Introduction

Free and fair elections are the main mechanism for the political will of citizens. It is also the way to form at least two branches of government - the executive and the legislature. That is why elections always matter in every country. However, it is important not only whether citizens express their will or not, but also how they do it. Larry Diamond and Mark Plattner argue that electoral systems may not only determine public will or public policy within the state but also contribute to political stability or vice versa - create a conflicting, polarized environment (Diamond & Plattner, 2006, pp. IX). When talking about the purpose of elections, David Horowitz first focuses on the proportional distribution of representation (Diamond & Plattner, 2006, pp. X). To achieve that proportional electoral system is the best and most effective.

According to French President Emmanuel Macron in 2019, reforms in favour of a proportional electoral system would help consolidate representative democracy in the country (Becher, 2019). This view is not unfamiliar to researchers of electoral systems. In the Proportional Electoral System (PR), seats are distributed among the parties according to the proportional support received by the party on election day. In contrast, majoritarian electoral systems have several major challenges, most importantly, losing votes - even in the case of a simple majority or a qualified majority, it is likely that the will of almost half of voters (less than 50%) who supported a defeated candidate or candidates will not be heard. It is to this issue that Mary Inman addresses the fact that in the Anglo-American Majority Majoritarian Electoral System, the "winner-take-all" is the same as in the case of the qualified majority (Inman, 1993, p. 3), which creates a reality of losing votes.

In the case of proportional elections, the risk of losing votes is less likely because the qualified threshold is seldom so high that a large proportion of voter-backed parties are unable to cross the established margin and incur a massive loss of votes. Even so, the party that crosses the threshold does not experience a crisis of legitimacy, while the holder of a simple majority seat may soon face this problem - based on the election results, there may be at least half of the voters against him who oppose the candidate's political platform or legitimacy.

Another, but no less common problem of the majoritarian electoral system is the so-called Gerrymandering, which is to reduce, increase, and distribute constituencies in favour of

incumbents or a particular party (Vox, 2019). In the presence of proportional representation, this problem is solved by the fact that the votes received across the state or the federal level are evenly distributed among the representatives.

Electoral systems differ in their disadvantages and advantages, although it is important to consider the cultural factor as well. The Anglo-Saxon electoral system is traditionally majoritarian, while that of continental Europe is proportional or mixed (Kvashilava, 2016, p. 12). Consequently, it is important to consider the fact that the former colonies inherited the very systems that their former rulers had. It is important to highlight the second aspect - historically, at the beginning of the twentieth century, the world's most countries were largely majoritarian not proportional.

Arend Lijphart reaffirms various studies that the electoral system determines the structure of political parties, their strength, and the way in which government is formed. The bipartisan parliament mainly formed through a majoritarian system, while the proportional electoral system makes the existence of a multiparty parliament more real (Lijphart, 2006, pp. 73-74). The proportional electoral system developed within heterogeneous societies and between class struggles (Lijphart, 2006, pp. 75-76) - the socially lower class wanted more representation in order to effectively protect their interests, which the majoritarian system could not do. Consequently, societies in which there are many political and social divisions, the proportional electoral system not only provides proportional representation but also fairer, which contributes to the democratic development of the political system.

Lijphart's view on the advantage of the proportional electoral system is rejected by Quentin L. By Quade, who observes the political processes in pre-Mussolini Italy, the Weimar Republic, and the Fourth French Republic. He argues that a proportional system creates political destabilization and often promotes extremism and does not lead to democratization (Quade, 2006, p. 94). Quade criticized Lijphart for his generalization and unambiguous conclusion based on his study of a specific geographical area - Scandinavia. This is why in any following study it is important to define and expand the area of study at the expense of those states that are geographically located in the same region but have switched to a proportional electoral system at different times. That is why the study of the states of South America, which experienced mainly Spanish and Portuguese colonization and, consequently, the assimilation of their political systems, is so important that each of them chooses a proportional electoral system at different times. Also, their democratic transition

varies significantly. The aim of the paper is to determine whether there is a connection between successful democratization and the transition to a proportional electoral system.

Methodology

In order to establish the connection between the adoption of a proportional electoral system and democratization, it is necessary to carry out data analysis. To do this, we will use data from Polity 5, research that has been collecting data on existing regimes in independent states since the 1800s and reviewing steps towards democratization or authoritarianism from year to year. Polity 5, through its point system, sets out the following condition: States with a score of -10 to -6 are autocracies. Anocracies, or hybrid regimes transitioning from autocracies to democracies, are represented by scores ranging from -5 to +5, while +6 to +10 are reserved for democracies (PolityProject, n.d.). A very important score for the present study is -88, which means points that systemic changes are taking place. This does not reflect the face of the regime itself, but rather indicates the changes that are taking place in the political system of this or that state (Marshall, M. G., 2018, p. 21). The transition may take several years and further data may change towards autocracy or democracy.

This paper investigates the role and relationship of the proportional electoral system in Latin American countries to promoting democratization. To do this, we will single out every South American country, find out when they switched to a proportional electoral system, and then compare it to Polity 5 data. In addition to the examples of the individual country, we also consider domestic political processes in order to exclude the influence of other important political processes on regime change and electoral systems. And if we had other politically significant factors coinciding with the change in the electoral system, it is important to analyze and compare them with similar or identical changes in other South American countries.

It is also important to note that when comparing examples from Latin American countries, we do not consider Suriname and Guyana, as the former was a colony of the Netherlands and the latter the United Kingdom. Their discussion with the rest of the Latin American countries would be irrelevant from a cultural and political point of view.

However, the paper does not cover Panama either, as it is a transcontinental state on the one hand, and it has de facto long been a sphere of US political control on the other, and due to that domestic political processes was less independent. Therefore making the evaluation and analysis of the real political environment in Panama is irrelevant.

South America - Overview and Individual Cases

The colonial heritage of South America significantly influenced the social and political development of individual countries. Because power was concentrated in one center semi-presidential and presidential governments and a mixed or majoritarian system hindered the development and democratization of political representation. Moreover, repeated military coups and regimes, as well as confrontations between the Socialists and the right-wing groups dramatically influenced not only domestic but also foreign policies. However, it is in the wake of these processes that electoral systems have changed in almost all South American states, some of which have evolved more rapidly, while others have relatively slowly transitioned to democratic or autocratic regimes. We review and compare all South American countries in the following research.

Argentina

Argentina was a Spanish colony that, in addition to Spanish economic expansionism and the extraction of resources, was also distinguished by the slave trade. From 1810 to 1818, Argentina waged a war for independence and was able to gain it and also establish partial control over states such as Uruguay and Paraguay. Independence was followed by civil war. The two forces - the Centralists and the Confederates - opposed each other. The form of governing the state and redistributing power was a key problem in Argentina. Despite the victory of the Confederates, the country has chosen the institution of a strong president.

The Argentine Parliament - the National Congress - is bicameral. Like basically all former colonies that gained independence before 1899, the electoral system in Argentina was majoritarian from

1900 to 1962. In 1963, Argentina adopted a proportional electoral system (Wills-Otero, 2009, p. 38).

Polity 5 data on Argentina's democratization and transition to a proportional electoral system is complex but significant. As a result of the 1963 presidential and parliamentary elections - which were held through a proportional system - Argentina was given 6 points, thus making it a democracy. Unfortunately, the data can not be limited by the time dimension, because in three years, in 1966, a military coup takes place, which overthrows the democratically elected government and establishes a dictatorship. In 1973, the military regime again replaces the democratically elected government, as a result of which Argentina regains 6 points and got back to the list of democracies. After that, in 1976-1982, Argentina was ruled by the military. These were troublesome years for democracy in the country. Only since 1983 has a democratically elected government finally returned in Argentina and Polity 5 then gives Argentina 8 points. As of today, it has 9 points.

Argentina switched to democracies for the first time since the transition to a proportional electoral system in 1963. The system is more transparent and representative. The latter is particularly noticeable because in 1963 the smaller parties were able to win more seats by a number of seats than in previous elections, and in the case of some parties were able to enter into the legislature for the first time (Nohlen, 2005, pp. 80-88). Despite several different military regimes, Argentina still manages to return to the principle of democratic representation, improve the rate of democracy, and reassess the damage caused by military regimes. All this, to some extent, can be attributed to the change of the electoral system and, consequently, the emergence of more different representations. In terms of democracy, Argentina is currently one of the leaders in Latin America.

Bolivia

Bolivia was the first state to revolt against Spanish colonial rule in 1809. At the same time, this country is named after Simon Bolivar - a South American revolutionary and fighter for independence. Despite the country's initial successful attempts to gain independence, it still had long-standing foreign confrontations with neighbouring states, which also hindered the achievement of internal political stability. Bolivia had a semi-proportional electoral system until

1955, and a proportional electoral system from 1956 to 1966 (Wills-Otero, 2009, p. 38). The country was ruled by Victor Paz Estenssoro from 1952-1956 and then from 1960-1964, who was a supporter of universal suffrage until he was overthrown by the junta on November 4, 1964. According to Polity 5, Bolivia had 4 points in 1952-1964 and was in the hybrid regime category. After the military coup, democratic elections in Bolivia were not held until 1985, so these data are insufficient to determine whether the transition to a proportional electoral system had a significant impact on the country's democratization process. It is noteworthy, however, that the introduction of the proportional electoral system took place after the reforms of Victor Paz Estenssoro and was marked by an exceptionally high, 85% turnout (Nohlen, 2005, p. 134).

Brazil

The Portuguese colony of Brazil revolted in 1822 and gained independence within three years. Until 1889 there was a monarchy in the country, and then a republic. The latter was distinguished by the rule of the oligarchy until the rule of Getúlio Vargas, backed by the military in 1930-1945. Throughout this period, Brazil remains an autocracy and has a majoritarian electoral system. (Wills-Otero, 2009, p. 38). Brazil has had a proportional electoral system since 1945 (Wills-Otero, 2009, p. 38). After the 1945 elections, a multi-party parliament was formed in which no party was able to achieve even a simple majority (Nohlen, 2005, p. 190). Polity 5 Gives Brazil 7 points after the 1945 elections, but during this period the Cold War begins and the Soviet government tries to strengthen the Communist Party in Brazil, which is compounded by the confrontation between the left and right forces. Vargas returns to power in 1951 but commits suicide amid economic crisis and internal destabilization.

1945-1964 is a period of reforms, most of which was of an economic nature. The confrontation between left and right forces reached a critical point in the early 1960s. In 1963, the presidency became even stronger, and left-wing President João Goulart began to move closer to the Eastern bloc against US interests. This year, Polity 5 scores 3 points, indicating the existence of a hybrid regime compared to 7 points in 1945 and 6 points in 1958.

A military coup took place in Brazil in 1964, which lasted until 1985. From this year, democratic elections will be held again and the country will return 7 points and will be on the list of democratic countries.

It is important to note that the transition to a proportional electoral system in Brazil was followed by the creation of a multi-party representation.

The overthrow of military rule in 1945 and the introduction of democratic reforms were followed by a change in the electoral system, which contributed to the multiparty composition of the House of Representatives and the relatively high degree of democracy. The negative changes that existed before 1964 were related to significant foreign shifts, which were also reflected in domestic political processes. Accordingly, the case of Brazil is significant in that the proportional democratic elections of 1986 not only created a multi-party representation in the Brazilian legislature but also gave way to new parties (Nohlen, 2005, p. 194).

Chile

Chile, which became independent in 1819 and relatively soon became a republic, switched to a proportional electoral system relatively early, in 1925. Even before that, Chile had a semi-proportional electoral system and a fairly strong parliament. Despite the transition to a proportional system, Chilean politics was chaotic, with several juntas and military coups taking place. All this makes the connection between proportional representation and the quality of democracy quite vague. That is why Polity 5 scores -88 points in 1925 and the following decade -3 points, indicating the destabilizing political environment in the country following the coups.

Chile has had a multi-party parliament in 1925, but instability was present as well as growing radical movements. An attempted coup d'état by the National Socialist Party of Chile in 1938 indicates the feeble institutions in the country and partial consent on the idea of one-party rule from the society.

Although Chile was multi-party even before the 1920s, the tendency for new parties to win seats in parliament became tangible since 1925. This period, despite political upheavals, was an important experience for developing political culture. Prior to 1958, Polity 5 gave Chile 2 points,

in 1958-1963, 5 points, and from 1963 to the 1973 military coup, 6 points, indicating that Chile became a democracy. This was a gradual and troublesome process.

While the transition to a proportional electoral system in Chile has not had an immediate effect on the country's politics, it has long contributed to the formation of a multi-party political space, which in turn is important for the existence of democratic processes. However, this analysis of the Chilean example is insufficient to establish a causal link between democracy and a proportional electoral system.

Colombia

Colombia has a relatively complex history of political controversy and infighting. In the country in 1899-1902, there was a civil war between the left-wing Liberal Party and the right-wing Conservatives, and in the 1940s and 1950s the so-called "Violence Period" (La Violencia), the confrontation between them was violent and bloody.

In 1931, a proportional electoral system was introduced, which lasted until 1957. During 1904-1929 Polity 5 rated Colombia -5 points. From 1930 it gained 5 points, which the country maintained until 1948. Even though political destabilization was a widespread proportional system help to curb the chaos at first but since 1948, instability in Columbia has intensified and became violent (Nohlen, 2005, p. 294).

Colombia switched to a proportional electoral system for the second time in 1978. Since 1974, Polity 5 has rated it at 7 points, which it maintained until 1991. Consequently, the introduction of a proportional electoral system for the second time has not brought significant changes in favour of democratic processes.

Ecuador

In the first half of the twentieth century, Ecuador's internal political processes were significantly related to foreign challenges, one of which was the war with Peru in 1941-42, during which Ecuador was not only defeated but also part of its territory temporarily occupied. President José María Velasco Ibarra has tried to carry out reforms to pull the country out of a political crisis. It

was in 1946 that Ecuador switched to a proportional electoral system (Wills-Otero, 2009, p. 38), and the first proportional elections were held in 1947. Polity 5 scores Ecuador by 1 point in 1925-1947 and 1 point in 1948, which is noticeable progress, especially in the backdrop of political instability and war in the country.

Peru

Peru is the most striking and sheer case between the relationship proportional electoral system and democracy. In 1963, Peru switched to a proportional electoral system (Wills-Otero, 2009, p. 39) and held parliamentary elections. Until 1963, elections were held on a majoritarian system, however, the election results in 1962, annulled by the military intervention (Walter, 2010, pp. 17-18). Polity 5 is very clear in this case: It gives Peru -5 points in 1962 but gave 5 points in 1963-1968. This is significant progress that directly coincides with the 1963 introduction to the proportional electoral system.

Uruguay

Uruguay is a small country located between two South American giants - Brazil and Argentina. Because of its political and economic development, Uruguay is even referred to as South American Switzerland (Goñi, 2016). Uruguay is one of the first countries in the world to use the proportional electoral system since 1918 (Wills-Otero, 2009, p. 39). Beyond that, Uruguay is the least corrupt state in South America (Goñi, 2016). Liberal and democratic reforms in Uruguay were carried out during the presidency of José Batlle y Ordóñez (1903-1907 and 1911-1915) (Nohlen, 2005, p. 488), which has a significant impact on the formation of democratic traditions. Proportionally democratic elections were held in 1919 (Nohlen, 2005, p. 501). Polity 5 evaluates 1910-1918 with 2 points, and the next, in 1919 with 3 points, which is a small difference in favour of democracy, though quite early and therefore, quite important.

Venezuela

Venezuela, which was a Spanish colony, declared independence in 1811, although until 1958 the country never had a stable democracy (Nohlen, 2005, p. 535). Polity 5 data rates period between 1938 and 1941 at -3 points - the highest score before 1958. Venezuela used a proportional electoral system year of 1946 to 1992 (Wills-Otero, 2009, p. 39). There was a military coup in the country in 1945, followed by the first democratic and proportional election held in 1947, in which the pro-democratic political party Acción Democrática won (Nohlen, 2005, p. 569). The period of party rule was the first occurrence when Venezuela sought to move to real democracy. This period is called El Trienio Adeco, but the attempt was unsuccessful and in 1948 the government was overthrown by a military coup.

Although Polity 5 does not score the year 1947 any different from previous or following years and gives the country -3 points, it is still important to note that this period is the beginning of democratic processes in Venezuela, which coincides with the imposition of a proportional electoral system.

Conclusion

The aim of the study was to find the existence of a causal link between the transition to a proportional electoral system and the process of democratization. The research data was collected from the Latin countries of South America. An analysis of these cases shows that changes in electoral systems in Latin American countries have not had a noticeable effect on democratization in all cases. It is true that except in Bolivia and Venezuela in all the cases we have reviewed and studied, the degree of democracy has increased in individual cases over the next four years after the establishment of the proportional electoral system, but alongside the imposition of the proportional electoral system, other democratic reforms or the replacement of military regimes or oligarchies were noticeable too. All of this indicating that in most cases the proportional electoral system was not a cause of democracy but a part of political change. Dates are also important: Democratic reforms and the transition to a proportional electoral system In the case of Venezuela, Uruguay, Ecuador, Paraguay and Brazil, coincides with global changes related to either the end of World War I and World War II or the collapse of the Soviet Union. All these cases have led to political and economic upheavals in the world. Of course, it does not rule out the possibility that the increase in representations and the proportional redistribution of seats in legislature may have

been a significant democratic impetus and even slightly increased the rate of democracy in South American countries, but its effect is still limited and less indicative of a strong causal link.

References

Lijphart, A. (2006). Constitutional Choices for New Democracies. In M. F. Larry Diamond, *Electoral Systems and Democracy* (pp. 73-76). Baltimore: The Johns Hopkins University Press.

Quade, Q. L. (2006). PR and Democratic Statecraft. In M. F. Larry Diamond, *Electoral Systems and Democracy* (p.94). Baltimore: The Johns Hopkins University Press.

Diamond, L. J., & Plattner, M. F. (Eds.). (2006). *Electoral systems and democracy*. Johns Hopkins University Press.

Inman, M. A. (1993). C.P.R. (Change through Proportional Representation): Resuscitating a Federal Electoral System. *University of Pennsylvania Law Review*, 141(5), 1991.

<https://doi.org/10.2307/3312581>

Wills-Otero, L. (2009). Electoral Systems in Latin America: Explaining the Adoption of Proportional Representation Systems During the Twentieth Century. *Latin American Politics and Society*, 51(03), 33–58. <https://doi.org/10.1111/j.1548-2456.2009.00055.x>

კვაშილავა, ბ. (2016) - კონსტიტუციური წყობისა და საარჩევნო სისტემის გავლენა პოლიტიკური პარტიების განვითარებაზე პოსტსოციალისტური ევროპის დემოკრატიებში

<https://gipa.ge/res/docs/%E1%83%99%E1%83%95%E1%83%90%E1%83%A8%E1%83%98%E1%83%9A%E1%83%90%E1%83%95%E1%83%90%E1%83%91%E1%83%90%E1%83%99%E1%83%A3%E1%83%A0.docx>

PolityProject. (n.d.). Retrieved November 27, 2020, from

<https://www.systemicpeace.org/polityproject.html>

Polity5 Project, Political Regime Characteristics and Transitions, 1800-2018

<http://www.systemicpeace.org/inscr/p4ch2018.xls>

Marshall, M. G. (2018) *POLITY5 Political Regime Characteristics and Transitions, 1800-2018 Dataset Users' Manual*

Vox. (2019, October 17). *The man who rigged America's election maps*.

<https://www.youtube.com/watch?v=KpamjJtXqFI>

Is proportional representation a cure for democratic discontent? | View. (2019, May 14). Euronews. <https://www.euronews.com/2019/05/14/is-proportional-representation-a-cure-for-democratic-discontent-view>

Kamdar, M. (2020, November 24). *France Is About to Become Less Free*. The Atlantic. <https://www.theatlantic.com/ideas/archive/2020/11/france-about-become-less-free/617195/>

Nohlen, D. (Ed.). (2005). *Elections in the Americas: A data handbook*. Oxford University Press.

Brooke, J. (1993, May 11). *Governing Party Wins Paraguay Presidential Vote* (Published 1993). *The New York Times*. <https://www.nytimes.com/1993/05/11/world/governing-party-wins-paraguay-presidential-vote.html>

Richard J. Walter (2010) *Peru and the United States, 1960-1975: How Their Ambassadors Managed Foreign Relations in a Turbulent Era*. Penn State Press

Goñi, U. (2016, February 9). *Opinion | Uruguay's Quiet Democratic Miracle* (Published 2016). *The New York Times*. <https://www.nytimes.com/2016/02/10/opinion/uruguays-quiet-democratic-miracle.html>

The Impact of Covid19 on Change of Government in Democracies and Countries with Hybrid Regimes

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Abstract:

The present study will examine the impact of Covid19 on change of government in democracies and states with hybrid regimes. In particular, a significant part of the research will be devoted to determining the impact of the current epidemiological situation and the established Covid-regulations on the change of government through elections in countries with democratic and hybrid regimes. . To do this, the results of all types of elections held in countries with democratic and hybrid regimes in 2020, 2019, 2018 and 2017 will be examined. Also, according to the mentioned years, the percentage will be counted in how many cases the change of government took place, and in how many - no. In addition to quantitative indicators, the study will discuss various hypotheses or arguments that could justify why a pandemic and restrictions may have had an impact on election results. In particular, it is interesting to note whether the current situation has allowed the authorities to use the established regulations for their own political purposes and for this reason to complicate the change of government in states with democratic and hybrid regimes.

Thus, the present study will be able to determine how different the rates of change of power as a result of the 2020 elections were compared to previous years. It should also be noted that alternative approaches will be considered in the study, which will increase the credibility of the present paper. However, despite some exceptions, the present study revealed that the 2020 elections were characterized by some difficulties, indicating the influence of Covid19 on the conduct of the electoral process and its consequences.

Key Words: Covid19; Democracy; Government; Elections.

Introduction

The Covid-pandemic , which began in 2020, has had a significant impact on the social, economic and political situation of almost every state. To manage the epidemiological situation, countries were forced to impose a curfew and introduce various regulations that restricted political rights. These regulations have affected various aspects of public life and the political process, including the electoral environment and its rules. In particular, due to the epidemiological situation, almost in all countries the pre-election campaign and the elections themselves were conducted with the background of covid regulations. This circumstance may have complicated the change of government, especially in countries with hybrid regimes, where democratic values are weakly developed.

In view of the above, the present paper aims to investigate whether the pandemic has enabled the ruling political forces to become more involved in the election process and as a result have had a negative impact on the electoral process. Therefore, it is necessary to determine on this basis whether the covid regulations had a real impact on the rate of change of government in countries with democracies and hybrids. The present study is an academic paper, therefore, various research methods will be used for the research purposes, including empirical data analysis.

Purpose of Research

The aim of the present study, as mentioned above, is to determine the impact of Covid19 on the rate of change of government in states with democracies and countries with hybrid regimes. In particular, after analyzing the quantitative indicators, it should be assessed how different the rate of change of government in 2020 was in the countries with democratic and hybrid regimes compared to previous years (2017; 2018; 2019). Therefore, this study should answer the following questions:

- Does the rate of change of government following the 2020 elections differ from those of previous years?
- If the study found that the percentages of change of government in 2020 differ from those of previous years, then what were the reasons for this change?

Thus, in order to answer the above questions, this paper will use various quantitative indicators, qualitative research or empirical analysis, which will enable the study of the role

of restrictions against co-epidemic in the change of governments in hybrid countries, which ultimately achieves the research goal.

Methodology

The study aims to determine a causal relationship, on the one hand, between the Covid19 (independent variable) and the change of government (dependent variable) through elections in countries with democracies and hybrids. Therefore, it is necessary to examine the results of all types of elections in 2020 in the target group countries. Then, it is necessary to determine the percentage of cases of change of government, and to compare this data with the figures of previous years.

The target group of the study is the countries of democratic and hybrid regimes. First of all, for the purposes of the study, it should be determined which countries are the democracies and hybrid regimes. To do this, the study will use data published by Freedom House in 2020. In particular, the organization is considered to be one of the most authoritative and reliable sources in the academic field. Freedom House uses the Gastil Index to measure the degree of governance of states, which measures the degree of civil and political rights in a state. In particular, on a 7-point scale, three types of countries are defined on the basis of the corresponding scores for the states: 1) Free; 2) Partly-free; 3) Not Free. In the present study, the target countries are the first (Free) and the second category (Partly-Free) countries.

The study will also use the data published by The Economist Intelligence Unit, which provides an additional indicator for classifying states' regimes and increases the reliability of the study. The EIU classifies states by governance on a 10-point scale that divides countries into four

types: 1) Full Democracy; 2) Flawed Democracy; 3) Hybrid Regime; 4) Authoritarian. In the present study, the target group of countries are the first (Full democracy), the second (Flawed Democracy) and the third category (Hybrid Regime) countries.

States with democratic and hybrid regimes were deliberately selected for this study, as elections are held regularly in such countries and it is possible to change the government. It should be noted, however, that the hybrid regime is characterized by certain elements characteristic of an authoritarian regime, such as voter bribery, intimidation, obstruction of the activities of opposition parties, and so on. Consequently, Covid19 could have a real impact on the conduct of the 2020 elections in the countries with hybrid regimes. Thus, it should be noted that the authorities were given the opportunity to use more power and introduce a state of emergency, as well as to restrict the basic human rights recognized by the Constitution by imposing various regulations, which itself could affect the electoral process.

However, it should be noted that the study will not consider data from authoritarian or other types of non-democratic states. In particular, elections in this type of state has a purely formal nature, and opposition political parties are not given a real opportunity to change government through elections. The main reasons for this are the peculiarities of authoritarian regimes, such as: persecution of opposition political parties and their leaders, harassment of critical media, voter bribery or intimidation, use of disproportionate force against peaceful demonstrators, falsification of ballot papers, etc. Therefore, in countries with authoritarian regimes, it is self-evident that the possibility of a change of government through elections is virtually ruled out, making the analysis of such state data irrelevant to the present study.

After defining the countries with democratic and hybrid regimes, the results of all types of elections held in the countries with the mentioned regimes in 2020, 2019, 2018 and 2017 should be examined. In particular, the percentages of the results of all types of elections in democratic and hybrid countries in 2020, 2019, 2018 and 2017 will be calculated on the basis of quantitative indicators. Especially, in each election, it must be determined whether there has been a change of government. It is important to clarify that the present study will discuss the results of both presidential, parliamentary and local elections.

For the purposes of the study, it needs to be clarified what the change of government means. In particular, the change of government following the parliamentary elections is a case in which the majority of voters supported the opposition political parties. As a result, the ruling party lost its parliamentary majority. Also considered a change of government is the case when the opposition parties received a sufficient number of votes, which made it possible to form a coalition government.

As for the presidential election, in this case the change of government will mean all the "cases" where the candidate nominated by the opposition party won in the first or second round and replaced the incumbent president. In the case of local self-government elections, attention will be paid to the number of votes received by opposition political parties in this or that administrative unit.

The above-mentioned years were deliberately selected. Especially, comparison of the results of the elections held in 2017, 2018 and 2019 with the results of the 2020 elections will show how different the rates of change of government were between the figures of 2017-2018, 2018-2019 and 2019-2020.

In addition to quantitative research, this paper will also use qualitative research methods, such as reviewing a specific "case", a scientific article, information published by an authoritative organization, or the media related to the results of elections in the states. For example, the study will use materials published by the BBC, Human Rights Watch and the OSCE. Thus, both qualitative and quantitative research methods will be used to achieve the research goal.

It should also be noted that the use of the above research methods ensures the reliability and validity of the research. In particular, in terms of reliability, the measurement mechanisms used in the study (analysis of election results in respective years in countries with democratic and hybrid regimes) are a reliable indicator of the achievement of the research objective. As for the validity, the variables presented in the study are useful for determining the causality, since the comparison of the percentages of the election results according to the respective years objectively reflects the existing data and is not based on a subjective assessment of various authors.

Also, after the results of the 2020 and 2019 elections are examined and the percentage of change of government in each year is determined, the above results will be compared with the results of the 2018 and 2017 elections. In particular, in this way, on the one hand, the validity of the survey will be ensured, and on the other hand, it will be possible to determine whether there is a significant difference between the results of the elections held in 2020-2019, 2019-2018 and 2018-2017.

Analysis

As mentioned above, Covid19 had an impact on the economic and political environment of almost every state. Covid19 affected on the rules of the election campaign and elections itself, which was mainly due to the current epidemiological situation and the restrictions imposed by the government. Therefore it is interesting to determine whether: the enacted regulations contributed to the victory of the authorities in the countries with democratic and hybrid regimes during the elections or did less restrictions contribute to the victory of the opposition political parties, which requires to discuss the following arguments to support this hypothesis:

a) Impact on International observer organizations

First of all, it should be noted that the restriction of international traffic by states has had a significant impact on various aspects, including the electoral process. In particular, in some cases, for example in the Mongolian parliamentary elections¹, due to restrictions on international traffic, international observation missions were not allowed to attend the elections. Consequently, the current situation was detrimental to the electoral process, as international observer organizations are impartial and authoritative organizations that objectively assess the electoral environment and election irregularities. Therefore, the authorities were allowed to use the current situation for their own electoral purposes, as less involvement of international observer missions in the electoral process encouraged the ruling party to violate electoral legislation.

¹ Mendee Jargalsaikhan, asiapacific.ca, “Democracy in the Time of Covid-19: Mongolia’s Parliamentary Election”, July 14, 2020
<https://www.asiapacific.ca/publication/democracy-time-covid-19-mongolias-parliamentary-election>

b) Impact on Political Parties

Restrictions imposed by the government also affected the activities of opposition political parties. In particular, in some cases, for example in the pre-election campaign of the Serbian parliamentary elections², due to the epidemiological situation, the constitutionally recognized freedom of assembly and demonstration was restricted, and it was forbidden to gather more than a certain number of people in outside . This regulation, in fact, deprived the opposition political parties the opportunity to express their protest against decisions made by the government. Also, most importantly, they were not given the opportunity to hold meetings in different cities or regions and meet with their own voters, which is one of the important parts of conducting a full-fledged election campaign.

c) Impact on Voters

Government restrictions are also linked to creating certain barriers for voters. In particular, it is noteworthy that the authorities imposed local restrictions to control the epidemiological situation, which meant closing the cities or the settlements. Consequently, it further complicated the mobility of voters to the polling stations. Another important circumstance is that, due to the fear of spreading the virus in general, it was possible for a certain number of opposition voters to refrain from going to the polls, as opposed to pro-government voters, who are usually easier to mobilize using administrative resources.

² ndi.org, “Serbia’s June 2020 Elections”

<https://www.ndi.org/sites/default/files/Serbia%E2%80%99s%20June%202020%20Elections%20Public%20Report.pdf>

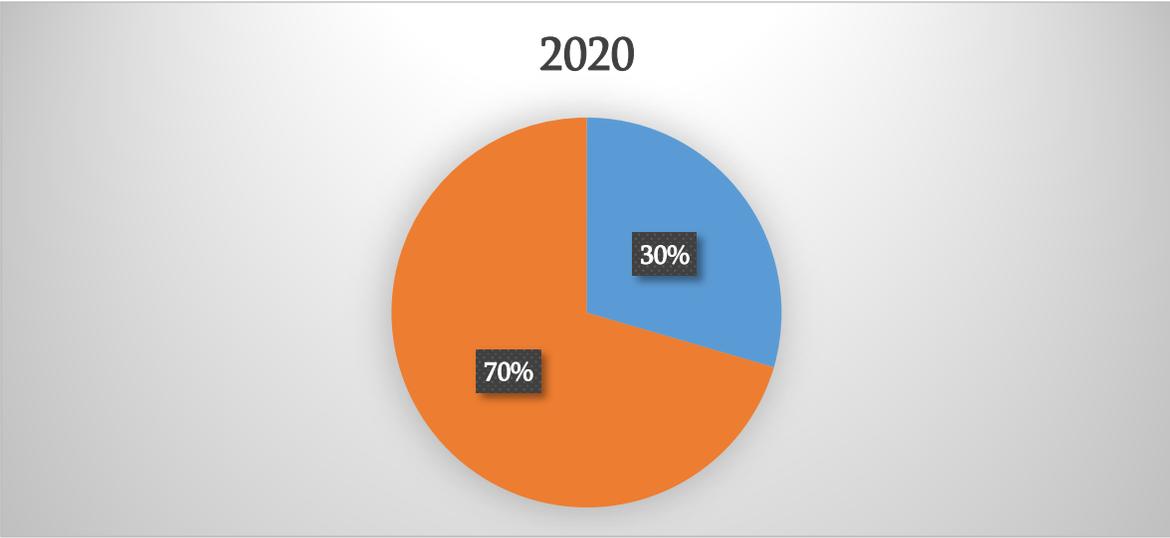
d) Impact on the pro-government campaign

The victory of the government in the elections was in some cases facilitated by its effective policy against Covid19. In particular, successfully managing the epidemiological situation and maintaining low rates of deaths and infections by taking various precautionary measures helped to popularize the government and increase its prestige, which in itself could have a positive impact on the election results of the ruling political party.

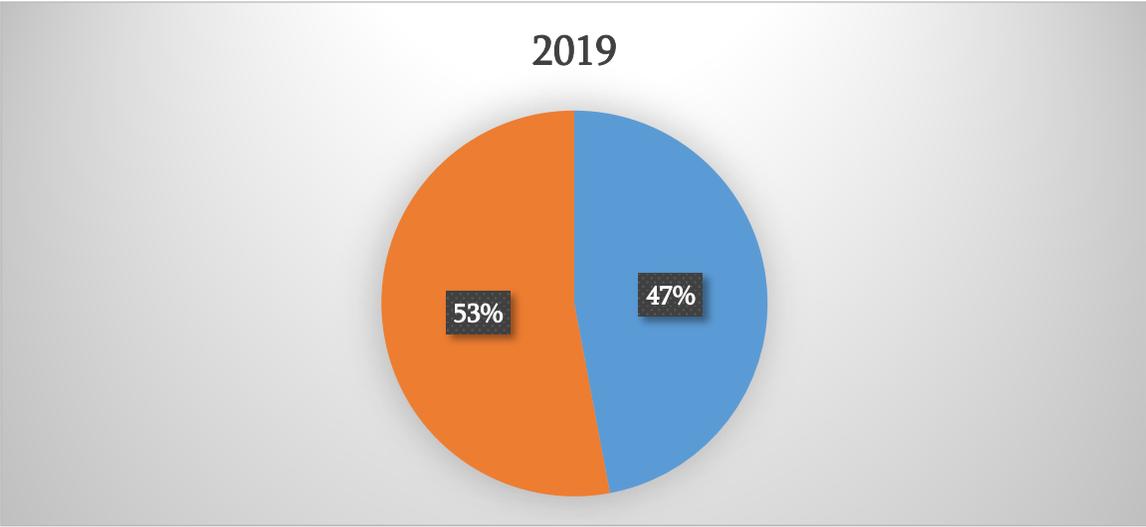
Empirical Analysis

Based on data from Freedom House and the Economist Intelligence Unit used in the study, states of democratic and hybrid regimes were identified. Data on elections in democratic and hybrid countries were also established using the IPU Parline database.

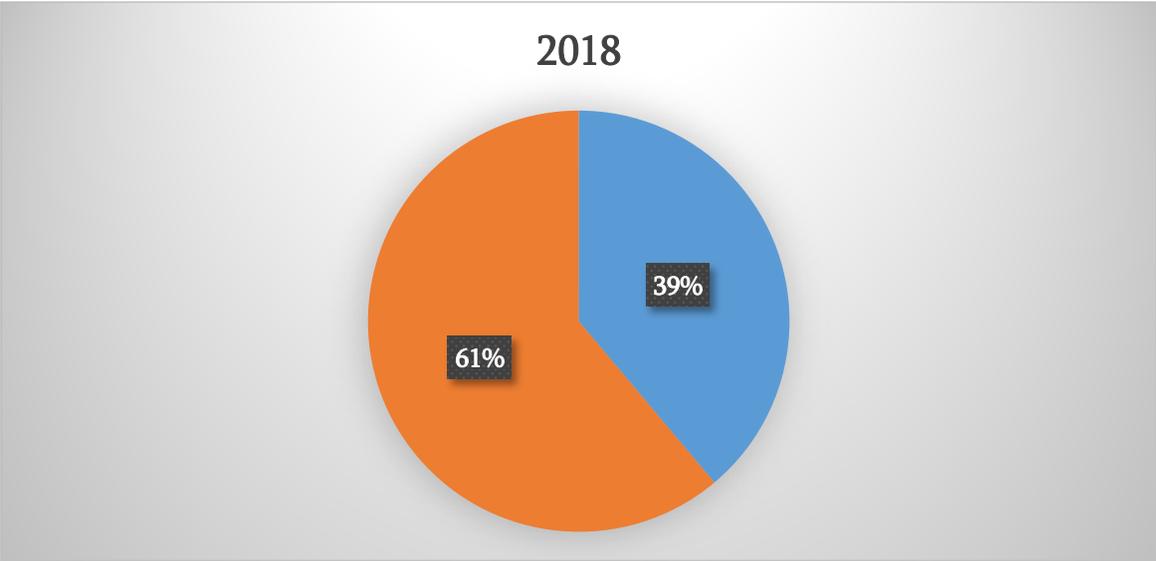
In 2020, a total of 45 presidential, parliamentary and local elections were held in countries with democracies and hybrids, of which 30% had a change of government and 70% did not. It should be noted, however, that since the 2020 elections, 22 have been held in countries with hybrid regimes and 23 in democracies.



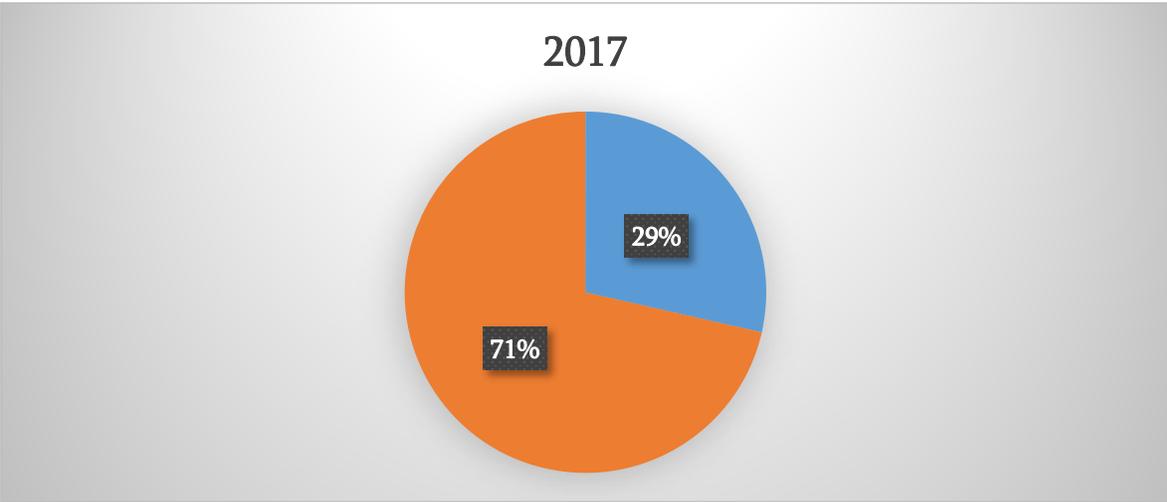
In 2019, a total of 50 presidential, parliamentary and local elections were held, of which 47% had a change of government and 53% did not. In addition, it was held in 22 countries with hybrid regimes and in 28 democracies. Therefore, it is evident that even in this case, the rate of change of government was lower, but compared to 2020, the rate of change of government is much higher, which supports the hypothesis expressed in the present study that in 2020 the rate of change of government was lower in democracies and hybrid regimes.



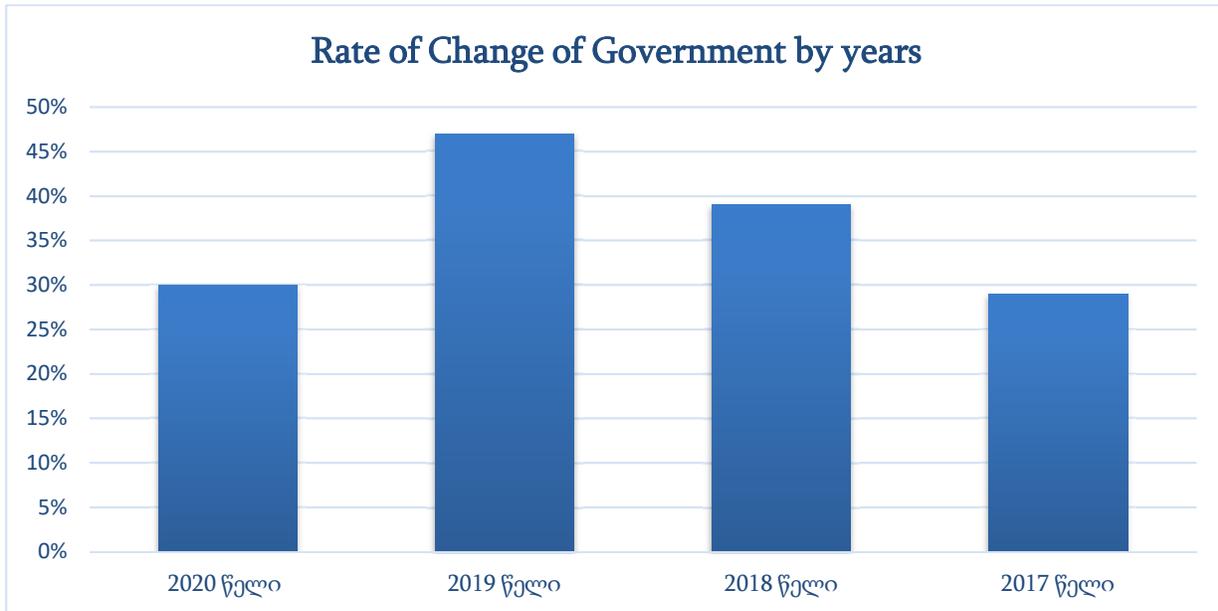
As for the elections held in countries with democratic and hybrid regimes in 2018, a total of 35 parliamentary, presidential and local elections were held, of which 39% were in power and 61% were not. However, 22 elections were held in hybrid countries and 13 in democracies. In this case, it is evident that the rate of change of government is lower compared to the results of the 2019 elections, however, this figure is still higher than the percentage of change of government as a result of the elections in 2020.



In the case of the 2017 parliamentary, presidential and local elections, a total of 32 elections were held, of which 29% had a change of government and 71% did not. However, in this case the rate of change of government is the lowest even compared to 2020.



The diagram below shows the general data examined as a result of the present study on the percentages of change of government by the study period.



For the purposes of the present study, it is important to pay attention to the comparative analysis of election results. In particular, according to the given diagram, based on the comparison of the results of the elections held in 2017 and 2018, it is determined that the percentage of change of government in 2018 was much higher than it was in 2017. Also, a similar case is observed in the case of the 2019 and 2018 election results, where the percentage of change of government in 2019 was higher than in 2018. However, there are already different figures when comparing the data for 2020 and 2019, since in 2020 the rate of change of government was much lower than in 2019. Therefore, it can be said that the dynamics of change of government was increasing during the study period and the percentage of change of

government in the countries with democracies and hybrid regimes increased with each subsequent election year. Explain the influence of Covid19 and the restrictions imposed by the government on the electoral process.

The study found that overall, the percentage of changes in government in the 2020 elections in countries with democracies and hybrid regimes was lower than in other years, except for the 2017 data. Therefore, the focus may be on certain issues. In particular, it is possible that in the states where there was a change of government in 2020, on the one hand, this was due to the wrong policies of the government, and on the other hand, it is possible that in various countries there were no strict restrictions and the government had less opportunity to influence elections. Therefore, in the case of the 2020 elections, two cases are interesting: in the states where the change of government took place, was it due to the fact that: a) the government did not manage the epidemiological situation well; Or b) there were fewer regulations imposed by the authorities that prevented the election campaign and the election process from being disrupted. And in the cases where a change of government failed, was it due to the strict restrictions imposed by the government, as a result of which the ruling party was able to interfere in the elections and use the imposed regulations for political purposes. These circumstances require further analysis by considering specific examples. Given the above, specific examples of countries with democratic and hybrid regimes need to be considered separately.

a) Covid19 prevented a change of government

In countries with hybrid regimes, Covid19 has had a significant impact on the conduct of elections. In particular, Covid19 prevented a change of government in some states. For example, in the 2020 Serbian parliamentary elections, the ruling team (SNS-Coalition) won 60% of the vote. In particular, due to the state of emergency imposed by the Serbian authorities, opposition political parties were not allowed to conduct a full-fledged election campaign and meet with their supporters. So, it had an impact on the election results. However, the NDI report states that the Serbian government used measures against the Covid19-pandemic for its own PR campaign, which in turn contributed to the victory of the ruling party in the elections.³

b) Government has changed due to political or economic circumstances

In addition to the specific cases discussed above, it is also necessary to analyze cases where the government has changed, which was largely due to a political or economic crisis. For example, in the 2020 Bolivian general election, the candidate of the opposition political party (Movement for Socialism) won, receiving 55% of the vote. The Bolivian election is a different case, as the change of government here depended more on the economic and political crisis in the country, rather than Covid19 and its subsequent regulations. In particular, the results of the 2019 general elections in Bolivia were annulled and the population had a sharply anti-government sentiment, which in turn had an impact on the re-run in the 2020 general elections and contributed to the victory of the opposition political party.

³ ndi.org, “Serbia’s June 2020 Elections”
<https://www.ndi.org/sites/default/files/Serbia%E2%80%99s%20June%202020%20Elections%20Public%20Report.pdf>

C) Less restrictions and change of government

Covid19 also had an impact on the change of government following the 2020 elections, as did the results of the elections in Montenegro⁴ and northern Macedonia, where the number of infected people was not as high as in other countries. At the same time, there were no strict restrictions in these countries, which is why the opposition political parties did not interfere in the conduct of the election campaign. Consequently, the change of government in the two countries mentioned above may have been facilitated by the existence of fewer restrictions and the full-fledged running of the election campaign by opposition political parties.

The present study also needs to consider specific cases of parliamentary, presidential or local elections in democracies in 2020.

A) The government has changed due to the economic crisis

Covid19 had a relatively different impact on elections in democracies and their results. For example, in the 2020 parliamentary elections in Suriname, the Progressive Reform Party won 39% of the vote. In the case of Suriname, the change of government was largely caused due to the economic crisis, which was the result of the policies of the ruling party⁵. However, the defeat of the incumbent president and his party in the parliamentary elections was caused due

⁴ ec.europa.eu, “Key findings of the 2020 Report on Montenegro”

https://ec.europa.eu/commission/presscorner/detail/hr/country_20_1796

⁵ usnews.com, “Suriname's President Loses Election, Leaves Economic Chaos”, June 16, 2020

<https://www.usnews.com/news/world/articles/2020-06-16/surinames-president-loses-election-leaves-economic-chaos>

to the fact that the president himself was convicted of drug trafficking, which negatively affected his rating.

B) The change of government was prevented by restrictions imposed by the ruling party

The parliamentary elections held in Mongolia⁶ in 2020 should be considered. In particular, the ruling party (Mongolian People's Party) won the election with 44% of the vote. Mongolia has imposed various regulations to manage the epidemiological situation, which has prevented opposition political parties from meeting with their supporters and exercising their constitutional rights.⁷

C) The government has not changed due to the credibility of the population towards the ruling political party

In addition to the above, there are also cases when the government has not changed, but this was mainly due to the fact that the population did not have a strong dissatisfaction with the government. For example, although the government in Poland, Romania and Croatia has not changed, the elections in these countries have been positively assessed by the OSCE and no significant irregularities have been reported during the elections, indicating that the government has not had a negative impact on the elections. And the population had the opportunity to express their will in the elections. Also the parliamentary elections in Slovakia

⁶ dw.com, "Mongolia elections: Landslide win for incumbent MPP"

<https://www.dw.com/en/mongolia-elections-landslide-win-for-incumbent-mpp/a-53933958>

⁷ Mendee Jargalsaikhan, asiapacific.ca, "Democracy in the Time of Covid-19: Mongolia's Parliamentary Election", July 14, 2020

<https://www.asiapacific.ca/publication/democracy-time-covid-19-mongolias-parliamentary-election>

should be mentioned, where the government changed, which was largely due to the difficult political situation in the country, rather than the relatively light restrictions imposed by the government.

Thus, the cases discussed in the present study show that Covid19 and the regulations in place to manage the current epidemiological situation have had a significant impact on the conduct of the election and its outcome. However, it should be noted that in some cases Covid19 was not the only determinant of the election results and the victory of a political party, as different indicators, such as economic or political crisis, could have influenced the change of government or the retention of a political party in different countries.

Conclusion

The study found that Covid19 had an impact on the course and outcome of the 2020 election. In particular, the regulations imposed by the government to manage the epidemiological situation, which restricted human rights, prevented a change of government in countries with democracies and hybrids, as evidenced by empirical analysis.

empirical analysis has shown that Covid19 had an impact on elections in both democracies and hybrids. However, it has had a particular impact on countries with hybrid regimes, as the examples discussed above show that the authorities used the restrictions for various political purposes, such as restricting international traffic, which prevented international observer missions from conducting full-fledged surveillance in various countries . Opposition political parties were not allowed to conduct a full-fledged election campaign as a result of restrictions of fundamental constitutional rights, including restrictions on freedom of assembly and

expression; Restrictions also violated constitutional human rights, preventing opposition groups from protesting against the government, including dissatisfaction with the epidemiological or economic situation, and so on.

Based on the empirical analysis used in the present study and the review of specific "cases", it is possible to identify the four main indicators that influenced the change of government or the ruling party in the countries with democratic and hybrid regimes.

1) Strict restrictions imposed by the government have allowed the ruling political party to remain in power, preventing opposition political parties, their supporters, and observer missions from actively participating in the election process.

2) The success of the ruling party in general has been facilitated by the successful policies of the ruling party in general and also in the context of managing the epidemiological situation, which is the main reason why the voters supported the ruling party again.

3) The victory of the opposition political party was facilitated by the severe social and political crisis in the country. Consequently, as a result of the dissatisfaction of the majority of the population, a change of government took place through elections.

4) The victory of the opposition political party was facilitated by the few restrictions imposed by the government and the existence of a competitive environment, as a result of which the opposition political parties were able to conduct their pre-election campaign without delay.

Thus, the present study found that Covid19 had a significant impact on the course and results of the 2020 elections in countries with democracies and hybrid regimes, as evidenced by the

percentage change of government during the study period. It is noteworthy that in some cases the authorities used the pandemic for their own political purposes and restricted human rights more than there was a real need for it. This has significantly damaged democratic values and set a dangerous precedent for large-scale restrictions imposed by the authorities, including endangering the electoral process and the activities of opposition political parties, especially during the recession of democracy in the world.

References

ndi.org, “Serbia’s June 2020 Elections”

<https://www.ndi.org/sites/default/files/Serbia%E2%80%99s%20June%202020%20Elections%20Public%20Report.pdf>

Mendee Jargalsaikhan, asiapacific.ca, “Democracy in the Time of Covid-19: Mongolia’s Parliamentary Election”, July 14, 2020

<https://www.asiapacific.ca/publication/democracy-time-covid-19-mongolias-parliamentary-election>

ec.europa.eu, “Key findings of the 2020 Report on Montenegro”

https://ec.europa.eu/commission/presscorner/detail/hr/country_20_1796

usnews.com, “Suriname's President Loses Election, Leaves Economic Chaos”, June 16, 2020

<https://www.usnews.com/news/world/articles/2020-06-16/surinames-president-loses-election-leaves-economic-chaos>

dw.com, "Mongolia elections: Landslide win for incumbent MPP"

<https://www.dw.com/en/mongolia-elections-landslide-win-for-incumbent-mpp/a-53933958>

Impact of Risk and Utility Discounting Factors on Behavioral Economics Models in Addiction Groups

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Abstract

This paper examines the attitude towards risk and the benefit to be received in various experimental and control groups. Analysis of the literature shows that risk-related and myopic decisions are typical to addiction groups which in the context of various alternatives conduct risky and less risky benefit analysis, two experiments have been conducted to determine these factors, which have shown that groups with addiction behavior are prone to risky behaviors. The main question of the research was to determine whether the decision on stopping taking drugs affected the risk factors. The results showed that there is no significant difference in these factors with respect to the persons involved in the replacement therapy, on the one hand, and the drug users who have not applied for treatment, on the other hand, which means that the decision on discontinuing use of drugs does not change the attitude towards risky decisions. This leads us to introduce a variety of choices to the consumer market in implementation of result-oriented drugpolicy to create alternatives with higher opportunity costs.

Key Words: Behavioral Economics, Decision models, addiction, replacement therapy.

Introduction

Behavioral addiction, drug dependence, gambling, are often considered as psychological or criminal problems such as illness or as a crime, but in economic terms this problem can be considered in the context of decision theory as choice between risky and for-sure benefits, current, immediate utility and tomorrow's discounted utility (DU). Decision-solving problem is characteristic for all areas of human life and can be used to explain different behaviors, including adaptive habits.

As a starting point we refer to the fact that any action of human beings (as a reward-hunter) is directed towards making the best choice between different alternatives. Consequently, choice between alternatives is related to risk analysis and immediate / tomorrow's utility measurement. We will consider the utility in general, which includes not only quantitative characteristics, but also the state of pleasure and satisfaction.

Generating utility (pleasure) is associated with a certain investment (refusal to receive today's utility, which is the initial investment expenditure), which has the corresponding returns in time as earned benefit. When making decisions, a person faces a dilemma – he/she evaluates what is the opportunity cost of the pleasure he/she has received. Such judgment is also applicable when making decisions about use of alcohol, drugs and cigarettes. It is widely recognized that cigarettes are harmful to health. However, in most cases, a cigarette smoker does not worry that smoking causes lung cancer after regular exposure for 40 years, and for him it is far more important to get a guaranteed satisfaction with a cigarette smoke at the moment, which he/she receives by tradeoff of the current and future utility.

We believe that in developing a single addiction policy the natural factors of human behavior in the context of different alternatives of pleasure should be taken into consideration bearing in mind the risk and time factors. This paper is aimed at finding out the risky decisions of individuals with behavioral addictions and introducing the obtained results in the addiction policy.

The goal of the research is to determine whether the decision made for treatment or quitting the substance dependence by drug-dependent individuals affects the changes of such factors. The research hypothesis is that the decision taken for treatment by the substance (drug)-dependent persons and quitting the behavioral dependence does not affect the risk factors of these persons towards dependence and these factors remain substantially unchanged.

The risky factors of comparable groups of students and gamblers were simultaneously studied with the drug-dependent persons within the framework of the experiment. Analysis of economic models of risk factors proved our hypothesis and showed that these factors in the vulnerable groups (gamblers, drug addicts) are significantly different from the similar

parameters of the student control groups. The determined risk factors of vulnerable groups have shown the preferences to risky behaviors more than it was expressed in the group of students.

Research

In order to identify risk preferences, we have chosen target groups to which the same research methodology has been applied. Several target groups were selected:

Group I - students (n = 35), which we, based on the results of the survey, divided into two risk-seeking and risk-averse behavioral subgroups (marijuana, drug use/non-use, game in the betting house);

Group II – the so-called gamblers (n = 15), persons engaged in gambling games;

Group III - drug users (n = 15) who are involved in methadone replacement therapy courses in order to reduce dependence.

Group IV - drug users (n = 15) with intensive narcotics use history treating themselves as drug addicts and who has never applied for treatment or replacement therapy;

Participants were awarded with cash prizes - GEL 5 for students; one of Tbilisi gambling house users selected for participation in Group II, and were awarded GEL 10 for participation in the experiments; as for the subsequent groups of persons involved in the methadone program, who agreed to take part in the experiment, we asked them if they invited any additional person who would satisfy the requirements of Group IV (an intensive user who did not apply for replacement or treatment therapy) would receive GEL 10 and the money generated in a lottery game. We also promised members of Group IV to participate in the same cash prize

In order to elicit risk preferences in the first experiment, Holt and Laury low- and high-payoffs lottery method was used. Since we were limited in the budget, the prize money was awarded to the participants only by low-payoff lottery results.

10 lotteries were presented to the participants. Each lottery consisted of two options - A and B. In each lottery participants selected either A or B option. Participants were rewarded with a cash prize lottery in order to stimulate the behavior that is close to reality. Before start of the game, participants knew that only one choice should have been selected from 10 choices by random selection resulting from a throw of a 10-sided die to make real money. Below is the example of one of the choices.

Lottery #1:

Option A - 1/10 chance to win GEL 2 and 9/10 chances to win GEL 1.6

Option B - 1/10 chance to win GEL 3.85 and 9/10 chances to win 10 tetri

After participants have made their choices, the instructor throws a ten-sided dice to select one lottery from ten and then throws the dice again to determine the amount of prize. The faces of the dice are numbered from 1 to 10, where 1 serves a 10% chance, 2 - 20% chance, and so on. The last number was a 100% chance. The participant received the sum equal to the probability corresponding to the thrown dice.

Overall, 184.3 GEL was paid as earnings, which was GEL 2.8 GEL per participant on average. The essence of this experiment was to determine the attitude toward the risk in players' choices. If we look at the latter pairs and the differences between the winnings ($EV(\text{choice A}) - EV(\text{choice B})$), the rational and risk-neutral person will choose option A in row 1 to 4 because $EV(A) > EV(B)$, and then switch over and choose option B in row 5 to 10 as $EV(B) > EV(A)$. It is also noteworthy that anyone who switches earlier (in the first pair) to option B is classified as risk-seeking. Finally, even the more risk-averse individual will switch to option B in 10th lottery as she higher expected value is guaranteed.

Consequently, selection of Option A in more than 4 rows indicates the risk aversion while selection of Option B in more than 6 rows - indicates the risk-seeking.

The next hypothetical part of the risk experiment consisted of similar questions from the first part, in contrast, that the amounts were increased and the award was not distributed.

10 pairs of lotteries presented to the participants are now comprised of the following options A and B:

Lottery #11:

Option A - 1/10 chance to win GEL 244 and 9/10 chances to win GEL 195

Option B - 1/10 chance of winning GEL 470 and 9/10 chances to win GEL 12

In this experiment our goal was to determine if the player's risk preference is heterogeneous in terms of increased bet. Here, as in the previous experiment, the choice of rational and the risk-neutral person falls between row 4 and row 5 of the lottery.

It is noteworthy that this approach to risk attitudes has its disadvantages, namely, to create an exact reflection of the reality that would make it possible for the participants to choose from the loss position. More specifically, in our experiment, and not only in ours, but also in all well-known laboratory experiments dedicated to measuring risk factors, individuals have to make choices between profitable options, according to the possible loss of profit standpoint, while in actual life, persons have higher awareness of loss and it is likely that their behavior towards the losing position and the risk preference may be different in reality. However,

within the scope of this experiment, it is almost impossible to convince the participants to play for their own money with loss/profit expectations in laboratory conditions.

As for measuring the risk factor, we use the following utility function:

$$U(x) = \frac{x^{1-r}}{1-r}$$

where r is the relative risk aversion, and the lottery outcome x is more than zero (as reported in the article of Holt and Laury, however, other exposure indicators are also used to express the risk factor). The risk ratio of the participant is measured in a point of indifference when he switches from option A to B. While a participant stays on option A, he thinks that the expected payoff is higher than expected payoff from option B. Switching from option A to option B is a milestone where the participant reveals his indifference (neutrality) toward risk.

Risk-neutral subject who chooses option A in row 1 to 4 and then switches over and chooses option B, the following equation is used to measure the risk ratio:

$$0.4 \frac{2^{1-r}}{1-r} + 0.6 \frac{1.6^{1-r}}{1-r} > 0.4 \frac{3.85^{1-r}}{1-r} + 0.6 \frac{0.1^{1-r}}{1-r}$$

From this equation the risk-neutral subject's risk ratio falls between -0.1425 and 0.147 ((-0.1425< r <0.147). The risk coefficients are measured for all pairs similarly. Calculated coefficients are shown in Table # 1.

| Option A options | Risk coefficient range | Indifference point (A) | Indifference point (B) |
|------------------|------------------------|------------------------|------------------------|
| 0-1 | $r < -0.95$ | 1.42 | 1.41 |
| 2 | $-0.95 < r < -0.485$ | 1.42 | 1.43 |
| 3 | $-0.485 < r < -0.142$ | 1.51 | 1.51 |
| 4 | $-0.143 < r < 0.147$ | 1.67 | 1.67 |
| 5 | $0.147 < r < 0.41$ | 1.93 | 1.93 |
| 6 | $0.41 < r < 0.68$ | 2.43 | 2.43 |
| 7 | $0.68 < r < 0.97$ | 3.82 | 3.82 |
| 8 | $0.97 < r < 1.37$ | 33.99 | 33.99 |
| 9-10 | $1.37 < r$ | -2.11 | -2.11 |

Table 1. Risk ratios and indifference points between options A and B

Risk Factors Assessment Experiment Results

Students

To analyze risk factors, experiment results, we provided experiment with 5 groups (two subgroups of students, gamblers, drug users, who are involved in treatment and users are not). Data for each group was summarized separately, and then statistical tests were conducted to determine whether the risk factor affects the way of human life.

Analysis of the data obtained from the risk factor experiments in the case of students showed that the total number of chosen safe options in the low-prize game is 127, and the number of risky variants is 223, which is different from the high-prize game responses - 183 and 167, respectively.

Summary of the safe option and analysis of the combined indicator over the likelihood of profit showed that respondents' answers are in line with increasing risk. The higher is the risk of option B, the more people stay on option A. The x axis in Figure #1 below shows probability, and the y axis is the total number of safe options in the relevant probability conditions. The dashed line curve - is the option of a risk-neutral subject, which means in the first four options it is better to choose Option A and then switch over and choose option B in the row 5 to 10. The option chosen by the students is somewhat repeating the curve line of the risk-neutral subjects. The blue curve shows a low-prize option in which awards will be presented, and the red curve reflects the curve of the hypothetical option.

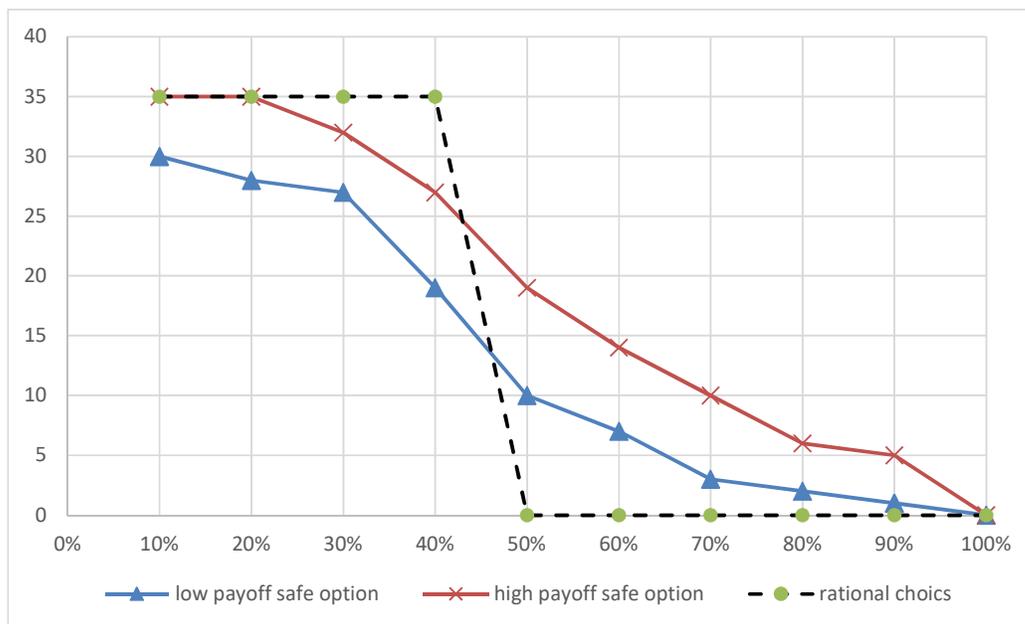


Figure 1. number of safe answers (Option A) of 35 students in different probabilities

Students have been divided into two conditional groups - students who do not have a history of risky behaviors and students who have a history of risky behavior to find a connection

between their responses and risky behaviors. On the one hand, we have compared the risk factors of students who have not been involved in at least three risk behaviors (cigarettes, marijuana, drug abuse and gambling) (in total it was 19 students), and the students who do not satisfy these conditions requirements (number of such students was 16).

Figure # 2 shows the curve of total safe options of students with less risk behaviors (blue and red curves) and students with risky behaviors (violet and blue curves). The diagram shows that it is clear that the total options of students with disabilities is not the same indicator for students with risk behaviors.

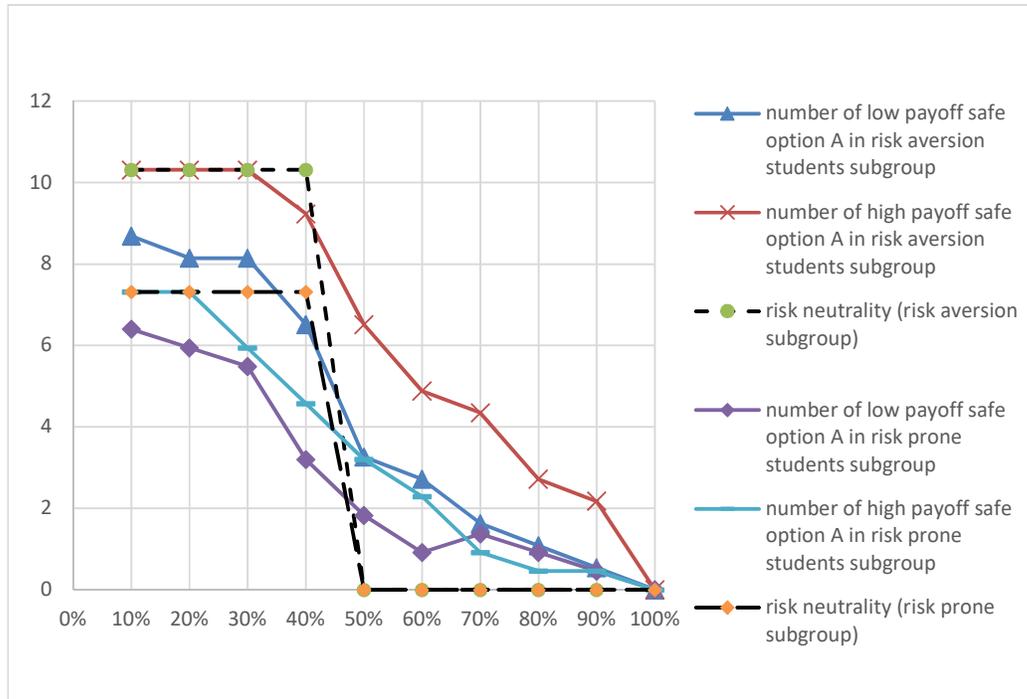


Figure 2. Summary of safe options by students with risk-averse and risky behaviors in low and high prize games

We applied the *t test* for two-sample and tested an alternative hypothesis about the fact that the risk factor is much lower in the students with safe behavior in both low- and high-prize games. It was confirmed that there is a significant difference between risk option responses among students with risk-seeking and risk-averse behaviors ($P=0.0004$). In other words, students with risk-averse behaviors in both lotteries chose safe options compared to students with risk-seeking behaviors.

Experiment results of individuals with addictive behavior

Unlike students, the total number of safe options for participants with behavioral addiction (gamblers, drug users (TR group) who have been involved in the treatment and drug users

who are not (DU group)), is significantly lower when the number of risky options has increased (see Table # 2).

| | Low prized | | High prized | |
|----------|-------------------|-----------------|--------------|---------------|
| | % of safe answers | % risky answers | safe answers | risky answers |
| students | 36.3% | 63.7% | 52.3% | 47.7% |
| gamblers | 24.7% | 75.3% | 25.3% | 74.7% |
| TR group | 27.3% | 72.7% | 41.3% | 58.7% |
| DU group | 28.7% | 71.3% | 40.7% | 59.3% |

Table 2 percentage of safe and risky options in different betting games according to the groups of participants

It should be noted that the number of safe options chosen by the gamblers in the low-prize game context was almost equal to the total number of safe options for high-prize hypothetical games, unlike students and drug users, where the number of paid low-prize safe options was lower as compared to the overall rate of high-prize safe options, which means that the presence of higher award has not affected the distribution of answers in case of students and drug users.

We conducted two-sample *t* tests within the three groups and tested hypotheses about the fact whether the risk factors and decisions made in the low-prize were different from the high-prize similar indicators. It was revealed that this hypothesis was not confirmed in gamblers answers ($P = 0.441$) and there was no difference, which means gamblers risky behavior stays the same in low and high aid games.

The answers of DU and TR groups differ significantly from low and high prize games. Drug users risk factor changes with a high probability (TR group - $P=2.31696E-06$ and DU Group - $P=0.001824$) and their risky behavior depends on the game outcome.

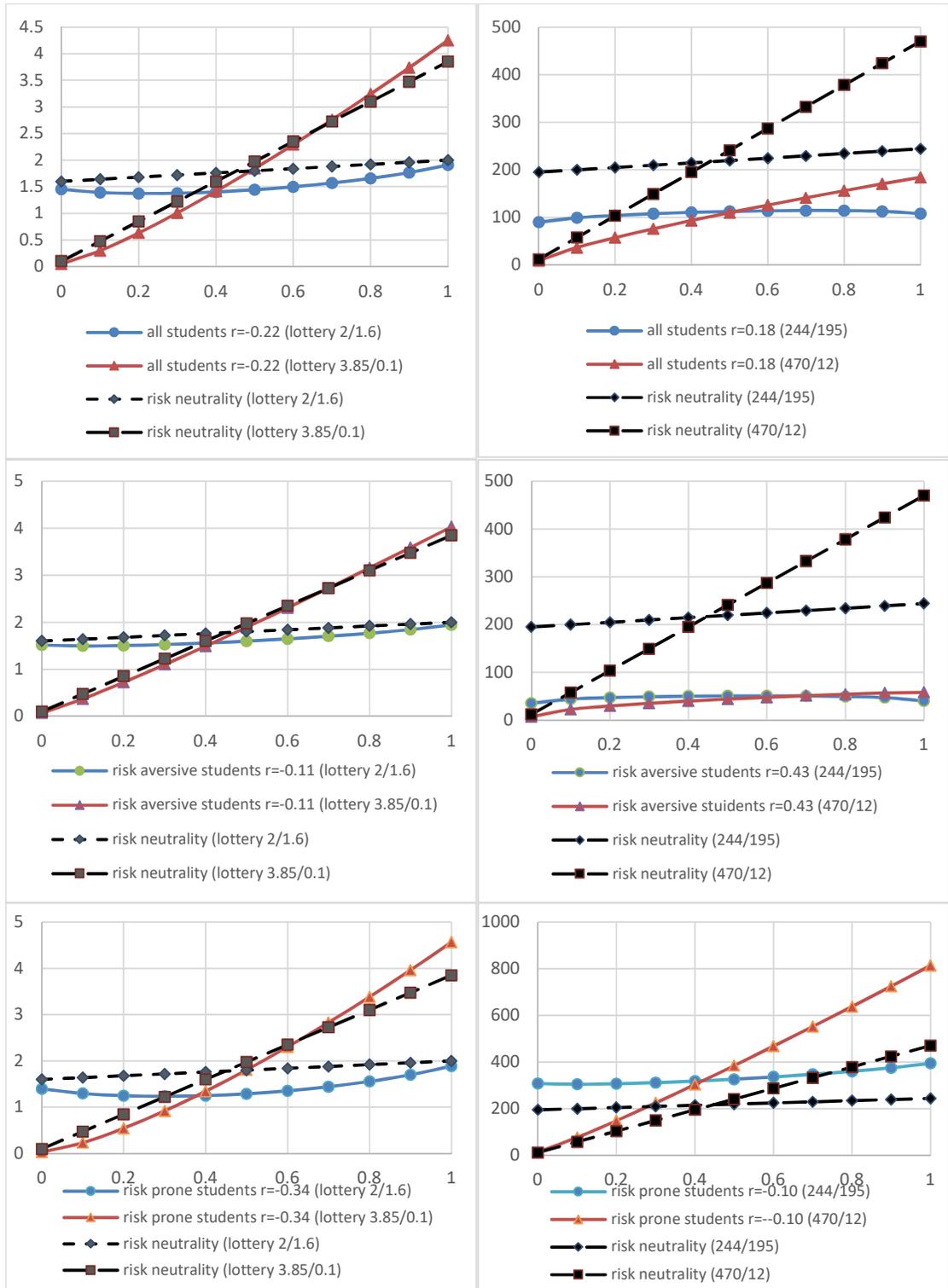
Modeling using Risk-Factors

Based on the risk factors indexed in Table # 1 and the experiment results, we were able to create behavioral models of the groups involved in the experiment. The estimated behavior of students, gamblers, DU and TR users with regard to different stake games was analyzed. Figure # 4 below shows risk-dependency models according to the average answers of all students in relation to the risk-neutral curve in low- and high-prize games. In addition, as in the previous case, we also divided students into sub-groups of students with risk-seeking and risk-averse behaviors and presented the relevant models. Figure # 5 is presented by decision models of persons with behavioral addiction.

The presented curves reflect the decision model and the value of utilities earned under the appropriate probability conditions according to $U(x) = \frac{(\text{Pr}(A)*X_1 + \text{Pr}(1-A)*X_2)^{1-r}}{1-r}$ function. The left column presents models according to the results of low-prize games and the right column presents models according to the results of high-prize games. Black dashed-line curves reflect the risk-neutrality. Blue and red curves show decisions of the participants. The crossing points are the place of decision changing. Blue and red curves and crossing points are determined by (r) risk factor that represents a statistical average for each group. The model presented in the Figure shows the human decision-making process. In the beginning a person follows the blue curve (a safe option – Option A in our experiment), because the possible

benefit is much larger than in the red curve (a risk option - Option B in our experiment). After the decision is changed, the individual is guided by the red curve.

Figure 4. students' decision-making model



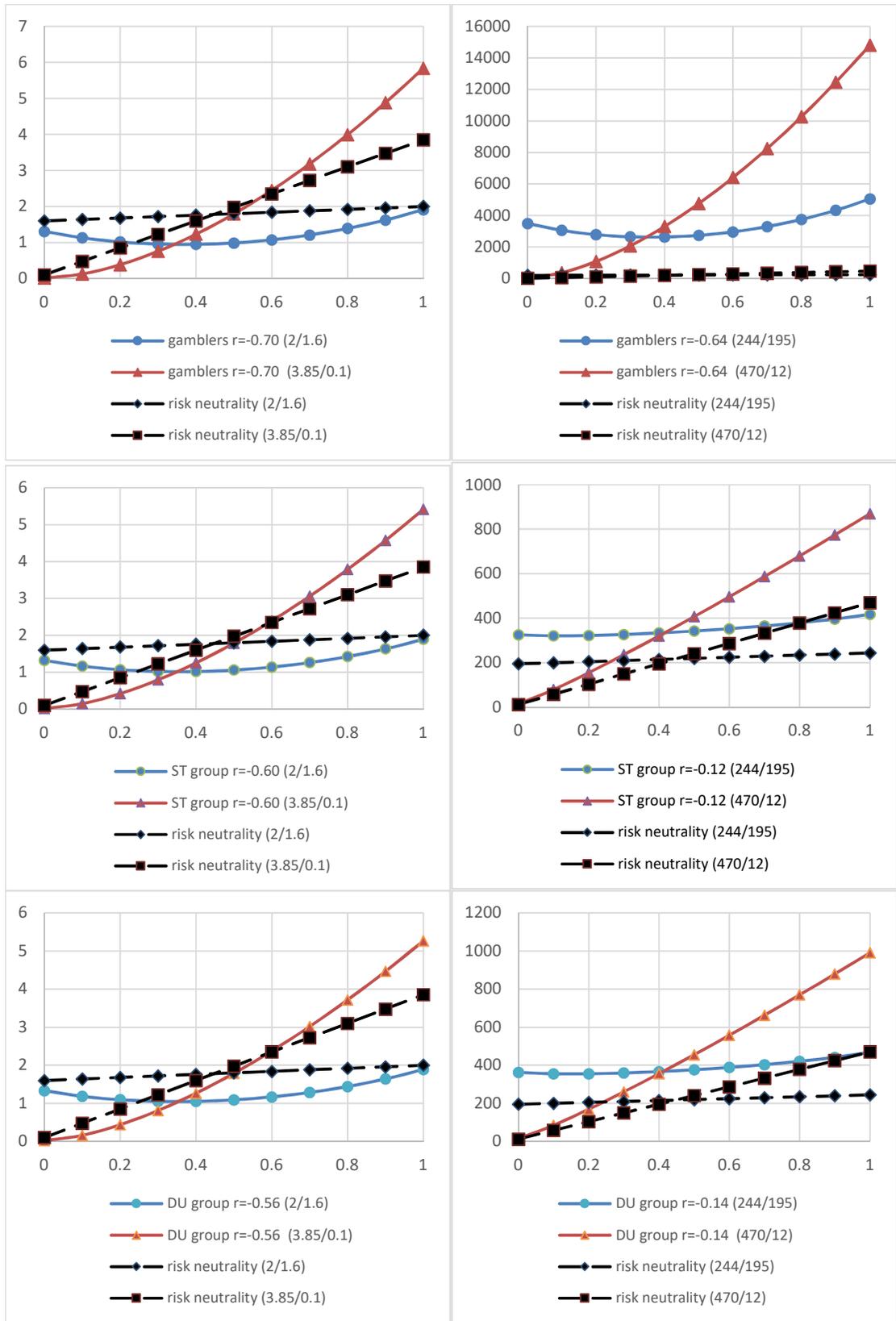


Figure 5. decision models in additive groups

If we look at the points of changing decisions by individuals involved in the experiment in each model, they differ from the points crossing the curves reflecting the risk-neutrality (as well as from the risk curves) and in terms of a high-prize game are at a significant distance from each other. The neutral curves are crossed when the probability of profit is 40%. However, the participants in the experiment do not follow the rational behavior of this model. Decision models differ from each other according to the size of prizes. The higher the prize is, the more distinctive are the color curves towards the risk-neutrality. In case of students, this was especially visible when we separated paths for students with risk-seeking and risk-averse behaviors. If we look at (d) and (f) curves of Figure # 4, we find that in case of high-prizes, the utility function of students with risk-averse behavior is significantly lower and is below the risk-neutrality curves, whereas the utility function of students with risk-seeking behavior is above the risk-neutrality curves. This means that a high-risk factor pushes them to make decisions for the benefit which is above the rational level, while the benefits of risk-averse individuals fall under rational curve.

Such a discussion can explain why the utility curves of drug users and especially gamblers sweep up. First of all, it is noteworthy that in low-prize models the decision curves of the experiment participants are below the risk-neutrality curves, however, in the context of high-prize game, the picture changes and the blue utility curve sharply moves above.

Risk-neutrality curves can be considered as a rational margin in which the profit can be obtained: in the context of our experiment, this profit is the expected value of the game. However, unlike the expected profit, the participants are exposing the profit with the calculated risk factors, which gives the game a much larger value than it is expressed in expected value. With this respect, the decisions of both risk-averse students and individuals with behavioral addiction are irrational, but in case of students, their risk factor guarantees that their expected utility does not exceed the margin of rationality, while the expected utility of the addicted individuals sharply exceeds any outcomes to be received within rational curves.

It is interesting that decision curves of the risk-averse students in high-prize game have convex shapes (see Figure 6b) which indicates that marginal benefits from the game decreases when probability of winning decreases and student change their decision when the chances of losing the benefit is minimal.

As for a low-prize game, the curve has a relatively high rate and it goes upward (red curve, Figure 6a). The only explanation for risk-averse students between these two decisions may be that, despite the fact that participants were awarded in a low-prize game, unlike the high-prize

game, the small amount of this reward led to its low opportunity cost and students were tended to get a higher-paid reward.

In Figure 6 and in the next figure, we have presented the curves that describe the behavior according to the decisions of the participants involved in the experiment. For each group we combine the curves in the decision point drawn according to Options A and B.

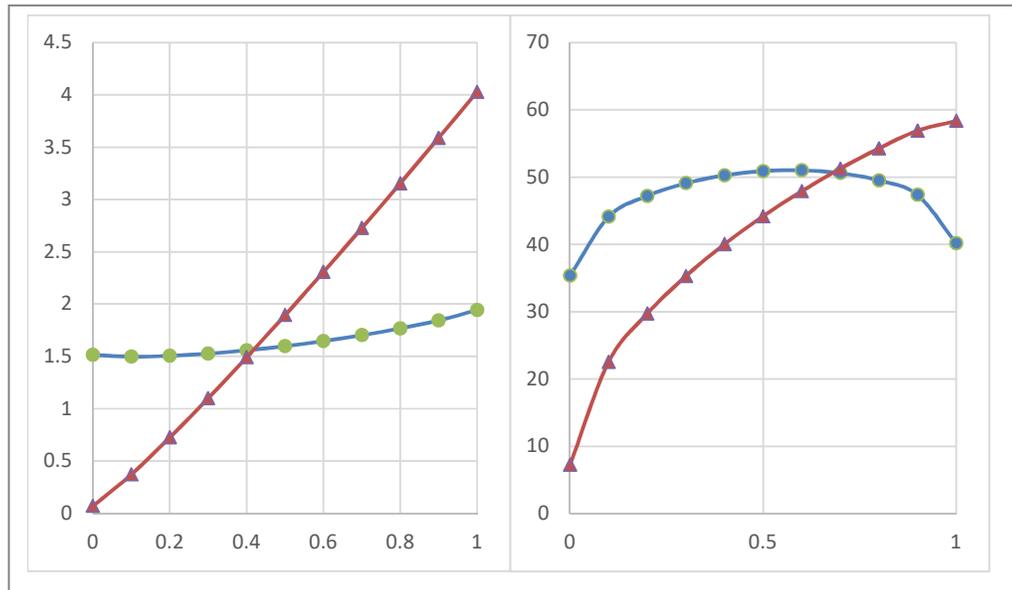


Figure 6. Decision curves of risk-averse students: a – in case of low-prizes, b – in case of high-prizes

Decision curves of the gamblers and DU and TR groups are concave in terms of low-prize and high-prize games. In the context of low-prize game all the curves more or less follow each other, and are not at a big distance from the rational, risk-neutrality curve (Figure #7a). In contrast, there is a significant difference in the high-prize game. The decision curves of addicted groups are above the neutrality curve, while the curve of all students goes below (Figure #7b), at the same time the gamblers curve pushes up sharply (due to high negative risk factor) and it is presented separately for more visibility (Figure #7c).

Analysis of the risk factor experiment results allows us to answer one of our main research questions - whether or not the attitude of the drug-dependent person towards risk had been changed after involvement in the treatment.

To answer this question, we again tested the hypothesis for two independent samples, we compared risk factors of DU group and RT group participants.

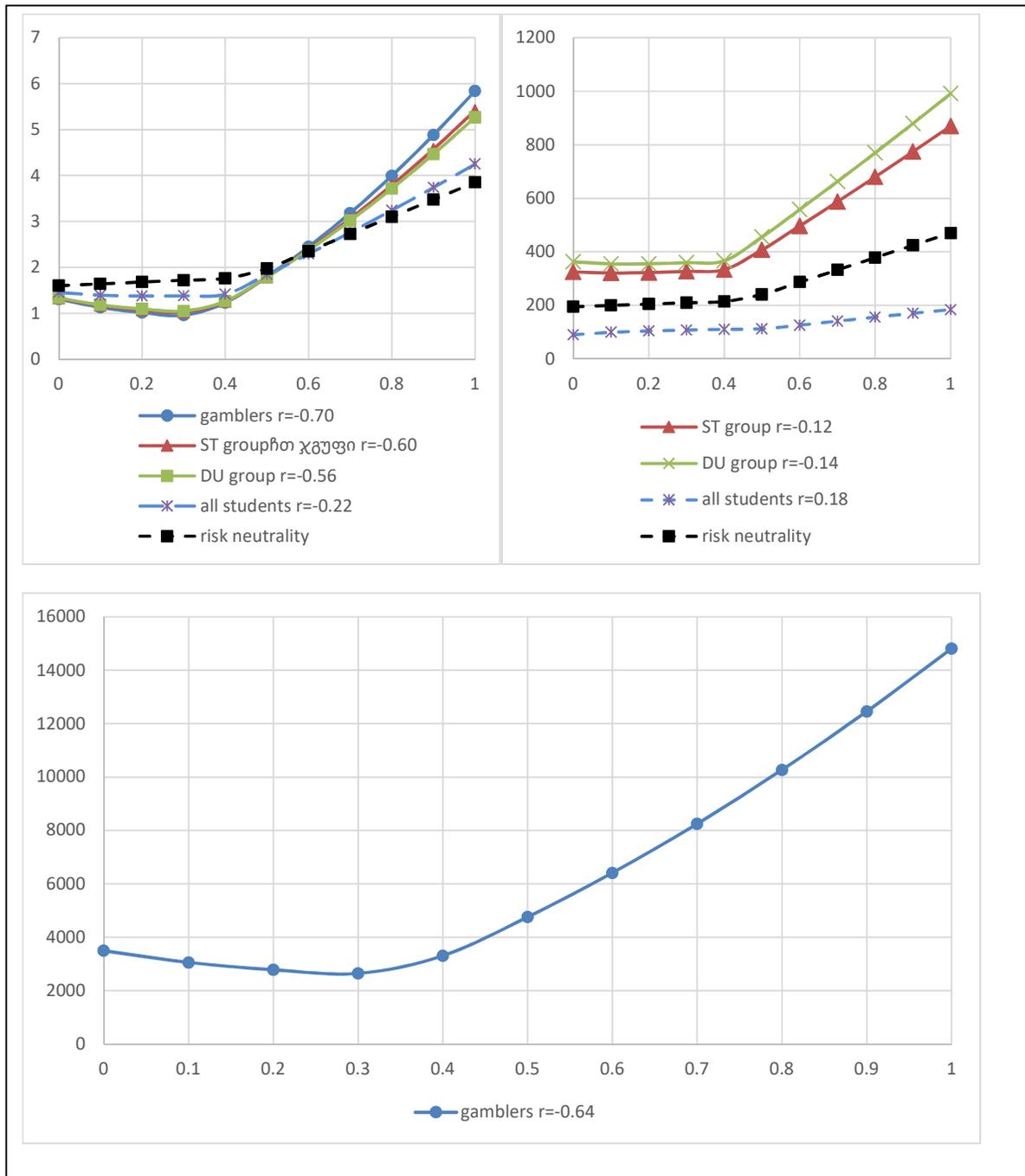


Figure 7. decision models

The zero hypothesis is as follows: decision to quit dependence on drugs and involvement in the substitution therapy would not affect the risk factors of drug users and it would remain the same. The alternative hypothesis is that the decision to participate in the substitution

therapy should have an impact on the risk factor ($H_0: \mu=0$ - risk factor remains unchanged, $H_1: \mu \neq 0$ - risk factor changes).

In both cases, t tests of low- and high-prize risk factors have not confirmed alternative hypotheses: in case of low-prize game - $P = 0.76$ and in case of high-prize game - $P = 0.80$. According to hypothesis testing we refused alternative hypothesis and confirmed that risky behavior of drug users does not depend on the decision to quit with drug use.

Conclusion/Recommendations

Analysis of the economic models of risky behavior showed a significant difference in risky factors in experiment groups of drug users, gamblers and control group of students.

Drug users and gamblers have shown their preferences towards risky behavior more than it was expressed in the group of students.

Based on the results of the experiment, the main question of the survey - whether the decision of substance-dependent users on commencement of treatment and quitting use of drugs led to change their risk factor, we revealed that these factors remain unchanged.

This causes us to prove that treatment is not a precondition to stop drug use. In the appropriate encouraging environmental conditions, the users will still demonstrate preference towards risky behavior and return to drug use after treatment.

Our recommendation is to develop addiction policy, based on the economic nature of decision models and opportunity costs of expected values.

References

- Ainslie, G. (1975). Specious Reward: A Behavioral Theory of Impulsiveness and Impulse Control. *Psychological Bulletin*, VOL. 82, No. 4, 463-496.
- Andersson, L., Bask, M., & Melkersson, M. (2003). Economic Man and the Consumption of Addictive Goods: The Case of Two Goods. *Substance Use & Misuse*, 41(4), 453 – 466.
- Annas, J. (1995). *The Morality of Happiness*. New York: Oxford University Press.
- Becker, G. (1993). The Economic Way of Looking at Behavior. *The Journal of Political Economy*, Vol. 101, No. 3, 385-409.
- Becker, G. S. (1992). Habits, Addictions, and Traditions. *Kyklos*, 45, 327-46.
- Becker, G., & Murphy, K. (1988). A theory of rational addiction. *The Journal of Political Economy*, 96(4), 675–700.
- Becker, G., Grossman, M., & Murphy, K. (1991). Rational addiction and the effect of price on consumption. *The American Economic Review*, 82(2), 237–41.
- Bergen-Cico, D., Otiashvili, D., Kirtadze, I., Zebransky, T., & Tsertsvadze, V. (2017). Cost analysis of the country of Georgia’s street level drug testing policy. *Journal of Drug Policy Analysis* 10(2), 1-22.
- Bickel, W. K., & Johnson, M. W. (2003). Delay Discounting: A Fundamental Behavioral Process of Drug Dependence. In G. Loewenstein, D. Read, & R. F. Baumeister, *Time and Decision* (pp. 419–40). New York: Russell Sage Foundation.
- Bohahon, C. E. (1991). An Economic Explanation for the Ineffectiveness of Addiction Treatment. *Contemporary Policy Issues* 9, 116-119.
- Ferguson, B. S. (2006). Economic Modeling of the Rational Consumption of Addictive Substances. *Substance Use & Misuse*, 41(4), 573 - 603.
- Frey, B. S., & Stutzer, A. (2014). Economic Consequences of Mispredicting Utility. *Journal of Happiness Studies*, 937–956.

- Friend, I., & Blume, M. E. (1975). The demand for risky assets. *The American Economic Review*, 65(5), 900–922.
- Holt, C. A., & Laury, S. (2002, Dec). Risk aversion and incentive effects. *The American Economic Review*, 92(5), 1644-1655.
- Khurtsia, L., & Tsertsvadze, V. (2015). Drugs, Silk Road, Bitcoins. *World Academy of Science, Engineering and Technology, International Science Index, Economics and Management Engineering* (pp. 9(7), 1529.). Istanbul: WASET.
- Loewenstein, G., & D., P. (1992). Anomalies in Intertemporal Choice: Evidence and Interpretation. *Quarterly Journal of Economics*, 107, 2, , 573-97.
- Maccrimmon, K., & Wehrung, D. (1990). Characteristics of risk taking executives. 36 (4). *Management Science*, 422–435.
- Madden, G. J., Petry, N. M., & Johnson, P. S. (2009). Pathological gamblers discount probabilistic rewards less steeply than matched controls. *Experimental and clinical psychopharmacology*, 5(17), 283-90.
- Madden, G. J., Petry, N. M., Bickel, W. K., & Badger, G. J. (1997). Impulsive and self-control choices in opiate-dependent patients and non-drug-using control participants: Drug and monetary rewards. *Experimental and Clinical Psychopharmacology* 5 (3), 256-262.
- Neumann, J. v., & Morgenstern, O. (1944). *Theory of Games and Economic Behavior*. Princeton University Press.
- O'Donoghue, T., & Rabin, M. (2003). Self-awareness and self-control. In D. R. G. Loewenstein, *Time and decision: Economic and psychological perspectives on intertemporal choice* (pp. 217-243). New York, NY, US: Russell Sage Found.
- Otiashvili, D., Kirtadze, I., Tsertsvadze, V., Chavchanidze, M., & Zabransky, T. (2012). *How Effective Is Street Drug Testing. Tbilisi: Alternative Georgia*. Tbilisi: altgeorgia.
- Pacula, R. L., Grossman, M., Chaloupka, F. J., O'Malley, P. M., Johnston, L., & Farrelly, M. C. (2001). Marijuana and youth. In J. Gruber, *Risky Behavior among Youths: An Economic Analysis*. Chicago: University of Chicago Press.
- Prelec, D. &. (2003). Self-signaling and self-control. In D. R. G. Loewenstein, *Time and decision: Economic and psychological perspectives on intertemporal choice* (pp. 277-298). New York, NY, US: Russell Sage Foundati.

Shane, F., Loewenstein, G., & O'Donoghue, T. (2002). Time Discounting and Time Preference: A Critical Review. *Journal of Economic Literature*, 40 (2), 351-401.

ოთიაშვილი, დ., ცერცვაძე, ვ., კირთაძე, ი., ჭავჭავაძე, მ., & ზაზარაძე, ტ. (2015).

რამდენად ეფექტურია ქუჩის ნარკოტესტირება. Retrieved from

<http://www.altgeorgia.ge>: <http://www.altgeorgia.ge/2012/myfiles/narkotestireba%20GEO-1.pdf>

საქართველოს პარლამენტი. (22/05/2012). *ნარკოტიკული საშუალებების,*

ფსიქოტროპული ნივთიერებების, პრეკურსორებისა და ნარკოლოგიური დახმარების შესახებ. თბილისი: საქართველოს საკანონმდებლო მაცნე.

ჯავახიშვილი, ჯ., ბალანჩივაძე, ნ., კირთაძე, ი., სტურუა, ლ., ოთიაშვილი, დ., &

ზაზარაძე, ტ. (2012). *ნარკოვიტარება საქართველოში*. თბილისი: ალტერნატივა

ჯორჯია.