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**Master's Thesis**

**Peaceful Enjoyment of Possessions in Occupied Territories: Limits of Effective  
Control and Challenges of Enforcement under the ECHR**

**Netrukdomas naudojimas nuosavybe okupuotose teritorijose: veiksmingos  
kontrolės ribos ir įgyvendinimo iššūkiai pagal EŽTK**

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## ABSTRACT AND KEYWORDS

This study examines how property rights are protected under Article 1 of Protocol No. 1 of the European Convention on Human Rights in areas under foreign or de facto control, with a particular focus on the occupied territories of Georgia. It also compares how the European Court of Human Rights evaluates alleged violations in occupied regions with its approach in regular property cases. In doing so, the analysis highlights practical difficulties, such as lack of evidence, limited access to domestic remedies, and weak cooperation from the authorities in control. Finally, the research assesses how effective the current legal framework is and proposes strategies to improve access to property rights for displaced people.

**Keywords:** property rights, Article 1 of Protocol No. 1, European Court of Human Rights, occupation, effective control, displaced persons, enforcement, restitution

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## LIST OF ABBREVIATIONS

<b>A1P1</b>	Article 1 of Protocol No. 1 to the European Convention on Human Rights
<b>ECtHR</b>	European Court of Human Rights
<b>ECHR</b>	European Convention on Human Rights
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>COE</b>	Council of Europe
<b>IHL</b>	International Humanitarian Law
<b>IDPs</b>	Internally Displaced Persons
<b>NGO</b>	Non-Governmental Organization
<b>ICRC</b>	International Committee of the Red Cross
<b>CM</b>	Committee of Ministers
<b>ICJ</b>	International Court of Justice

## INTRODUCTION

*“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world.”<sup>1</sup>*

**Relevance of the topic.** The ongoing displacement of tens of thousands of people from Abkhazia and the Tskhinvali Region/South Ossetia<sup>2</sup> demonstrates the pressing challenges of protecting property rights under international human rights law.<sup>3</sup> Article 1 of Protocol No. 1 to the European Convention on Human Rights guarantees the right to peaceful enjoyment of possessions and remains among the most frequently litigated provisions before the European Court of Human Rights.<sup>4</sup> The Court’s interpretation of this article has been consistently pragmatic, because while it shows deference to national authorities through the margin of appreciation<sup>5</sup>, it has nonetheless found numerous violations over the years. This became especially visible from the late twentieth century,<sup>6</sup> when the Court began to develop a broader and more autonomous understanding of “possessions,” extending it beyond traditional ownership to a wide range of proprietary and economic interests. In parallel, it refined the fair-balance test, requiring that any interference pursue a legitimate public aim without imposing an excessive burden on the individual.<sup>7</sup> This proportionality standard now structures the Court’s reasoning in both regular domestic disputes and more complex cases involving conflict-affected or occupied territories.

In its routine application, the ECtHR’s case law addresses expropriation, taxation, land-use restrictions, and restitution, illustrated by judgments.<sup>8</sup> These judgments assume that national systems are functioning and able to implement the ECtHR’s decisions. However, property issues in occupied territories raise much greater difficulties. In such

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<sup>1</sup> ROOSEVELT, Eleanor (1958). Speech delivered in 1958.

<sup>2</sup> UNITED NATIONS REFUGEE AGENCY (UNHCR) (09-2024). Georgia fact sheet [online].

<sup>3</sup> LOUCAIDES, Loukis G. (2004). The Protection of the Right to Property in Occupied Territories. *The International and Comparative Law Quarterly*, 53(3), 677–690 [online].

<sup>4</sup> GRGIĆ, Aida; MATAGA, Zvonimir; LONGAR, Matija and VILFAN, Ana (n.d.). The Right to Property under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and Its Protocols. *Council of Europe. Human Rights Handbooks*, No. 10 [online].

<sup>5</sup> SCHABAS, William A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, pp. 893–894.

<sup>6</sup> HARRIS, D. J.; O’BOYLE, M.; and NATES, E. P. et al. (2023). *Law of the European Convention on Human Rights*. Fifth edition. Oxford: Oxford University Press, chapter 20, Article 1, First Protocol: The Right to Property, 1. Introduction, p. 876.

<sup>7</sup> SCHABAS, William A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, p. 967.

<sup>8</sup> Sporrang and Lönnroth v. Sweden, Nos. 7151/75 and 7152/75, judgment of 23 September 1982, HUDOC and Beyeler v. Italy, No. 33202/96, judgment of 5 January 2000, HUDOC

situations, questions of jurisdiction, effective control, and enforcement become central, while the usual ways of balancing rights and responsibilities often do not work in practice.

In territories under foreign occupation or dominated by unrecognized de facto regimes, the risks to property rights multiply.<sup>9</sup> Individuals face mass displacement, destruction of homes and livelihoods, and the long-term loss of access to property.<sup>10</sup> Also, the legal remedies are scarce,<sup>11</sup> as states usually deny responsibility for actions taking place beyond their declared borders, while the de facto authorities cannot be held to account because they are not recognized subjects of international law.<sup>12</sup> Hence, this gap highlights the normative and practical limits of international accountability in such settings.

The Georgian experience offers a powerful case study of these issues. Since the early 1990s,<sup>13</sup> and especially after the 2008 war,<sup>14</sup> thousands of people displaced from Abkhazia and the Tskhinvali Region/South Ossetia have been unable to return to their homes.<sup>15</sup> However, the situation in Georgia is not unique. Greek Cypriots have been prevented from returning to their houses in the north of Cyprus despite repeated judgments of the European Court of Human Rights.<sup>16</sup> In Transnistria,<sup>17</sup> property rights are restricted under Russian-supported separatist rule.<sup>18</sup> In Crimea, after annexation, residents were required to re-register their land under Russian law<sup>19</sup> and in many cases lost ownership altogether. The Court has used the idea of effective control in all of these cases to decide if the respondent State is responsible and if the Convention can give a real remedy when sovereignty is in question.<sup>20</sup>

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<sup>9</sup> Gunnar M. Ekeløve-Slydal, Ana Pashalishvili, and Inna Sangadzhiyeva, “Human Rights behind Unsettled Borders,” Foreign Policy Centre, 26 September 2019.

<sup>10</sup> *Parliamentary Assembly of the Council of Europe (2010). Resolution 1708: Solving property issues of refugees and internally displaced persons, adopted 28 January 2010, Doc. 12106.*

<sup>11</sup> *Georgia v. Russia (II) (Grand Chamber), No. 38263/08, judgment of 21 January 2021, HUDOC.*

<sup>12</sup> BERKES, Antal (2018). De facto regimes and the responsibility to protect. In: *State Responsibility, International Crimes and Human Rights*. Cambridge: Cambridge University Press, pp. 155–174.

<sup>13</sup> PETERSEN, Alexandros. *The 1992–93 Georgia–Abkhazia War: A Forgotten Conflict* [online].

<sup>14</sup> COHEN, Ariel; and HAMILTON, Robert E. (2011). *The Russian Military and the Georgia War: Lessons and Implications*, 1 June 2011, 114 pages. JSTOR.

<sup>15</sup> SESKURIA, Natia (2021). Georgia’s Historic Victory: Implications of the ECHR Ruling. *Middle East Institute*, 11 February 2021.

<sup>16</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed., Cambridge University Press, 2016, “Human rights in situations of military occupation,” pp. 668–669.

<sup>17</sup> *Ibid.*, pp. 669–670.

<sup>18</sup> COHEN, Ariel; and HAMILTON, Robert E. (2011). *The Russian Military and the Georgia War: Lessons and Implications*, 1 June 2011, p. 4. JSTOR.

<sup>19</sup> Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights & High Commissioner on National Minorities (2015). *Report of the Human Rights Assessment Mission on Crimea (6–18 July 2015)*, 17 September 2015, p. 29.

<sup>20</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed., Cambridge University Press, 2016, “Human rights in situations of military occupation,” pp. 669–670.

Despite the court's important decisions about jurisdiction and state responsibility outside of national borders,<sup>21</sup> important uncertainties remain, particularly regarding the scope of the effective-control doctrine and the enforcement of judgments in long-term occupation scenarios.

The Georgian experience therefore provides the central case study of this thesis. The long-term displacement of people from Abkhazia and the Tskhinvali Region/South Ossetia<sup>22</sup> presents one of the clearest contemporary tests of the effectiveness of Article 1 of Protocol No. 1 in situations of occupation. Georgia's status as a full member of the Council of Europe,<sup>23</sup> while a significant part of its internationally recognized territory lies under the effective control of another state and unrecognized de facto authorities,<sup>24</sup> makes it a uniquely valuable context for assessing the limits of the Court's jurisdictional doctrines and the practical challenges of enforcing its judgments. The Georgian case study thus illustrates both the urgency and complexity of protecting property rights under the Convention in occupied territories.<sup>25</sup>

**Object.** This thesis examines how the right to peaceful enjoyment of possessions, guaranteed by Article 1 of Protocol No. 1 to the European Convention on Human Rights, is protected in situations of foreign occupation and in territories governed by de facto regimes. It focuses on how the European Court of Human Rights defines and applies this right in situations where a state exercises effective control over territory that lies outside its internationally recognized sovereignty. The analysis examines the ECtHR's case law on the occupied territories of Georgia (Abkhazia and the Tskhinvali Region/ South Ossetia) and compares it with decisions concerning Northern Cyprus, Transnistria, Crimea, and Nagorno-Karabakh. Through this comparison, the study aims to explain how the Court interprets the concepts of "possessions," "interference," and "effective control," and how these ideas influence state responsibility and access to remedies for displaced persons. The research stays within the legal framework of the European Convention system. It does not deal with issues of political recognition, national property laws, or the legality of military occupation under international humanitarian law. Instead, its purpose is to assess,

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<sup>21</sup> *Loizidou v. Turkey; Cyprus v. Turkey; Catan and Others v. Moldova and Russia; Chiragov and Others v. Armenia; Georgia v. Russia (IV)*, ECtHR. HUDOC.

<sup>22</sup> Independent International Fact-Finding Mission on the Conflict in Georgia (2009). *Volumes I-III*, September 2009, p. 27.

<sup>23</sup> Council of Europe, "I am Georgian and therefore I am European".

<https://www.coe.int/en/web/tbilisi/home>

<sup>24</sup> Council of Europe (2022). *Information Documents SG/Inf(2022)38: Consolidated Report on the Conflict in Georgia (April–October 2022)*, 3 November 2022, p. 4.

<sup>25</sup> Council of Europe (2024). *Consolidated report on the conflict in Georgia (October 2023 – March 2024)*, 15 April 2024, p. 9.

from both doctrinal and practical perspectives, how effectively Article 1 of Protocol No. 1 protects property rights in contexts where the state with lawful sovereignty over the territory is unable to secure rights there due to the presence of a foreign power exercising effective control.

**Aims and objectives.** The aim of the thesis is to analyze how property rights are protected under Article 1 of Protocol No. 1 of the ECHR in occupied territories. To achieve this, the thesis examines how the European Court of Human Rights deals with alleged violations in areas under foreign or de facto control, combining both doctrinal and practical perspectives. It explains the main mechanisms the ECtHR uses to protect this right and then shows where people face legal and practical barriers that limit effective enforcement. Based on these findings, the thesis proposes ways to improve both the formal recognition and the real-life protection of property rights for displaced persons.

The **tasks** include 1) setting out the main concepts of Article 1 of Protocol No. 1 in regular property cases, including how the Court understands possessions, what counts as interference, and how the fair balance test works in practice; 2) analyzing the ECtHR doctrines that have been developed for property cases linked to situations of occupation, such as effective control, continuing violations, and the use of adjusted evidentiary standards; 3) examining case law from occupied territories, including Abkhazia, South Ossetia, and Northern Cyprus, while highlighting key interpretations together with the main lines of reasoning of the ECtHR; 4) evaluating the practical, structural, and political factors that influence how property rights are enforced for displaced persons, with particular attention to access to remedies, evidentiary challenges, and compliance with judgments; 5) assessing how effective the Convention framework is in protecting property rights in situations of foreign or de facto control; and 6) identifying the remaining gaps within the current system, as well as suggesting measures that could strengthen the practical protection of property rights in contexts of prolonged occupation.

**Methods.** To achieve the objectives of this thesis, doctrinal, comparative, and contextual research methods have been used.

**Doctrinal analysis:** The analysis starts with Article 1 of Protocol No. 1 of the European Convention on Human Rights. The process includes collecting the relevant case law, clarifying the meaning of the terms ‘possessions,’ ‘interference,’ and ‘fair balance,’ and analyzing how the Court applies these concepts. Landmark judgments such as *Sporong and*

*Lönnroth v. Sweden*,<sup>26</sup> *James and Others v. the United Kingdom*,<sup>27</sup> *Beyeler v. Italy*,<sup>28</sup> and *Brumărescu v. Romania*<sup>29</sup> illustrate the ECtHR's general approach to property rights. In order to highlight the main doctrinal and practical obstacles that arise in situations of foreign or de facto control, these are then compared with occupation-related cases, such as *Georgia v. Russia (IV)*,<sup>30</sup> *Taganova and Others v. Georgia and Russia*,<sup>31</sup> *Loizidou v. Turkey*,<sup>32</sup> *Cyprus v. Turkey*<sup>33</sup> and *Chiragov v. Armenia*.<sup>34</sup> Cases were selected from the HUDOC database<sup>35</sup> based on their precedential value and relevance to property rights under both regular and occupation-related circumstances.

**Use of empirical materials:** The thesis also uses empirical materials. These include monitoring materials from the OSCE,<sup>36</sup> and the United Nations,<sup>37</sup> as well as execution reports from the Committee of Ministers.<sup>38</sup> These materials are used to assess whether ECtHR judgments have been implemented, how enforcement challenges appear in practice, and how they impact displaced persons. Although available statistics on compliance and property restitution are taken into consideration to show broader trends, qualitative evidence is given priority.

**Comparative analysis:** This method is applied in two ways. First, it compares the European Court of Human Rights' reasoning in "regular" property rights cases with cases concerning occupied territories to highlight similarities and differences. Second, it considers contextual comparisons between different regions, Northern Cyprus, Transnistria, Crimea, Nagorno-Karabakh, and Georgia, where the Strasbourg Court has had to apply the doctrine of effective control and assess responsibility for violations.

**Contextual analysis:** This method is used to connect the legal findings with the broader reality of occupation. This includes examining how restricted access to property,

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<sup>26</sup> SPORRONG and LÖNNROTH v. Sweden, ECtHR, Judgment of 23 September 1982, Applications Nos. 7151/75 and 7152/75. HUDOC.

<sup>27</sup> JAMES and Others v. the United Kingdom, ECtHR, Judgment of 21 February 1986, Application No. 8793/79. HUDOC.

<sup>28</sup> BEYELER v. Italy, ECtHR, Judgment of 5 January 2000, Application No. 33202/96. HUDOC.

<sup>29</sup> BRUMĂRESCU v. Romania, ECtHR, Judgment of 28 October 1999, Application No. 28342/95. HUDOC.

<sup>30</sup> Georgia v. Russia (IV), App. No. 39611/18, ECtHR, Judgment of 9 April 2024. HUDOC.

<sup>31</sup> Taganova and Others v. Georgia and Russia, Apps. Nos. 18102/04 and others, ECtHR, Judgment of 17 December 2024. HUDOC.

<sup>32</sup> Loizidou v. Turkey, ECtHR, Judgment of 18 December 1996, Application No. 15318/89. HUDOC.

<sup>33</sup> Cyprus v. Turkey, ECtHR, Judgment of 10 May 2001, Application No. 25781/94. HUDOC.

<sup>34</sup> Chiragov and Others v. Armenia, ECtHR, Grand Chamber, Judgment of 16 June 2015, Application No. 13216/05. HUDOC

<sup>35</sup> ECtHR, HUDOC database. <https://hudoc.echr.coe.int/#%20>

<sup>36</sup> OSCE, *Human Rights in the Occupied Territories of Georgia* (Information Note, 8 October 2010), RC.DEL/186/10.

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights, *Report on human rights developments in Georgia, including Abkhazia and the Tskhinvali Region / South Ossetia*, A/HRC/34/37 (2017).

<sup>38</sup> Committee of Ministers, Council of Europe, *Georgia v. Russia (II), Status of Execution (action report and decisions)*, HUDOC-EXEC, various documents.

displacement, and the lack of available alternatives affect individuals and communities. This method makes it possible to assess whether Strasbourg case law offers practical protection in conflict settings or whether its impact remains limited in real-world terms.

Taken together, these methods reflect a broad and complementary research approach. By combining doctrinal legal analysis with empirical evidence, comparative reasoning, and socio-legal insights, the thesis evaluates to assess how the ECtHR framework operates both in principle and in practice, particularly regarding the protection of property rights in occupied or de facto controlled territories.

**Originality.** The originality of this thesis lies in its combined study of how property rights under the European Convention on Human Rights are interpreted and enforced in occupied territories, with Georgia used as the main case study. In this regard, existing scholarship provides important foundations, for example, Milanovic's work on extraterritorial jurisdiction,<sup>39</sup> while major commentaries on the Convention, such as those by Harris, O'Boyle and Warbrick,<sup>40</sup> Schabas,<sup>41</sup> and Mowbray<sup>42</sup> offer detailed doctrinal insights. Studies on displacement and property restitution, including Leckie,<sup>43</sup> and analyses of property regimes in conflict settings, such as works on Abkhazia and South Ossetia by Coppieters<sup>44</sup> and Lynch,<sup>45</sup> also provide valuable contextual insights. This thesis builds on the mentioned studies but takes a different approach. It offers a structured comparison between the Court's handling of property rights in occupied territories and its treatment of ordinary domestic cases. It can be said that this perspective is missing in the existing literature. It also goes beyond doctrinal analysis by looking at how Strasbourg judgments are enforced in practice. This issue is often mentioned in the literature but rarely examined in detail. By grounding the assessment in the Georgian context and comparing it with other occupation settings, such as Northern Cyprus, Transnistria, Crimea, and Nagorno-Karabakh, the thesis provides an original contribution that links legal doctrine with real-world outcomes.

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<sup>39</sup> MILANOVIĆ, Marko (2011). *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*. Oxford: Oxford University Press.

<sup>40</sup> HARRIS, D. J.; O'BOYLE, M.; NATES, E. P.; and BUCKLEY, C. M. (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press.

<sup>41</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Introductory comments on Protection of Property.

<sup>42</sup> MOWBRAY, A. (n.d.). *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3rd ed. Oxford: Oxford University Press.

<sup>43</sup> LECKIE, S., ed. (n.d.). *Housing and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials*. Cambridge: Cambridge University Press.

<sup>44</sup> COLUMBIA INTERNATIONAL AFFAIRS ONLINE (n.d.). *Introduction to COB02*.

[https://ciaotest.cc.columbia.edu/book/cob02/cob02\\_intro.html](https://ciaotest.cc.columbia.edu/book/cob02/cob02_intro.html)

<sup>45</sup> INTERNATIONAL AFFAIRS (n.d.). "Article Title." *International Affairs*, 78(4).

<https://academic.oup.com/ia/article/78/4/831/2434773>

**Main sources.** This thesis uses a structured combination of primary and secondary sources, providing a strong foundation for examining Article 1 of Protocol No. 1 under the ECHR in situations of occupation, prolonged displacement, and extraterritorial control. The primary sources include the ECHR itself, Article 1 Protocol No. 1, and leading ECtHR judgments that establish the relevant doctrines. These judgments, such as *Georgia v. Russia (II)*,<sup>46</sup> *Georgia v. Russia (IV)*,<sup>47</sup> *Taganova and Others v. Georgia and Russia*,<sup>48</sup> *Loizidou v. Turkey*,<sup>49</sup> *Cyprus v. Turkey*<sup>50</sup> and *Chiragov and Others v. Armenia*,<sup>51</sup> illustrate key principles such as effective control, continuing violations, and state responsibility in contested territories. Additional primary materials include Council of Europe documents such as the Article 1 of Protocol No. 1<sup>52</sup> and the thematic factsheet on the protection of property. Reports from the Committee of Ministers' execution process<sup>53</sup> are also used to highlight practical enforcement challenges. These sources help to show not only how the Court interprets property rights but also how these interpretations work in practice.

The secondary sources include doctrinal commentaries, monographs, and scholarly analyses that provide interpretation and contextual understanding of the Court's jurisprudence. The core doctrinal works include Harris O'Boyle and Warbrick's *Law of the European Convention on Human Rights*,<sup>54</sup> Schabas' *The European Convention on Human Rights: A Commentary*,<sup>55</sup> and Mowbray's *Cases, Materials and Commentary on the European Convention on Human Rights*.<sup>56</sup> These sources offer detailed explanations of key concepts such as possessions, interference, the fair balance test, subsidiarity, and proportionality, and they clarify the reasoning underpinning the Court's decisions. For understanding extraterritorial jurisdiction and the attribution of state responsibility, the thesis relies on Marko Milanovic's *Extraterritorial Application of Human Rights*

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<sup>46</sup> *Georgia v. Russia (II)*, App. No. 38263/08, ECtHR, Grand Chamber, 21 January 2021

<sup>47</sup> *Georgia v. Russia (IV)*, App. No. 39611/18, ECtHR, Second Section, 28 March 2023

<sup>48</sup> *Taganova and Others v. Georgia and Russia*, Apps. Nos. 18102/04 and 4 others, Second Section, 21 January 2025

<sup>49</sup> *Loizidou v. Turkey*, App. No. 15318/89, ECtHR, Grand Chamber, 18 December 1996

<sup>50</sup> *Cyprus v. Turkey*, App. No. 25781/94, ECtHR, 10 May 2001

<sup>51</sup> *Chiragov and Others v. Armenia*, App. No. 13216/05, ECtHR, Grand Chamber, 16 June 2015

<sup>52</sup> COUNCIL OF EUROPE, *Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights: Protection of Property*, Updated 31 August 2020. <https://rm.coe.int/guide-art-1-protocol-1-eng/1680a20cdc>

<sup>53</sup> COUNCIL OF EUROPE, Committee of Ministers, *Execution of judgments of the European Court of Human Rights*. <https://www.coe.int/en/web/cm/execution-judgments>

<sup>54</sup> HARRIS, D. J.; O'BOYLE, M.; NATES, E. P.; and BUCKLEY, C. M. (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press.

<sup>55</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Introductory comments on Protection of Property.

<sup>56</sup> MOWBRAY, A. (n.d.). *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3rd ed. Oxford: Oxford University Press.

Treaties<sup>57</sup> and Ilias Bantekas and Oette's *International Human Rights Law and Practice*.<sup>58</sup> These works examine how human rights obligations operate where formal sovereignty does not correspond to actual authority, providing guidance on applying human rights in contested or occupied territories. Further, secondary sources focus specifically on property rights in occupied territories. These include *The Protection of the Right to Property in Occupied Territories*,<sup>59</sup> and Leckie's *Housing and Property Restitution Rights of Refugees and Displaced Persons*.<sup>60</sup> These studies place Article 1 of Protocol No. 1 in the context of larger discussions concerning displacement, reparations, and the long-term impacts of conflict on property regimes. The thesis also uses primary sources from international monitoring groups, such as reports from the Independent International Fact-Finding Mission on the Conflict in Georgia,<sup>61</sup> consolidated Council of Europe reports on the Georgian conflict, OSCE human rights and security assessments,<sup>62</sup> and UNHCR country fact sheets for Georgia.<sup>63</sup> These sources offer concrete evidence on displacement, borderization practices, and the loss or deterioration of property. They offer important factual support, especially when domestic records are limited or unavailable. In addition, secondary sources, such as policy studies and academic research on de facto authorities, prolonged occupation, and state responsibility, help to explain the wider implications of Article 1 of Protocol No. 1 for people affected by territorial fragmentation.

Together, these materials ensure that the thesis examines both the legal principles established by the European Court of Human Rights and how they are applied in practice in occupied territories. By combining doctrinal, empirical, and contextual sources, the research is able to assess not only what the law says but also how it works on the ground for displaced individuals and property owners.

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<sup>57</sup> MILANOVIC, Marko (2011). *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy*. Oxford: Oxford University Press.

<sup>58</sup> BANTEKAS, Ilias, and OETTE, Lutz (2016). *International Human Rights Law and Practice*, 2nd ed. Cambridge: Cambridge University Press, "Human rights in situations of military occupation."

<sup>59</sup> LOUCAIDES, Loukis G. (2004). The Protection of the Right to Property in Occupied Territories. *International and Comparative Law Quarterly*, 53(3), 677–690.

<sup>60</sup> LECKIE, S., ed. (2007). *Housing, Land, and Property Restitution Rights of Refugees and Displaced Persons: Laws, Cases, and Materials*. Cambridge: Cambridge University Press.

<sup>61</sup> Independent International Fact-Finding Mission on the Conflict in Georgia (2009), Volumes I–III (Annexes referenced). [https://www.echr.coe.int/documents/d/echr/HUDOC\\_38263\\_08\\_Annexes\\_ENG](https://www.echr.coe.int/documents/d/echr/HUDOC_38263_08_Annexes_ENG)

<sup>62</sup> OSCE (2010). *Human Rights in the Occupied Territories of Georgia (Information Note, 8 October 2010)*, RC.DEL/186/10.

<sup>63</sup> UNHCR (2009). *Protection of Internally Displaced Persons in Georgia: A Gap Analysis*, July 2009, p. 7.

## 1. PROTECTION OF PROPERTY RIGHTS UNDER THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The protection of property has long been a central element in the development of human rights. Its intellectual origins go back to Enlightenment ideas, most notably reflected in the French Declaration of the Rights of Man and of the Citizen of 1789.<sup>64</sup> This document recognized property as one of the “natural and imprescriptible rights” and described it as “inviolable and sacred,” allowing deprivation only in cases of lawful public necessity accompanied by fair compensation.<sup>65</sup> Over time, however, this liberal vision later faced strong ideological challenges. Thinkers such as Pierre-Joseph Proudhon, famously declaring that “property is theft,”<sup>66</sup> while Marx and Engels later called for the abolition of private property in the Communist Manifesto.<sup>67</sup> Taken together, these competing perspectives shaped modern understandings of property as both an individual entitlement and a social institution.<sup>68</sup>

This philosophical divide had a strong influence on the drafting of the Universal Declaration of Human Rights, where states sought to balance the liberal idea of individual ownership with the post-war focus on social welfare. Article 17 thus embodies a carefully negotiated compromise that continues to influence contemporary international law:

1. Everyone has the right to own property, alone as well as in association with others.
2. No one shall be arbitrarily deprived of their property.<sup>69</sup>

As a result, property protection entered international human rights law not as an unconditional right, nor merely as an economic interest but, as a balanced framework that reflects both private autonomy and public governance.<sup>70</sup>

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<sup>64</sup> The French Declaration of the Rights of Man and of the Citizen (1789), <https://www.elysee.fr/en/french-presidency/the-declaration-of-the-rights-of-man-and-of-the-citizen>

<sup>65</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Protection of Property/Protection de la Propriété, Introductory comments, p. 958.

<sup>66</sup> Ibid.

<sup>67</sup> The Communist Manifesto (1848), <https://www.marxists.org/archive/marx/works/1848/communist-manifesto/index.htm>

<sup>68</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Protection of Property/Protection de la Propriété, Introductory comments, p. 958.

<sup>69</sup> Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>

<sup>70</sup> S SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Protection of Property/Protection de la Propriété, Introductory comments, p. 958.

The recognition of property as a human right was strengthened in the second half of the twentieth century through its inclusion in international and regional instruments.<sup>71</sup> The drafters of A1P1 in 1953 drew on earlier debates to create wording that emphasized the "peaceful enjoyment of possessions." From there, it was then up to the ECtHR to figure out what this provision meant. Over time, the ECtHR developed a comprehensive doctrine. Through its case law, the ECtHR articulated the principles governing interferences with property, most importantly the requirement of lawfulness, the pursuit of a legitimate public interest, and the need for a fair balance between individual and collective interests. Accordingly, the protection of property within the ECHR system evolved into a sophisticated structure rooted in proportionality and non-arbitrariness.<sup>72</sup>

As the ECtHR handled increasingly complex cases, it gained a deeper understanding of what counts as a "possession." This expansion was not accidental but arose from the need to ensure modern forms of economic value are effectively protected. Thus, the concept grew to encompass not only tangible assets but also licenses, social benefits, compensation claims, and legitimate expectations.<sup>73</sup> This broader definition gave the ECtHR the tools it needed to address property issues in exceptional circumstances, such as armed conflict, occupation, or situations involving unrecognized de facto authorities.

Together, these developments show that the protection of property under the ECHR is a dynamic and interconnected system. It emerged from multilateral negotiations, was influenced by different legal and philosophical traditions, and has been shaped further through the ECtHR's case law. For this reason, when analyzing property claims in the following chapters, especially those arising in occupied territories, it is important to place them within this broader historical and doctrinal context. Only by doing so can the ECtHR's reasoning in these cases be fully understood.

### *1.1. Legal framework, scope, and interpretation of Article 1 of Protocol No. 1*

A1P1 guarantees the peaceful enjoyment of possessions while allowing for lawful interference in the public interest.<sup>74</sup> In order to achieve this, the subchapter first explains

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<sup>71</sup> LOUCAIDES, Loukis G. (2004). "The Protection of the Right to Property in Occupied Territories." *The International and Comparative Law Quarterly*, 53(3), p. 677.

<sup>72</sup> *Ibid.* p. 681.

<sup>73</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Protection of Property/Protection de la Propriété, Introductory comments, p. 958.

<sup>74</sup> D. J. HARRIS, M. O'BOYLE, E. P. NATES, and C. M. BUCKLEY (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press, chap. 20, Article 1, First Protocol: The Right to Property, 1. Introduction, p. 861.

the internal structure and substantive test of the provision. It then outlines the admissibility requirements commonly applied in property cases before the ECtHR and, finally, examines the main doctrinal issues that arise in disputes linked to occupation.

The drafting history of A1P1, discussed above, shows that the provision was the result of a political compromise. In particular, disagreements among the Contracting States about how strongly property rights should limit social and economic reforms led to the deliberate decision to place property rights in the First Protocol rather than in the main text of the Convention. States such as the United Kingdom and Sweden wanted to make sure that the provision would not unduly restrict policies like nationalization. Consequently, A1P1 guarantees a qualified right and grants states a wide margin of appreciation.<sup>75</sup>

Furthermore, the ECtHR is left to establish compensation principles through case-law interpretation because it does not specifically mandate compensation in cases of lawful interference. In landmark cases such as *Sporrong and Lönnroth v. Sweden* (1982)<sup>76</sup> and *James and Others v. the United Kingdom* (1986),<sup>77</sup> the Court established the tripartite analytical structure that continues to guide property rights jurisprudence. These are the general principle of peaceful enjoyment, the prohibition of deprivation except under lawful conditions, and the state's right to regulate property in accordance with the public interest. Taken together, these elements are treated in a proportionality assessment to guarantee a fair balance between individual and collective interests.<sup>78</sup>

After outlining the general guarantees and the tripartite structure of interference, it is important to clarify what qualifies as a “possession,” since the scope of this concept determines who may invoke these protections. A1P1 protects both tangible and intangible property, with an autonomous convention meaning independent of domestic law.<sup>79</sup> In particular, the ECtHR recognizes that “possessions” may include existing ownership, accrued claims, or other legitimate expectations grounded in a reasonable legal basis. Planning permissions,<sup>80</sup> contractual rights,<sup>81</sup> tort claims that are extinguished by

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<sup>75</sup> D. J. HARRIS, M. O'BOYLE, E. P. NATES, and C. M. BUCKLEY (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press, chap. 20, Article 1, First Protocol: The Right to Property, 1. Introduction, p. 876

<sup>76</sup> SPORRONG and LÖNNROTH v. Sweden, App. No. 7151/75, ECtHR, 23 September 1982.

<sup>77</sup> JAMES and Others v. the United Kingdom, App. No. 8793/79, ECtHR, 21 February 1986.

<sup>78</sup> HARRIS, O'BOYLE, NATES and BUCKLEY (2023), chap. 20, Article 1, First Protocol: The Right to Property, 1. Introduction, p. 876.

<sup>79</sup> *Ibid.* p. 862

<sup>80</sup> BURBERGS, M., in E. BREMS and J. GERRARDS (eds.) (2013). *Shaping Rights in the ECHR: The Role of the European Convention on Human Rights in Determining the Scope of Human Rights*. Cambridge: Cambridge University Press, “How the right to respect for private and family life, home and correspondence became the nursery in which new rights are born, Article 8 ECHR,” p. 315.

<sup>81</sup> *Ibid.*

retrospective legislation,<sup>82</sup> and intellectual property rights<sup>83</sup> are a few examples. By contrast, speculative hopes or claims without a sufficient legal foundation are excluded.<sup>84</sup> Moreover, property rights may cease to qualify where they can no longer be exercised effectively, as illustrated by restitution claims following World War II or post-communist expropriations.<sup>85</sup>

This nuanced understanding of “possessions” is particularly relevant in post-Soviet contexts, where the ECtHR has recognized the “right of use” as a protected possession where formal land ownership was unavailable.<sup>86</sup> Similarly, housing support granted to civil servants qualifies as a possession, but on the condition that the individual continues to meet the eligibility requirements for receiving that benefit. Applicants must provide documentary evidence to support the claims they submit, such as tax records or legal entitlements, to demonstrate their proprietary interest.<sup>87</sup> As a result, how possessions are defined sets the basic threshold for admissibility and for how the ECtHR evaluates both the lawfulness and proportionality of the interference.

In light of this, it is essential to examine the conditions under which interference with property rights may be considered lawful. AIP1 does not confer an absolute right to property. Interferences must satisfy three interrelated criteria, which are the lawfulness, pursuit of a legitimate aim, and proportionality through the fair balance test.<sup>88</sup> Lawfulness requires that measures be grounded in accessible, precise, and foreseeable legal provisions. Retroactive or uncertain legislation may itself constitute a violation.<sup>89</sup> The legitimate aim encompasses the public or general interest, including social and economic policy goals.<sup>90</sup> National authorities have a wide margin of appreciation when identifying these interests, but the ECtHR still reviews their decisions to ensure that the measures adopted are not “manifestly without reasonable foundation.”<sup>91</sup>

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<sup>82</sup> HARRIS, O’BOYLE, NATES and BUCKLEY (2023), p. 864.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid., pp. 866-867

<sup>85</sup> D. J. HARRIS, M. O’BOYLE, E. P. NATES, and C. M. BUCKLEY (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press, chap. 20, Article 1, First Protocol: The Right to Property, 1. Introduction, pp. 866-867.

<sup>86</sup> CHIRAGOV and Others v. Armenia, ECtHR (Grand Chamber), Judgment of 16 June 2015, App. No. 13216/05, and MAHARRAMOV v. Azerbaijan, ECtHR, Judgment of 12 December 2023, App. No. 32717/18.

<sup>87</sup> Council of Europe, *Guide on Article 1 of Protocol No. 1 to the European Convention on Human Rights: Protection of Property*, Updated 31 August 2020, p. 16

<sup>88</sup> SCHABAS, W. A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, Art. 1, Protection of Property/Protection de la Propriété, Introductory comments, p. 974

<sup>89</sup> Ibid.

<sup>90</sup> D. J. HARRIS, M. O’BOYLE, E. P. NATES, and C. M. BUCKLEY (2023). *Law of the European Convention on Human Rights*, 5th ed. Oxford: Oxford University Press, chap. 20, Article 1, First Protocol: The Right to Property, 1. Introduction, p. 879 (on Beyeler v. Italy).

<sup>91</sup> D. J. HARRIS, M. O’BOYLE, E. P. NATES, and C. M. BUCKLEY (2023), pp. 876–879.

The fair balance principle, first articulated in *Sporrong and Lönnroth v. Sweden*,<sup>92</sup> requires that the burden of pursuing legitimate public objectives not fall disproportionately on an individual property owner. The assessment takes into account whether the measure was timely and foreseeable, whether adequate procedural safeguards were in place, whether compensation was provided, and whether the public interest could have been achieved through less restrictive alternatives.<sup>93</sup> It is also noted that compensation need not equal full market value but must be reasonably related to the property's value.<sup>94</sup> In cases of prolonged inaction or delayed enforcement, the ECtHR has found violations due to excessive burden on property owners.<sup>95</sup> This proportionality analysis applies to all types of interferences, whether classified as deprivation, control of use, or other restrictions, and ensures that national authorities remain accountable when their measures are arbitrary or manifestly unjustified. At the same time, the ECtHR's review remains deferential to national authorities, particularly in social and economic regulation, but strict scrutiny is applied where persistent, arbitrary, or manifestly unjustified measures are evident.<sup>96</sup>

Having outlined the scope of protection and the principles governing lawful interference, it is necessary to analyze the admissibility and jurisdictional requirements for invoking A1P1. In order for an application to be considered by the Court, it must satisfy several jurisdictional criteria. First, *ratione materiae* requires the existence of a possession within the meaning of the provision. Second, *ratione temporis* ensures that the Court has temporal jurisdiction over the events in question. Third, *ratione loci* addresses territorial or extraterritorial jurisdiction, which extends to areas under the effective control of a state, even if these lie beyond its recognized borders, and fourth, *ratione personae* concerns the applicant's status as a victim.<sup>97</sup> It is important to mention that territorial jurisdiction extends to all areas under the effective control of a state, including those situated beyond its internationally recognized borders.<sup>98</sup> Furthermore, applicants must qualify as victims under

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<sup>92</sup> SPORRONG and LÖNNROTH v. Sweden, App. No. 7151/75, ECtHR, 23 September 1982.

<sup>93</sup> D. J. HARRIS, M. O'BOYLE, E. P. NATES, and C. M. BUCKLEY (2023), p. 872.

<sup>94</sup> Papastavrou and Others v. Greece, ECtHR, Judgment of 10 April 2003, Application No. 46372/99, and LITHGOW and Others v. the United Kingdom, ECtHR, Judgment of 8 July 1986.

<sup>95</sup> HARRIS, D. J.; O'BOYLE, M.; and NATES, E. P. et al. (2023). *Law of the European Convention on Human Rights*. Fifth edition. Oxford: Oxford University Press, chapter 20, Article 1, First Protocol: The Right to Property, 1. p. 872.

<sup>96</sup> *Ibid.*, pp. 876–879.

<sup>97</sup> GOMIEN, D., HARRIS, D., and ZWAAK, L. (1996). *Law and Practice of the European Convention on Human Rights and the European Social Charter*. Strasbourg: Council of Europe Publishing, p. 65, "The Competence of the Commission."

<sup>98</sup> GRGIĆ, A., MATAGA, Z., LONGAR, M., and VILFAN, A. (2006). *The Right to Property under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and Its Protocols*. Human Rights Handbooks, No. 10. Strasbourg: Council of Europe, p. 32.

Article 34, including natural and legal persons,<sup>99</sup> as well as heirs.<sup>100</sup> Also, exhaustion of domestic remedies is generally required, except in cases where remedies are inaccessible, ineffective, or illusory.<sup>101</sup>

The ECtHR additionally recognizes continuing violations in situations where access to property is obstructed over time.<sup>102</sup> Georgia's reservations to A1P1, relating to IDPs and specific legislation, illustrate how states frame exceptional circumstances under prolonged occupation while raising questions of compatibility with the ECHR's object and purpose.<sup>103</sup>

To summarize, this chapter established the doctrinal foundation necessary for analyzing property rights in contested and occupied territories. By clarifying the scope of protected possessions, the conditions for lawful interference, and the criteria for admissibility and jurisdiction, it provides the basis for the subsequent discussion of how the ECHR applies beyond a state's recognized borders. Accordingly, chapter 2 builds on this framework to examine the challenges of extraterritorial application and the ECtHR's jurisprudence on effective control.

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<sup>99</sup> GOMIEN, D., HARRIS, D., and ZWAAK, L. (1996). *Law and Practice of the European Convention on Human Rights and the European Social Charter*. Strasbourg: Council of Europe Publishing, p. 65, "The Competence of the Commission."

<sup>100</sup> SCHABAS, William A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, p. 958.

<sup>101</sup> SCHABAS, William A. (2015). *The European Convention on Human Rights: A Commentary*. Oxford: Oxford University Press, p. 958.

<sup>102</sup> *Ibid.*, p. 984.

<sup>103</sup> *Ibid.*

## 2. PROPERTY RIGHTS IN OCCUPIED TERRITORIES: APPLICATION OF THE CONVENTION AND JURISDICTIONAL CHALLENGES

### 2.1. Extraterritorial application of the ECHR and the doctrine of effective control

The protection of property rights under Article 1 of Protocol No. 1 becomes more complicated when sovereignty is disputed or when a state tries to exercise authority beyond internationally recognized borders. In such situations, the gap between the guarantees provided by A1P1 and the reality of political or military power becomes evident. The goal is to ensure that the rights of affected individuals are meaningfully protected, even in circumstances that challenge conventional legal frameworks.

At the same time, the ECtHR operates at the intersection of legal principle and geopolitical realities, where the application of A1P1 cannot be considered in isolation from the broader international context. International law establishes the principles of territorial integrity and political independence as foundational norms. Key instruments, including the Charter of the Organization of African Unity,<sup>104</sup> the 1970 United Nations Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States,<sup>105</sup> and the 1975 Helsinki Final Act,<sup>106</sup> reaffirm that states must respect the sovereignty and territorial borders of other states. Over the decades, these norms have evolved into jus cogens prohibitions against the acquisition of territory through force, making the invasion, annexation, or military occupation of a foreign territory inherently unlawful. The UN Charter, the 1974 UN General Assembly Definition of Aggression, and the 2010 Kampala Review Conference of the International Criminal Court reiterate that territorial conquest cannot confer lawful title<sup>107</sup> or relieve a state of responsibility for human rights violations. Accordingly, international law establishes that factual control, rather than formal recognition or legality of occupation, determines the scope of responsibility for protecting human rights under A1P1.

Within the European human rights system, the ECtHR has consistently applied these principles in cases of prolonged occupation or contested sovereignty. The

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<sup>104</sup> Charter of the Organization of African Unity (1963). [https://au.int/sites/default/files/treaties/7759-file-oau\\_charter\\_1963.pdf](https://au.int/sites/default/files/treaties/7759-file-oau_charter_1963.pdf)

<sup>105</sup> United Nations General Assembly, *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States* (1970).

<sup>106</sup> Conference on Security and Co-operation in Europe (CSCE), *Helsinki Final Act* (1975). <https://www.csce.gov/wp-content/uploads/2016/10/Helsinki-Final-Act.pdf>

<sup>107</sup> Shelton, Dinah (ed.), *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013), pp. 388 (Territorial integrity); 389 (The forceful acquisition of a territory); 390–392 (Secession).

jurisprudence following Turkey's invasion of Northern Cyprus demonstrates the ECtHR's reliance on effective control rather than formal legal title to attribute responsibility.<sup>108</sup> It is underscored that what matters for the application of AIP1 is whether the state has the capacity, through military, political, or economic means, to regulate and ensure protection of property, even where the legal ownership of the territory remains disputed or contested.<sup>109</sup>

The ECtHR's approach must be also understood in the context of broader legal norms on unilateral secession. Indeed, historical and contemporary experiences, including Katanga, Biafra, and the Turkish Republic of Northern Cyprus, demonstrate international law's general prohibition of unilateral secession achieved through force or coercion, whereas consensual dissolutions, negotiated peace settlements, or agreed federal arrangements, such as in Czechoslovakia, Eritrea, and South Sudan, have been treated as legitimate. Moreover, the ICJ's Advisory Opinion on Kosovo clarified that declarations of independence do not per se violate international law, but they do not generate a general right to secede outside these narrowly defined circumstances. The rationale underpinning these decisions is inherently pragmatic, because the international community tolerates secession only when necessary to preserve political stability, prevent economic disintegration, and avoid renewed cycles of minority exclusion, displacement, or ethnic cleansing.<sup>110</sup> Accordingly, in this context, the ECtHR's assessment of property rights in contested territories must engage with both normative principles and the realities of governance structures established by occupying or de facto authorities.

In this regard, the doctrines of effective control and decisive influence<sup>111</sup> provide the ECtHR with a robust legal framework for the extraterritorial application of AIP1. Effective control arises where a state exercises direct authority, often through military presence, administrative oversight, or other mechanisms allowing it to regulate local governance. By contrast, decisive influence applies where a state substantially shapes or supports local authorities that cannot act independently, rendering it responsible for their actions. These doctrines are particularly important in property rights cases because violations in conflict-affected areas rarely take the form of isolated incidents. They often involve prolonged displacement, denial of access to homes or land, destruction of property,

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<sup>108</sup> Loukis G. Loucaides, "The Protection of the Right to Property in Occupied Territories," *International and Comparative Law Quarterly*, vol. 53, no. 3 (2004), p. 683.

<sup>109</sup> Shelton, Dinah (ed.), *The Oxford Handbook of International Human Rights Law* (Oxford: Oxford University Press, 2013), p. 388 (Territorial integrity); p. 389 (The forceful acquisition of a territory); pp. 390–392 (Secession).

<sup>110</sup> *Ibid.*

<sup>111</sup> Bantekas, Ilias, and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), pp. 669–670 ("Human rights in situations of military occupation").

administrative measures undermining ownership, and complex disputes over legal titles and inheritance. Property rights violations in such contexts are often structural rather than episodic. Displaced persons may face ongoing obstacles to returning to or enjoying their property, including physical barriers, administrative restrictions, or restrictions imposed by de facto authorities. As a result, these challenges highlight the importance of the continuing violation doctrine, whereby each day of denied access is considered a fresh interference under A1P1.

Furthermore, the international human rights regime functions simultaneously as a legal and political framework, meaning that the interpretation of rights often adapts to geopolitical realities. This dynamic is particularly visible in the case law of the ECtHR concerning property rights under A1P1. As conflicts, occupations, and the emergence of unrecognized de facto regimes became more prevalent, the ECtHR was compelled to adjust its reasoning in order to ensure that A1P1 protection does not collapse in situations where the territorial state no longer has the capacity to guarantee rights. Consequently, although A1P1 was originally designed to regulate the relationship between individuals and their lawful state authorities, its application in occupied or conflict-affected territories requires a modified analytical approach. In these contexts, formal sovereignty becomes less relevant, while the factual ability of a state to control territory and individuals becomes decisive.

This shift becomes clearer when contrasted with the Court's early jurisprudence, which was developed in stable constitutional systems such as those examined in *Sporrong and Lönnroth v. Sweden*,<sup>112</sup> *James and Others v. the United Kingdom*,<sup>113</sup> *Beyeler v. Italy*,<sup>114</sup> and *Brumărescu v. Romania*.<sup>115</sup> In these judgments, the ECtHR set out the traditional three-part test, which means that any interference with property must follow the law, pursue a legitimate aim, and strike a fair balance between public interest and individual rights. These cases assumed that domestic institutions were functioning, remedies were accessible, and state authority was clearly defined. In occupied territories, these assumptions usually do not apply. Domestic legal systems may fail, replacement institutions may not be recognized or may lack legitimacy, and people often cannot practically access their homes, land, or other property. This fundamental change in context pushed the ECtHR to rethink how A1P1

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<sup>112</sup> *Sporrong and Lönnroth v. Sweden*, Judgment of 23 September 1982

<sup>113</sup> *James and Others v. United Kingdom*, Judgment of 21 February 1986

<sup>114</sup> *Beyeler v. Italy*, No. 33202/96, Judgment of 5 January 2000

<sup>115</sup> *Brumărescu v. Romania*, Judgment of 28 May 1999

should operate where authority is no longer exercised by the sovereign state but by another actor holding factual power.<sup>116</sup>

The ECtHR first articulated the new approach in *Loizidou v. Turkey*,<sup>117</sup> where it recognized that obligations under the Convention may extend to areas outside a state's formal borders when that state exercises effective control over the territory. The same principle was affirmed in *Cyprus v. Turkey*,<sup>118</sup> where the ECtHR held that thousands of displaced persons faced an ongoing violation as long as they remained prevented from using or reclaiming their property. Through these cases, the ECtHR established that territorial control, rather than sovereignty, determines whether a State bears responsibility under A1P1.<sup>119</sup>

As conflicts evolved, the ECtHR also refined its understanding of how responsibility arises in situations where a state does not directly administer a territory but nevertheless exercises decisive influence over local authorities. This development began with *Ilaşcu and Others v. Moldova and Russia*.<sup>120</sup> Although the Transnistrian territory remained internationally part of Moldova, the ECtHR held Russia responsible because political, economic, and military support rendered the de facto administration dependent on Russian authority.<sup>121</sup> The ECtHR held that a state can be responsible under the ECHR if it has the ability to prevent, halt, or fix violations carried out by local authorities that act under its decisive influence. This reasoning was upheld in later cases, notably *Catan and Others v. Moldova and Russia*<sup>122</sup> and *Chiragov and Others v. Armenia*,<sup>123</sup> which reaffirmed that factual authority in all its forms establishes jurisdiction under A1P1.

A different type of situation arose in *Georgia v. Russia (II)*.<sup>124</sup> The Court drew a strict distinction between the five days of active hostilities in August 2008 and the period after the ceasefire. During the active hostilities, the chaotic nature of the fighting made it impossible to attribute territorial or personal jurisdiction to either side. Once the ceasefire took effect, however, Russia exercised stable and comprehensive control over Abkhazia, South Ossetia, and the surrounding areas. The ECtHR therefore attributed responsibility

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<sup>116</sup> D. J. Harris, M. O'Boyle, E. P. Nates, and C. M. Buckley, *Law of the European Convention on Human Rights*, 5th ed. (Oxford: Oxford University Press, 2023), chap. 20, "Article 1, First Protocol: The Right to Property," 1. Introduction, p. 876.

<sup>117</sup> *Loizidou v. Turkey (1996, Grand Chamber)*, HUDOC.

<sup>118</sup> *Cyprus v. Turkey, (2001)* HUDOC.

<sup>119</sup> Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3rd ed. (Oxford: Oxford University Press, 2014), "Home," p. 548.

<sup>120</sup> *Ilaşcu and Others v. Moldova and Russia (2004)*, HUDOC.

<sup>121</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), "Human rights in situations of military occupation," pp. 669–670.

<sup>122</sup> *Catan and Others v. Moldova and Russia (2012)*, HUDOC

<sup>123</sup> *Chiragov and Others v. Armenia (2015)*, HUDOC

<sup>124</sup> *Georgia v. Russia (II)*, App. No. 38263/08

for violations of A1P1 during the post-conflict period, including the destruction of homes, denial of return, and the imposition of restrictions along the administrative boundary lines.<sup>125</sup> This reasoning was further confirmed in *Georgia v. Russia (IV)*,<sup>126</sup> where the Court reiterated that Russian military, political, and economic dominance ensured the survival of local administrations, making their conduct attributable to Russia. The ECtHR also clarified that effective control persisted well beyond 2008, meaning that Russia's obligations under A1P1 continued during subsequent years of occupation.

The most recent refinement appears in *Taganova and Others v. Georgia and Russia*,<sup>127</sup> in which the ECtHR systematically assessed Russian presence, support networks, and command structures in Abkhazia.<sup>128</sup> It concluded that Russia exercised effective control over the territory and that displaced ethnic Georgians had been continuously deprived of access to and enjoyment of their properties. The ECtHR held that this ongoing deprivation imposed a disproportionate burden on the applicants in violation of A1P1. Significantly, the ECtHR also found that Georgia had fulfilled its positive obligations because, despite lacking access to the territory, it adopted legislative measures, engaged in humanitarian assistance, and cooperated with international organizations. This illustrates the ECtHR's increasingly realistic approach to positive duties, recognizing the limits faced by a sovereign state that no longer controls its own internationally recognized territory.<sup>129</sup>

Taken together, these judgments form a coherent doctrine whereby A1P1 applies wherever a state exercises factual authority, whether through direct military presence or through decisive influence over local actors. Violations in occupied or controlled territories frequently take the form of long-term restrictions on access, use, and enjoyment. Because these restrictions persist as long as the controlling power maintains authority, the ECtHR consistently treats them as continuing violations. This approach ensures that the protection of possessions under A1P1 does not disappear in situations where sovereignty is disputed and ordinary legal mechanisms have collapsed, thereby safeguarding individuals from the erosion of their property rights in conflict-affected regions.

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<sup>125</sup> Milanović, Marko. "Georgia v. Russia No. 2: The European Court's Resurrection of Bankovic in the Contexts of Chaos." *EJIL:Talk!*, 25 January 2021.

<sup>126</sup> *Georgia v. Russia (IV)*, App. No. 39611/18, Second Section, 9 April 2024, HUDOC.

<sup>127</sup> *Taganova and Others v. Georgia and Russia*, Applications Nos. 18102/04 and others, Judgment of 17 December 2024, Rectified 21 January 2025, Final 17 March 2025, HUDOC.

<sup>128</sup> European Human Rights Advocacy Centre (EHRAC), "Court Finds Violations by Russia of Property and Family Rights for Those Forced from Property in Abkhazia (*Taganova and Others v. Georgia and Russia*)," 20 December 2024, Middlesex University, School of Law.

<sup>129</sup> *Taganova and Others v. Georgia and Russia*

In sum, this chapter explores how A1P1 operates in territories affected by occupation or de facto control, focusing on the doctrinal evolution of the ECtHR's approach, the practical challenges faced by displaced populations, and the interaction between normative guarantees and political constraints. By examining the principles of effective control, decisive influence, and continuing violations, as well as the jurisprudence developed in contexts such as Northern Cyprus, Transdnistria, and the occupied territories of Georgia, the chapter establishes a comprehensive analytical foundation. Ultimately, it highlights the ways in which the Court adapts its reasoning to complex realities, ensuring that property rights remain meaningful even when the standard assumptions of domestic protection no longer apply. It therefore sets the stage for the detailed analysis in the subsequent subchapters, which consider, the Georgian case study, comparative approaches to occupation-related property violations, and the doctrinal and practical distinctions between ordinary domestic and occupation-related cases.

## 2.2. Case study: Occupied territories of Georgia

This case study applies the doctrinal framework developed in Chapter 1 to the specific context of Abkhazia and South Ossetia, illustrating how the principles of extraterritorial jurisdiction and effective control operate in practice. The situation in Georgia demonstrates that prolonged denial of access to property, the establishment of unrecognized administrations, and sustained involvement of Russia in governance and security structures create conditions in which ordinary property protections under A1P1 cannot function effectively. Accordingly, examining these circumstances alongside the leading cases before the ECtHR clarifies how factual control reshapes the legal environment for property rights and how the Court has attempted to address these complex realities.<sup>130</sup>

This case study is significant for two interconnected reasons. First, it demonstrates that prolonged occupation fundamentally alters the way A1P1 functions in practice. Property rights violations become systemic, linked to the structure of control rather than to individual administrative decisions. Second, it shows that when domestic remedies cease to exist, the ECtHR becomes the primary avenue for individuals seeking recognition of their rights. The Georgian experience thus provides an important illustration of how

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<sup>130</sup> Polish Institute of International Affairs (PISM), "Judgment of the European Court of Human Rights in the Case *Georgia v. Russia*," 22 January 2021.

jurisdiction, responsibility, and fair balance are recalibrated when the ECHR is applied in territories where sovereignty is contested and ordinary legal mechanisms have collapsed.<sup>131</sup>

### *2.2.1. Background: Displacement and Property loss in Abkhazia and South Ossetia*

The roots of displacement and property loss in Abkhazia and South Ossetia are long and complex, shaped by historical, political, and demographic dynamics that predate the dissolution of the Soviet Union. During the Soviet period, central policies aimed at managing ethnic diversity and reinforcing Moscow's authority created local administrative structures that had some autonomy but were still dependent on the central government. These arrangements, combined with efforts at rapid modernization and the suppression of distinct political identities, weakened intercommunity trust and fostered tensions that would later crystallize into demands for secession. As a result, those historical processes laid the groundwork for the violent contests of the early 1990s, when both Abkhazia and South Ossetia sought independence from the newly independent Georgian state.<sup>132</sup>

In order to better understand the nature and scale of AIP1 violations in these territories, it is important to consider their historical background. The conflicts in Abkhazia and South Ossetia in the early 1990s and the 2008 war resulted in large-scale displacement and widespread loss of property. Hundreds of thousands of ethnic Georgians fled their homes, often within hours or days, with no opportunity to secure personal belongings or safeguard title documents. After hostilities ended, return became impossible due to the presence of Russian forces, the establishment of de facto administrations, and the imposition of severe restrictions on crossing the administrative boundary lines. These conditions produced long-term exclusion from property rights, accompanied by widespread destruction of housing, appropriation of land, and the complete absence of functioning legal remedies capable of addressing these violations.<sup>133</sup>

Over time, these authorities adopted administrative and legislative measures that consolidated their control over land and housing, often excluding displaced persons from any form of participation or remedy. These developments are well documented in reports

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<sup>131</sup> Civil Georgia, *Court Rules Russia Must Pay Damages over Georgia War*, n.d.  
<https://civil.ge/archives/393735>

<sup>132</sup> Cain, Edward N., "European Court of Human Rights' Ruling in *Georgia v. Russia (II)* and Its Application to the Current Crisis in Ukraine," *Loyola University Chicago International Law Review* 19, no. 2 (2023): 209–212.

<sup>133</sup> *Ibid.*

by the OSCE, which describe not only looting and destruction of property but also long-term difficulties for returnees in accessing documentation or reclaiming their homes.<sup>134</sup>

The armed hostilities of August 2008 intensified dynamics that had already developed during the conflicts of the early 1990s and, in doing so, transformed existing patterns of displacement and property loss into a far more entrenched and enduring reality. When Russian forces crossed into Georgian territory in early August, the fighting unfolded rapidly and resulted in the occupation of several towns and villages.<sup>135</sup> These military developments produced a new wave of displacement, accompanied by widespread destruction and looting, particularly in ethnically mixed areas adjacent to the administrative boundary lines. Although a substantial proportion of those newly displaced were able to return once active hostilities ceased, tens of thousands remained unable to recover their homes or land because access was blocked, properties were destroyed, or local conditions made return unsafe.

For many Georgian citizens displaced in the early 1990s, the 2008 events had an equally profound impact, which means that they reinforced the perception that political and territorial developments were moving decisively against the prospect of return, prompting growing numbers of long-term internally displaced persons to reconsider their expectations and instead look for alternative long-term solutions within Georgia.<sup>136</sup>

The conflict also had political and legal consequences. According to the Council of Europe's consolidated reports on Georgia, the "borderization" phenomenon, meaning the gradual strengthening of administrative boundaries, has continued in Abkhazia. This has limited freedom of movement and made it harder for displaced people to return and claim their property.<sup>137</sup> Over time, the situation gradually evolved from an emergency situation caused by active hostilities to a more long-term, stabilized but illegal control, during which violations of property rights became structural rather than episodic.

This transformation of the legal and practical environment also affected the role of Georgia as the territorial state. Article 19 of the Constitution of Georgia guarantees the right to own and inherit property and establishes conditions for lawful restrictions and

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<sup>134</sup> Office for Democratic Institutions and Human Rights, *Human Rights in the War-Affected Areas Following the Conflict in Georgia* (Warsaw: 27 November 2008).  
<https://www.osce.org/files/f/documents/d/6/35578.pdf>

<sup>135</sup> United Nations High Commissioner for Refugees (UNHCR), *Protection of Internally Displaced Persons in Georgia: A Gap Analysis* (July 2009), p. 7.

<sup>136</sup> *Ibid.*, pp. 10–11.

<sup>137</sup> Civil Georgia, *Court Rules on Property Rights of Displaced Persons in Georgia*, Civil.ge.  
<https://civil.ge/archives/454353>

expropriation, including mandatory full and fair compensation.<sup>138</sup> However, because Georgia lost effective control over Abkhazia and South Ossetia, it could no longer provide domestic remedies or enforce property claims within the territories. Instead, Georgia adopted legislative frameworks to help internally displaced persons register their pre-war property. The ECtHR in its ruling acknowledged Georgia's efforts, including its "Law on Occupied Territories," but it also concluded that practical challenges made those efforts insufficient in the absence of control.<sup>139</sup> Moreover, international and humanitarian organizations, such as UNHCR and ICRC, have been involved in monitoring and assisting with property-related claims, although their access is often limited by the de facto authorities.<sup>140</sup> These dynamics show how Georgia's positive obligations under AIP1 need to be interpreted in their larger context, which means that despite being structurally barred from exercising control, the sovereign state nevertheless uses non-territorial means to protect property rights.

In addition to international protection under the European Convention on Human Rights, Georgia has enacted the "Law of Georgia on Occupied Territories," which confirms that Abkhazia and South Ossetia remain part of Georgia and recognizes that displaced persons retain their property rights. The law further provides that if restitution is impossible due to occupation, displaced persons are entitled to compensation. This domestic legal framework complements the ECtHR's doctrine on effective control and provides a clear national foundation for claims by displaced persons.<sup>141</sup>

In this context, individual applicants increasingly turned to the ECtHR to assert their rights and to hold Russia responsible as the state exercising factual control over the territories. The *Loizidou v. Turkey*<sup>142</sup> and *Cyprus v. Turkey*<sup>143</sup> line of cases provided the jurisprudential foundation, while the Georgia-related cases allowed the ECtHR to refine and apply this approach to a different geographical and political context. Through the successive judgments in *Georgia v. Russia (II)*,<sup>144</sup> *Georgia v. Russia (IV)*,<sup>145</sup> and *Taganova and Others v. Georgia and Russia*,<sup>146</sup> the ECtHR clarified that Russia's military presence,

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<sup>138</sup> Constitution of Georgia, Article 19, *Right to Property*. <https://wipolex-res.wipo.int/edocs/lexdocs/laws/en/ge/ge066en.html>

<sup>139</sup> Civil Georgia, "ECHR: Russia Failed to Ensure Displaced Homeowners Rights in Abkhazia, Georgia," *Civil Georgia*, 17 December 2024. <https://civil.ge/archives/645783>

<sup>140</sup> Civil Georgia, "Court Rules on Property Rights of Displaced Persons in Georgia," *Civil Georgia*. <https://civil.ge/archives/454353>

<sup>141</sup> Law of Georgia on Occupied Territories (adopted 23 October 2008). <https://matsne.gov.ge/en/document/view/19132>

<sup>142</sup> *Loizidou v. Turkey*

<sup>143</sup> *Cyprus v. Turkey*

<sup>144</sup> *Georgia v. Russia (II)*, Judgment of 21 January 2021, Application No. 38263/08

<sup>145</sup> *Georgia v. Russia (IV)*, Application No. 39611/18, Judgment of 9 April 2024

<sup>146</sup> *Taganova and Others v. Georgia and Russia*

political involvement, and economic support placed the territories under its effective control.<sup>147</sup> Legal analysts have interpreted this decision as confirming that de facto authorities in these regions are not independent but subordinate to Russia.<sup>148</sup> Through subsequent judgments, the ECtHR also clarified that ongoing denial of access to property, destruction of homes, and movement restrictions can be directly attributed to Russia as the controlling power.<sup>149</sup>

The Georgian cases also highlight how the nature of AIP1 violations evolves in prolonged occupation settings. Rather than being framed as isolated, momentary breaches, the ECtHR confronted a continuum of interferences. Thousands of displaced people were prevented from using, inheriting, or returning to their possessions not because of a single act but due to a system of control maintained by the de facto power structures. This persistent denial led the ECtHR to characterize such harm as a continuing violation.<sup>150</sup> The interference continues because the controlling power still has the ability to act, even though normal property law would not allow it. Altogether, these events show three key features of property loss under long-term occupation.

The first is that displacement occurs suddenly, but the denial of return persists for prolonged periods. In both Abkhazia and South Ossetia, civilians were often forced to flee with little or no warning, leaving behind homes, land, and possessions. Decades later, large parts of the displaced population remain unable to return, not because formal decisions were ever issued depriving them of ownership, but because the security situation, the presence of Russian forces, and the practices of local de facto authorities have made return practically impossible. Over 26,000 Georgian citizens remain displaced as a result of the 2008 war, many of whom continue to be denied the right to return to their homes. This ongoing deprivation underscores the continuing nature of property and housing rights violations in the occupied territories.<sup>151</sup>

The second feature concerns the breakdown of domestic protection mechanisms in areas that are no longer under the authority of the sovereign state. Once the de facto authorities consolidated control, Georgia's courts and administrative institutions became

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<sup>147</sup> K. Dzehtsiarou, "Georgia v. Russia (II)," *American Journal of International Law* 115, no. 2 (2021): 288–294.

<sup>148</sup> Polish Institute of International Affairs (PISM), "Judgment of the European Court of Human Rights in the case Georgia v. Russia," 22 January 2021.

<sup>149</sup> "Violations of civilian property rights in Abkhazia! Russia's condemnation," *ECHRCaseLaw.com*, 29 December 2024.

<sup>150</sup> Polish Institute of International Affairs (PISM), "Judgment of the European Court of Human Rights in the case Georgia v. Russia," 22 January 2021.

<sup>151</sup> Natia Seskuria, "Georgia's Historic Victory: Implications of the ECHR Ruling," *Middle East Institute*, 11 February 2021.

inaccessible to those trying to assert property rights. Within the territories themselves, the institutions that operate are not recognized under international law<sup>152</sup> and do not provide remedies that meet international standards. Consequently, displaced persons have been left without any meaningful avenue to challenge interference with their possessions. This institutional vacuum is central to understanding why property-related grievances in these territories have evolved into continuing violations under AIP1.

The third structural feature arises from the legal regimes introduced by de facto authorities. These regimes have fragmented property protection and created statutory barriers that either complicate or entirely prevent the lodging of restitution claims. Changes to citizenship rules, residency requirements, land registration procedures, and documentation obligations have placed displaced persons in an impossible position: they cannot assert property rights unless they accept the legitimacy of the de facto authorities or obtain documents that lack validity outside the territories. These measures function not only as administrative obstacles but also as tools that shape the long-term demographic and political landscape of the territories.<sup>153</sup>

These structural developments have had severe consequences for individuals on both sides of the administrative boundary lines. Individuals who remained in Abkhazia or South Ossetia after the conflicts often faced pressure to comply with local regulations by transferring property under the systems established by the de facto authorities or by accepting the loss of their homes in practice even where formal titles still existed.<sup>154</sup> Those who had fled encountered a different but equally insurmountable set of obstacles: the loss or destruction of property documents, the absence of functioning registries, local rules barring claims by people who left during the conflicts, and, in some cases, the risk of losing their Georgian nationality or acquiring an uncertain legal status if they sought to engage with local administrative bodies.

These circumstances have turned what might once have seemed like individual property disputes into structural, long-term human rights issues under AIP1. The main problem is not a single act of interference but the ongoing inability to exercise ownership, combined with the lack of effective remedies, even though “*All refugees and displaced persons have the right to have restored to them any housing, land, and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land,*

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<sup>152</sup> UNHCR, *Protection of Internally Displaced Persons in Georgia: A Gap Analysis* (July 2009), 13.

<sup>153</sup> OSCE Review Conference – Human Dimension Session, Warsaw, 30 September–8 October 2010, Working Session 6, *Human Rights in the Occupied Territories of Georgia*, Information Note Distributed by the Delegation of Georgia, p. 1.

<sup>154</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), “Human rights in situations of military occupation,” p. 665.

*and/or property that is factually impossible to restore as determined by an independent, impartial tribunal.”*<sup>155</sup>

The legal and administrative measures adopted by the de facto authorities in Abkhazia<sup>156</sup> and South Ossetia/ Tskhinvali Region<sup>157</sup> have contributed significantly to this situation. Rules governing citizenship and residency have, in some cases, required returnees to renounce their Georgian nationality or accept documents that have no standing outside the territories, creating a genuine fear of statelessness or legal marginalization. Likewise, restrictions on the registration and inheritance of property, as well as regulations limiting the ability of displaced persons to bring claims before local bodies, have created a legal environment in which restitution is either impossible or dependent on acceptance of the de facto authorities’ legitimacy. These measures operate alongside the physical barriers imposed since 2008, including “borderization,”<sup>158</sup> checkpoints, and controls on freedom of movement, which further deter individuals from pursuing claims or attempting to access their property.

On the Georgian side, as it was also mentioned above, the state has developed systems for documenting displacement and providing support to internally displaced persons, including housing assistance and certain compensation mechanisms.<sup>159</sup> However, these measures cannot restore effective control over property located in territories where Georgia does not exercise authority. The gap between the formal protection offered by domestic law and the reality on the ground reflects a fragmented legal situation in which individuals are left without meaningful remedies. This fragmentation highlights the importance of international adjudication, where responsibility is assessed on the basis of factual control rather than formal sovereignty. The situation in Abkhazia and South Ossetia therefore clearly demonstrates how long-term occupation turns property issues into broader and continuing human rights problems under AIP1.<sup>160</sup>

Finally, it is necessary to emphasize the human consequences of this prolonged situation. The inability to return is not solely a legal or economic issue but one that affects

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<sup>155</sup> United Nations, *Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons* (2005), Principle 2.1, 24. [https://www.ohchr.org/Documents/Publications/pinheiro\\_principles.pdf](https://www.ohchr.org/Documents/Publications/pinheiro_principles.pdf)

<sup>156</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), “Human rights in situations of military occupation,” p. 665.

<sup>157</sup> *Ibid.*

<sup>158</sup> Giorgi Menabde, “Georgian Dream Not Expected to Demand Russia Pay ECHR Fine,” *Eurasia Daily Monitor*, vol. 22, issue 145 (The Jamestown Foundation, 29 October 2025).

<sup>159</sup> Amnesty International, *In the Waiting Room: Internally Displaced People in Georgia* (London: Amnesty International, 2010), 17.

<sup>160</sup> Edward N. Cain, “European Court of Human Rights’ Ruling in Georgia v. Russia (II) and Its Application to the Current Crisis in Ukraine,” *Loyola University Chicago International Law Review* 19, no. 2 (2023): 209–212.

individuals' sense of identity, belonging, and psychological security. Loss of homes and land has weakened traditional livelihoods, disrupted community networks, and limited access to schools, cultural heritage sites, and cemeteries. Reports by international monitors, parliamentary delegations, and humanitarian organizations consistently describe extensive destruction in areas formerly inhabited by ethnic Georgians, as well as ongoing intimidation, movement restrictions, and administrative practices that collectively prevent displaced persons from recovering their property or re-establishing their presence. These observations provide a consistent factual foundation for understanding how prolonged occupation has transformed property disputes in Abkhazia and South Ossetia into long-term human rights crises under Article 1 of Protocol No. 1, marked by continuing violations rather than isolated events.

Despite efforts to improve security and accountability, serious human rights concerns persist. The lack of progress in investigating the deaths of Giga Otkhзорia,<sup>161</sup> Davit Basharuli,<sup>162</sup> Archil Tatumashvili, Irakli Kvaratskhelia, and Inal Jabiev, as well as the more recent killings of Temur Karbaia and Tamaz Ginturi,<sup>163</sup> underscores the prevailing climate of impunity. These failures illustrate the structural fragility of the rule of law in the occupied territories and reinforce the urgent need for effective accountability mechanisms capable of addressing grave violations of human rights and IHL.<sup>164</sup>

These structural conditions help explain why property disputes from Abkhazia and South Ossetia end up before the ECtHR. Long-term displacement, the lack of any functioning legal remedies in the occupied territories, and the decisive role of the state exercising factual control have created a situation where property rights are continuously restricted. People are not only unable to use or access their homes and land, but they also have no realistic way to challenge what has happened, regain their property, or receive compensation. Given that there is no effective protection on the ground, affected individuals and the Georgian state increasingly turn to the ECtHR as the only body able to

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<sup>161</sup> *Case of Matkava and Others v. Georgia*, European Human Rights Advocacy Centre (EHRAC), 2023.

<sup>162</sup> European Parliament, "Resolution of 23 November 2023 on the Georgian citizens Tamaz Ginturi killed and Levan Dotiashvili abducted by the Russian occupation forces in the occupied Tskhinvali region of Georgia (2023/2981(RSP)),<sup>162</sup> *Official Journal of the European Union*, 23 November 2023.

<sup>163</sup> European Parliament, *Verbatim Report of Proceedings, 22 November 2023* (Strasbourg), "The killing of Tamaz Ginturi, a Georgian citizen, by Russia's occupying forces in Georgia."

[https://www.europarl.europa.eu/doceo/document/CRE-9-2023-11-22-INT-3-435-0000\\_EN.html](https://www.europarl.europa.eu/doceo/document/CRE-9-2023-11-22-INT-3-435-0000_EN.html)

"*Tamaz Ginturi, a veteran of war waged by Russia on Georgia in 2008, was killed by Russian forces near the administrative boundary line while heading to church with his companion, who was later captured and detained. We name in the resolution names of other victims, but our call is to establish the EU sanction list, similar to Otkhзорia-Tatumashvili, the Georgian list, that is to lead us in imposing sanctions for these kinds of actions against civilians and the ordinary people of Georgia, patriots of this country.*"

<sup>164</sup> Council of Europe, *Consolidated Report on the Conflict in Georgia (October 2023–March 2024)*, 15 April 2024, 9.

examine who is responsible for these long-term restrictions. Subsection 2.2.2 therefore looks at how Georgia has used both interstate and individual applications and how the Court has adapted its interpretation of AIP1 to address the realities of prolonged occupation.

### *2.2.2. Georgia before the European Court of Human Rights: Inter-State and Individual Applications*

Georgia's litigation before the ECtHR shows how the Convention system has gradually developed ways to address the long-term effects of conflict, displacement, and the loss of property in Abkhazia and South Ossetia. The Court has dealt with both inter-State cases brought by Georgia against Russia and individual applications from displaced persons who have been unable to use or reach their homes and land for many years. Taken together, these decisions form an increasingly consistent approach to questions of responsibility, jurisdiction, access to property, and the role of effective control in situations of prolonged occupation.

The first major interstate case was *Georgia v. Russia (I)*,<sup>165</sup> decided by the Grand Chamber in 2014. Although this case did not directly concern Abkhazia or South Ossetia, it demonstrated the Court's readiness to assess coordinated state conduct that affects large groups of people. The application concerned the mass arrest, detention, and expulsion of Georgian nationals from Russia in late 2006. The ECtHR found violations of Article 3, Article 5 paragraphs 1 and 4, and Article 4 of Protocol No. 4. While this judgment dealt primarily with migration and detention rather than property, it showed that the ECtHR was prepared to handle large-scale, systematic patterns of conduct by a state. This approach later became crucial in the conflict-related cases, which raise structurally similar issues of widespread displacement, destruction of homes, and long-term obstacles to return.

The core judgment on occupation, displacement, and property rights is *Georgia v. Russia (II)*,<sup>166</sup> delivered by the Grand Chamber in January 2021. In this case, the ECtHR held that Russia had exercised effective control over Abkhazia and South Ossetia since 2008. This finding was based on several indicators, including the presence and operational role of Russian troops, the involvement of Russian state structures, and the political, military, and economic dependence of the de facto authorities on Russia. Because Russia

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<sup>165</sup> *Georgia v. Russia (I)*, ECtHR, Application No. 13255/07, lodged 2007.

<sup>166</sup> *Georgia v. Russia (II)*, ECtHR (Grand Chamber), Judgment of 21 January 2021, Application No. 38263/08.

exercised this level of control, it was responsible for securing Convention rights in both territories. The ECtHR also found Russia responsible for multiple violations affecting civilians who were forced to flee, such as the destruction of houses, looting, the burning of villages, and the barriers that prevented displaced persons from returning to their homes. These measures interfered with the peaceful enjoyment of possessions under A1P1. Importantly, the ECtHR underlined that the ongoing inability to return was a continuing violation, not a past event. This confirmed that A1P1 applies in a dynamic way in post-conflict situations where long-term obstacles persist even after active fighting has ended.

A more recent interstate judgment, *Georgia v. Russia (IV)*,<sup>167</sup> examined the process commonly referred to as “borderization” along the administrative boundary lines with Abkhazia and South Ossetia. This process involves installing fences, barbed wire, surveillance equipment, and other physical structures that restrict movement and gradually alter the situation on the ground. These measures block access to homes, farmland, orchards, water sources, and family cemeteries. The ECtHR held that Russia continued to exercise effective control over the affected areas through its military presence and its decisive influence over the de facto authorities. The Court confirmed that these long-term restrictions amount to an interference with property rights under A1P1, even in the absence of formal expropriation. The judgment is significant because it recognizes that persistent obstacles preventing people from reaching or using their property can breach A1P1 in a way comparable to destruction or seizure. It also reinforces the understanding that effective control may be exercised through cumulative practices that reshape daily life in occupied territories.

The most important individual judgment relating directly to Abkhazia is the Grand Chamber’s ruling in *Taganova and Others v. Georgia and Russia*<sup>168</sup>. The applicants were Georgian nationals who had lost access to their homes and land in Abkhazia during the early nineteen nineties conflict and had never been able to return. The Court examined whether this long-term deprivation amounted to a continuing interference with their property rights under A1P1 and whether responsibility lay with Georgia, Russia, or both. It held that Russia exercised effective control over Abkhazia during the relevant period and therefore had responsibility under A1P1. Russia was held responsible for violations of A1P1 and Article 8 because the applicants had been entirely prevented from using or visiting their homes and land, and no compensation or legal remedy existed. The ECtHR

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<sup>167</sup> *Georgia v. Russia (IV)*, ECtHR (Second Section), Application No. 39611/18, Judgment of 9 April 2024,

<sup>168</sup> *Taganova and Others v. Georgia and Russia*, ECtHR, Applications Nos. 18102/04 and others, Judgment of 17 December 2024, Rectified 21 January 2025, Final 17 March 2025,

considered the violation to be ongoing from nineteen ninety-eight, when Russia ratified the Convention, until two 2022, when it withdrew from it. Georgia, by contrast, was not found responsible because it had no actual control over the territory and had taken reasonable steps to support displaced persons through legislative and humanitarian measures. The Court also emphasized that neither state provided an effective domestic remedy for the property complaints.

The *Taganova and Others v. Georgia and* <sup>169</sup> judgment also resolved several legal uncertainties. The ECtHR held that Georgia's reservation under Article fifty-seven concerning property rights in Abkhazia was invalid because it did not satisfy the Convention's formal requirements. It further explained that the declaration under Article 56 could not be interpreted as limiting the territorial scope of the Convention in a manner that would deprive individuals of the protection guaranteed by A1P1. These findings reaffirm the foundational principle that individuals must be able to rely on Convention guarantees regardless of unresolved political questions, parallel legal regimes, or the status of contested territories.

Taken together, the interstate cases and individual applications involving Georgia show how the ECtHR has moved from treating conflict-related incidents as isolated violations to addressing the prolonged consequences of occupation and displacement. The judgments clarify that effective control, not formal sovereignty, determines responsibility under the ECHR. They also establish that long-term obstacles preventing access to homes and land may constitute continuing violations under A1P1. This developing case law provides a doctrinal foundation for understanding how the ECtHR approaches A1P1 in situations of extended occupation. It also prepares the ground for the next subsection, which examines how these principles apply to the specific patterns of property interference that have emerged in Abkhazia and South Ossetia and how the Court's reasoning operates when addressing those concrete situations.

The Georgian cases therefore operate not only as individual judgments but also as part of a broader judicial trajectory in which the ECtHR refines its approach to effective control, continuing violations, and the practical consequences of prolonged displacement. They reveal the same structural patterns that have emerged in other occupied territories: the transformation of property violations into long-term restrictions, the centrality of access rather than formal expropriation, and the decisive role of factual authority over territory. These features position the Georgian situation firmly within the wider body of occupation

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<sup>169</sup> *Taganova and Others v. Georgia and Russia*, ECtHR, Applications Nos. 18102/04 and others, Judgment of 17 December 2024, Rectified 21 January 2025, Final 17 March 2025.

jurisprudence and make it necessary to assess how the Court's reasoning in Georgia compares with earlier decisions concerning Cyprus, southeast Turkey, Transdniestria, and Nagorno Karabakh. A comparative evaluation is essential because it shows the degree to which the Court has applied its principles consistently across different conflicts and how these principles have evolved in response to changing factual and political realities. It is this comparative analysis that forms the basis of the next subsection, which examines how the doctrines developed in other occupation cases illuminate the challenges faced in Abkhazia and South Ossetia and help to assess the strengths and limits of the court's current approach.

### *2.3. Comparison of Occupation Cases and Evaluation of the Court's Approach*

The challenges identified in the Georgian context cannot be fully understood without situating them within the broader jurisprudence on property rights in occupied or otherwise contested territories. The ECtHR has confronted similar patterns of displacement, loss of access, and prolonged factual control in several other situations, most prominently in cases concerning Northern Cyprus,<sup>170</sup> Transdniestria,<sup>171</sup> and more recently, Nagorno in cases concerning Northern Cyprus,<sup>172</sup> Transdniestria,<sup>173</sup> and more recently, Nagorno Karabakh.<sup>174</sup> While each conflict has its own historical and political specificities, these situations reveal a set of recurring legal issues that have shaped the Court's interpretation of A1P1. Examining them provides essential insight into the consistency of the Court's approach and clarifies whether the principles applied in Georgian cases reflect an incremental development or a departure from previous jurisprudence. In particular, viewing Georgian cases through this wider lens makes it possible to evaluate whether the Court applies a coherent doctrine across conflicts or whether its reasoning shifts depending on political sensitivities and the degree of factual control exercised by the respondent State.

A first point of comparison concerns the ECtHR's treatment of prolonged displacement as a continuing violation of A1P1. In the Cyprus line of cases, the ECtHR held that preventing displaced persons from returning to, accessing, or using their homes

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<sup>170</sup> *Loizidou v. Turkey*, Grand Chamber, judgment of 23 February 1995.

<sup>171</sup> Rooney, Jane, "The Relationship between Jurisdiction and Attribution after *Jaloud v. Netherlands*," *Netherlands International Law Review* 62 (2015): pp. 407–428.

<sup>172</sup> *Loizidou v. Turkey*, Grand Chamber, judgment of 23 February 1995.

<sup>173</sup> Rooney, Jane, "The Relationship between Jurisdiction and Attribution after *Jaloud v. Netherlands*," *Netherlands International Law Review* 62 (2015): pp. 407–428.

<sup>174</sup> *Chiragov and Others v. Armenia*, Grand Chamber, judgment of 16 June 2015, ECtHR.

and land constituted an ongoing interference with the peaceful enjoyment of possessions.<sup>175</sup> Furthermore, the ECtHR emphasized that even in the absence of formal expropriation measures, the continued denial of access represented a breach that persisted for as long as the situation remained unchanged.<sup>176</sup> This approach allows the ECtHR to avoid fragmenting the violation into isolated events and instead recognizes the systemic nature of property deprivation created by long-term territorial division. Accordingly, this logic strongly resonates with the Georgian cases, where the decisive factor has likewise been the applicants' inability to reach their property, obtain information about its condition, or make use of it in any meaningful way.<sup>177</sup>

By conceptualizing these situations as continuing violations, the Court recognizes that the harm is not a single event but a long-term consequence of altered territorial control. Moreover, the recurring inability to exercise ownership or enjoy possessions in contested areas demonstrates a structural pattern that extends beyond individual claims, highlighting the persistent challenges faced by displaced populations.<sup>178</sup> Therefore, examining Georgian cases alongside other contested contexts, such as Northern Cyprus, Transnistria, and Nagorno-Karabakh, illustrates that the ECtHR consistently applies its doctrinal framework for A1P1, adapting to the specific factual and political circumstances while maintaining a coherent legal approach.<sup>179</sup> Furthermore, the structural recognition of property deprivation underscores the ECtHR's understanding that long-term interference with possessions produces cumulative social, economic, and cultural effects for affected communities, which must be considered when evaluating violations under A1P1.

Across the earlier Cyprus line of cases, beginning with the four interstate applications and the landmark individual application in *Loizidou v. Turkey* and *Cyprus v. Turkey*,<sup>180</sup> the ECtHR treated prolonged denial of access as an interference with the peaceful enjoyment of possessions. The Court rejected the idea that formal expropriation is necessary to trigger A1P1 and instead focused on whether the owner could realistically

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<sup>175</sup> *Loizidou v. Turkey*, Grand Chamber, judgment of 23 February 1995.

<sup>176</sup> Costas Paraskeva, *Protecting Internally Displaced Persons under the European Convention on Human Rights and other Council of Europe standards: A Handbook*, "10. Application of the ECtHR's jurisprudence in the context of displacement," pp. 50–54.

<sup>177</sup> *Chiragov and Others v. Armenia*, Grand Chamber, judgment of 16 June 2015, ECtHR.

<sup>178</sup> Department for the Execution of Judgments of the European Court of Human Rights, *Thematic Factsheet: Protection of Property*, June 2022, pp. 10–18.

<sup>179</sup> Mustafayeva, Najiba, "The European Court of Human Rights and the Armed Conflict: The Case of Nagorno-Karabakh," CESRAN International, 24 August 2018.

<sup>180</sup> Aida Grgić, Zvonimir Mataga, Matija Longar, and Ana Vilfan, *The Right to Property under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and Its Protocols*, Human Rights Handbooks, No. 10 (Council of Europe), p. 30.

use or control the property.<sup>181</sup> The continuous inability of Greek Cypriots to enter their homes in the northern part of Cyprus<sup>182</sup> was treated as a continuing violation, a principle that became central to later cases involving long-term displacement. Importantly, the Court separated political arguments about legitimacy from its core function of ensuring the protection of individual rights. This judicial posture is relevant for Georgia because political debates about the legality of the de facto authorities have often overshadowed the very personal and continuous nature of property loss experienced by displaced Georgians. The Cyprus jurisprudence therefore provides a template that clarifies how A1P1 operates in conflict settings where territorial sovereignty is contested but where individuals continue to suffer daily effects of displacement.

Subsequent cases refined the concept of home and strengthened the protection of displaced persons. In *Demades v. Turkey*,<sup>183</sup> the ECtHR acknowledged that even a secondary residence could qualify as a home under the Convention when the applicant maintained meaningful personal ties with it. The continuing restriction on access therefore interfered with both A1P1 and Article 8. This recognition that emotional attachment and lived experience matter to ownership is particularly significant for the Georgian context, where many displaced persons held land and houses that served not only as economic resources but also as the center of family and community life. For these individuals, prolonged denial of access is not only a financial loss but also a disruption of social identity and continuity. Such reasoning supports the argument that Georgian cases should not be reduced to questions of economic damage alone but understood as involving broader dimensions of personal autonomy, dignity, and cultural continuity.

The ECtHR then extended its denial of access doctrine to different conflict settings. In *Doğan and Others v. Turkey*,<sup>184</sup> the inability of villagers to return to their homes due to persistent security restrictions deprived them of all means of livelihood and amounted to an interference that affected the substance of ownership. The court stressed that restitution or compensation must be provided when safe return is not possible. This reasoning is echoed in *Chiragov and Others v. Armenia*, where an Azerbaijani applicant could not return to his property in the Lachin district. Although the territory was internationally recognized

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<sup>181</sup> Eyal Benvenisti, Expert Opinion, *In the matter of Police Director of Nicosia vs. Shimon Mistrieli Aykout*, 5 December 2024, Whewell Professor of International Law Emeritus, University of Cambridge, p. 3.

<sup>182</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), “Human rights in situations of military occupation,” pp. 668–669.

<sup>183</sup> Alastair Mowbray, *Cases, Materials, and Commentary on the European Convention on Human Rights*, 3rd ed. (Oxford: Oxford University Press, 2014), Home, p. 548.

<sup>184</sup> D. J. Harris, M. O’Boyle, E. P. Nates, and C. M. Buckley, *Law of the European Convention on Human Rights*, 5th ed. (Oxford: Oxford University Press, 2023), chap. 20, “Article 1, First Protocol: The Right to Property,” 1. Introduction, pp. 870–871.

as belonging to Azerbaijan, Armenian forces exercised factual control.<sup>185</sup> The ECtHR accepted evidence from independent monitors to confirm ongoing displacement and held that the absence of any workable property claims mechanism placed an excessive burden on the applicant. This emphasis on continuing interference, combined with the duty to establish accessible remedies, forms a consistent line of reasoning that aligns closely with the Georgian situation, where no functional restitution process exists in Abkhazia or South Ossetia. Across these cases, the Court has moved toward an understanding of A1P1 that requires not only noninterference but also the establishment of practical avenues for property recovery or compensation in the aftermath of conflict.

The ECtHR's jurisprudence on effective control and decisive influence also plays a central role in attribution. In *Loizidou and Cyprus v. Turkey*, responsibility followed from Turkey's effective overall control over the northern part of Cyprus.<sup>186</sup> In *Ilascu and Others v. Moldova and Russia* and subsequent decisions, such as *Catan and Others v. Moldova and Russia* and *Mozer v. Moldova and Russia*, the Court expanded this framework by concluding that decisive influence over a separatist regime can also suffice to engage responsibility.<sup>187</sup> Russia's military, economic, and political support to Transdniestria placed the applicants within its jurisdiction, even absent a classical occupation.<sup>188</sup> This more flexible standard reappears in the South Caucasus cases, including *Georgia v. Russia II*<sup>189</sup> and *Taganova and Others v. Georgia and Russia* where the ECtHR found that Russia exercised both direct control and structural influence over the de facto authorities in Abkhazia and South Ossetia. For Georgian applicants, this finding provides the essential jurisdictional link that allows displacement-related property claims to proceed. It also illustrates how the Court gradually moved from a narrow, territorially focused conception of jurisdiction to a functional model grounded in factual power and real-world influence.

At the same time, the ECtHR has struggled to maintain clarity regarding the threshold of control. In some decisions, the standard of effective overall control is applied

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<sup>185</sup> D. J. Harris, M. O'Boyle, E. P. Nates, and C. M. Buckley, *Law of the European Convention on Human Rights*, 5th ed. (Oxford: Oxford University Press, 2023), chap. 20, "Article 1, First Protocol: The Right to Property," 1. Introduction, pp. 870–871.

<sup>186</sup> Aida Grgić, Zvonimir Mataga, Matija Longar, and Ana Vilfan, *The Right to Property under the European Convention on Human Rights: A Guide to the Implementation of the European Convention on Human Rights and Its Protocols*, Human Rights Handbooks, No. 10, p. 32.

<sup>187</sup> Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 2nd ed. (Cambridge: Cambridge University Press, 2016), "Human Rights in Situations of Military Occupation," pp. 669–670.

<sup>188</sup> *Ibid.*

<sup>189</sup> Natia Seskuria, "Georgia's Historic Victory: Implications of the ECHR Ruling," *Middle East Institute*, 11 February 2021.

strictly, while in others, especially *Ilaşcu and Others v. Moldova and Russia*,<sup>190</sup> the ECtHR relies on a broader notion of decisive influence that has been criticized for lacking a clear legal foundation. This shifting threshold creates uncertainty for applicants from Georgia, who must rely on the ECtHR's willingness to interpret complex political and military realities without falling into contradictions. Nevertheless, the Court's pragmatic approach demonstrates its aim to prevent gaps in the protection of property rights in situations where formal occupation is denied but effective control or influence persists. This tension between doctrinal strictness and practical necessity constitutes one of the most complex, yet essential, aspects of the Court's jurisprudence in cases concerning property rights in conflict-affected or occupied territories.

The ECtHR's treatment of domestic remedies further illustrates its balancing of principle and pragmatism. In *Demopoulos and Others v. Turkey*, the ECtHR recognized the Immovable Property Commission in Northern Cyprus as an effective remedy and required exhaustion before Strasbourg proceedings.<sup>191</sup> This represented a significant development, as the Court acknowledged a local mechanism established by a de facto authority, provided it operated effectively in practice. In contrast, the Georgian context lacks any comparable mechanism. In *Taganova and Others v. Georgia and Russia*, the ECtHR confirmed that neither Russia nor Georgia offered effective remedies for displaced persons, thereby permitting applicants to approach Strasbourg directly.<sup>192</sup> Consequently, the absence of functioning local or international restitution structures continues to shape the challenges faced by displaced Georgians and limits the Court's capacity to secure practical redress. The comparison therefore demonstrates that, without a viable claims process, the Court is more likely to find violations yet remains constrained in facilitating actual restitution or compensation.

A broader comparison shows that the ECtHR consistently applies an evidence-responsive approach. Because displaced persons rarely retain physical documents, the Court accepts material from UNHCR,<sup>193</sup> OSCE,<sup>194</sup> and COE<sup>195</sup> monitoring bodies to substantiate ownership, displacement, or control of territory. This evidentiary flexibility

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<sup>190</sup> Giorgi Nakashidze, "The European Court of Human Rights in a New Reality: Does It Have Sufficient Procedural Infrastructure to Deal with Armed Conflicts?" PhD Candidate, Faculty of Law, Ivane Javakhishvili Tbilisi State University, p. 57

<sup>191</sup> Rhodri C. Williams, "Demopoulos v. Turkey (Eur. Ct. H.R.), Introductory Note," *International Legal Materials*, Vol. 49, No. 3 (2010), pp. 816–849, p. 1

<sup>192</sup> *Taganova and Others v. Georgia and Russia*, ECtHR, Applications Nos. 18102/04 and others, Judgment of 17 December 2024, rectified 21 January 2025, final 17 March 2025.

<sup>193</sup> United Nations High Commissioner for Refugees (UNHCR), "Protection," <https://www.unhcr.org/what-we-do/protect-human-rights/protection>

<sup>194</sup> Organization for Security and Co-operation in Europe (OSCE) <https://www.osce.org>

<sup>195</sup> Council of Europe, <https://www.coe.int/en/web/portal/home>

has been particularly important for Georgian applicants, whose properties are frequently inaccessible, whose registries have been destroyed, and whose records may be dispersed among multiple authorities. By permitting proof through converging indicators rather than strictly formal documentation, the Court sustains access to justice despite long-term displacement and fragmented control. Furthermore, this approach is critical in conflicts marked by mass displacement, protracted territorial disputes, and the destruction of administrative infrastructure, and it aligns with the Court's broader effort to mitigate procedural obstacles that could otherwise undermine the substantive protection afforded by A1P1.

Taken together, these cases reveal several key patterns in the ECtHR's reasoning. First, jurisdiction under Article 1 of the Convention depends on factual control, not on sovereignty, which ensures that the protections of A1P1 extend to persons living under occupation or de facto administration. Second, the continuous denial of access to property is treated as an ongoing interference, allowing applicants from long-running conflicts to bring claims decades after displacement. Third, in situations where no functioning local remedy exists, the fair balance test effectively collapses, and violations of A1P1 are almost inevitable. Fourth, although territorial states retain certain positive obligations, the ECtHR interprets these duties realistically, recognizing that governments such as Georgia cannot achieve restitution in areas outside their control.

The Georgian cases demonstrate both the strengths and limitations of this framework. On one hand, the ECtHR's doctrines of effective control, decisive influence, and continuing violations provide a clear legal basis for recognizing the rights of displaced Georgians whose property remains inaccessible. These judgments confirm that A1P1 applies fully in Abkhazia and South Ossetia, regardless of the political status of the territories. On the other hand, the persistent nonimplementation of judgments reveals the limits of what Strasbourg can achieve. Even when violations are established, displaced persons rarely obtain restitution or compensation, and the legal fragmentation remains unresolved. The comparison with other conflicts underlines that this enforcement gap is not unique to Georgia but reflects a structural limitation of the Convention system in situations where political cooperation is absent and the respondent state maintains entrenched control. This tension between robust doctrinal protection and limited practical enforcement runs through the entire body of jurisprudence and shapes the Georgian experience directly.

Overall, the ECtHR has created a coherent legal structure that links jurisdiction, effective control, and continuing interference into a unified approach for property rights in

occupied territories. For Georgia, this framework offers recognition, legal continuity, and an authoritative record of violations. Yet the gap between judicial findings and real-world outcomes continues to constrain meaningful resolution. This subchapter therefore establishes the essential doctrinal background for analyzing the specific enforcement challenges discussed in the following section, where the Georgian case study helps illustrate both the transformative potential and the structural limitations of the Court's current approach.

#### *2.4. Doctrinal and Practical Differences between Regular and Occupation-Related Cases*

The protection of property rights during situations of occupation or foreign control is shaped by a complex interaction between international humanitarian law, international human rights law, and regional instruments such as the ECHR. While these legal regimes operate with distinct structures and purposes, their concurrent application creates a multilayered normative framework that governs the responsibilities of states, the rights of displaced persons, and the legality of actions taken by occupying powers. Understanding this framework is essential for analyzing the deprivation of property rights in territories such as Abkhazia and South Ossetia, where prolonged occupation and the absence of effective domestic institutions create profound challenges for both legal accountability and practical restitution.

IHL provides the foundational rules governing conduct in occupied territories. The Hague Regulations of 1907<sup>196</sup> and the Fourth Geneva Convention of 1949<sup>197</sup> establish that an occupying power does not acquire sovereignty over the territory it controls and must respect existing laws unless absolutely prevented from doing so. Property belonging to private individuals must be respected, and confiscation is generally prohibited. The occupying power may administer public property and use it for military needs, but private ownership remains protected. These rules reflect a fundamental principle that occupation is a temporary factual situation, not a source of lawful title, and therefore cannot legally extinguish private property rights. This principle is particularly relevant in contexts of long-term occupation, where *de facto* authorities may attempt to transfer, re-register, or otherwise alter ownership rights in ways inconsistent with IHL.

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<sup>196</sup> Hague Regulations (IV) Respecting the Laws and Customs of War on Land, 18 October 1907, The Hague.

<sup>197</sup> Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, 12 August 1949, United Nations Treaty Series, Vol. 75, p. 287.

The first and perhaps most foundational difference arises at the stage of establishing jurisdiction. While regular domestic property cases proceed on the presumption that the respondent state exercises territorial jurisdiction and therefore bears convention responsibility, occupation-related cases require the additional inquiry into whether the respondent exercises effective control over the territory in question. This issue was central in *Loizidou v. Turkey*, where the Court held that Turkey, notwithstanding the absence of formal annexation, exercised effective overall control over Northern Cyprus through its military presence and thus bore responsibility for interferences with property rights.<sup>198</sup> This approach has been central for cases involving Abkhazia and South Ossetia, where the ECtHR in *Georgia v. Russia II* and in *Taganova and Others v. Georgia and Russia* clarified that responsibility follows from factual military and administrative control rather than assertions of sovereignty. No parallel inquiry is needed in ordinary domestic cases, where jurisdiction is rarely contested. The necessity of proving effective control therefore introduces a doctrinal threshold that systematically distinguishes occupation cases from the mainstream of AIP1 litigation.

A second significant difference concerns the temporal character of violations. Domestic property disputes usually involve a single expropriation, regulatory act, or administrative measure. The Court therefore evaluates the existence of an interference by reference to that specific moment. By contrast, in occupied territories the primary harm is the prolonged inability to return to or use one's home or land, often for decades. This has led the ECtHR to apply the doctrine of continuing violations, first articulated in the Cyprus case law and later extended to other conflicts. By treating each day of denied access as a renewed interference, the Court ensures that displaced persons retain standing even when the initial loss of their property occurred long before ratification of the Convention or long before they were in a position to lodge an application. Without this doctrine, most applicants displaced from Abkhazia or South Ossetia in the early 1990s would have no legal avenue for recognition today. The continuing violation doctrine is therefore not merely a procedural tool but a structural adjustment to ensure that AIP1 remains capable of addressing long-term displacement.

A third distinction concerns the character of interference with possessions. In domestic cases, the impugned measures generally take the form of identifiable legal acts, such as expropriation orders, zoning decisions, or administrative refusals. In occupation

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<sup>198</sup> Marko Milanovic, *State Jurisdiction Is Not State Responsibility: A. Loizidou: A Test of Attribution? II From Compromise to Principle*, in *Extraterritorial Application of Human Rights Treaties: Law, Principles, and Policy* (Oxford: Oxford University Press, 2013), 28 March 2013

settings, however, violations often result from purely factual circumstances: military checkpoints, closure of roads, the presence of foreign armed forces, or the ongoing insecurity that prevents villagers from returning. These interferences are rarely formalized in legal instruments. The Court's recognition in *Loizidou* that denial of access, even without a formal expropriation, constitutes an interference under AIP1 has therefore been essential. This flexible interpretation is equally critical for displaced persons from Abkhazia and South Ossetia, who often cannot produce updated property documents, cannot verify the status of their homes, and cannot rely on functioning local institutions. The broader notion of interference allows the Court to address deprivations arising from the reality of prolonged occupation.

A fourth difference concerns the application of the fair balance test and the scope of the state's margin of appreciation. In ordinary domestic cases such as *Sporrong and Lönnroth v. Sweden*<sup>199</sup> or *Beyeler v. Italy*,<sup>200</sup> the Court recognizes that states enjoy a wide margin when regulating property for legitimate public purposes. The fair balance test therefore involves weighing individual burdens against community interests that are usually articulated through functioning democratic processes. By contrast, in occupation cases the margin of appreciation is drastically reduced. The long-term denial of access to property, combined with the absence of any functioning legal mechanism capable of offering redress, leaves little room for proportionality. Because displaced persons bear an inherently excessive and persistent burden, the analysis tends toward a presumption of violation. The occupation context therefore narrows the fair balance test, not for formal doctrinal reasons but because the structural circumstances make any justification implausible. This dynamic is visible in all major occupation-related property cases, including those concerning Georgia.

A fifth difference arises in relation to evidence and procedural context. In regular domestic cases, ownership and interference can usually be established with title deeds, administrative documents, correspondence, and court records. In conflict-affected territories, these sources are frequently unavailable. Documents may have been lost during displacement, registries may be destroyed, and de facto authorities may refuse to issue or recognize property records. The Court therefore relies on a broader set of evidentiary indicators, including reports from UNHCR, the OSCE, and the COE; satellite imagery; or consistent testimonies gathered by monitoring bodies. This evidentiary flexibility is

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<sup>199</sup> *Sporrong and Lönnroth v. Sweden*, ECtHR, Judgment of 23 September 1982

<sup>200</sup> *Beyeler v. Italy*, No. 33202/96, judgment of 5 January 2000

essential but also marks a departure from standard evidentiary methods. For applicants from Abkhazia and South Ossetia, this flexible approach is often the only means of establishing ownership or demonstrating ongoing denial of access. Without it, the breakdown of local institutions would make their claims impossible to prove.

A sixth practical difference concerns the availability and effectiveness of domestic remedies. In regular domestic cases, the Court requires exhaustion of local remedies, since national courts are functioning and capable of reviewing administrative decisions. Occupation cases differ fundamentally. Domestic remedies in occupied territories are typically nonexistent or purely theoretical, and the ECtHR has repeatedly held that applicants cannot be expected to pursue remedies that do not exist in practice. This was central in *Chiragov* and in the Georgian cases, where the Court acknowledged that Georgian courts cannot operate in Abkhazia or South Ossetia and that no alternative mechanism exists. The absence of functioning remedies eliminates one of the core structural pillars of the Convention system, namely subsidiarity. As a result, the ECtHR becomes the first and often the only forum capable of addressing property claims arising from occupation.

A seventh and final difference concerns enforcement, which is where the gap between doctrinal recognition and real-world consequences becomes most visible. In regular domestic cases, even when implementation is slow, judgments are generally enforced under the supervision of the Committee of Ministers. In occupation cases, enforcement is significantly more difficult. When the respondent state denies effective control or refuses political cooperation, implementation becomes largely symbolic. The Court's findings, though legally authoritative, may have limited real-world impact. This problem is not unique to the Georgian situation but is consistent with what occurred in *Cyprus v. Turkey* and more recently in *Chiragov and Others v. Armenia*.<sup>201</sup> The gap between legal recognition and practical enforcement therefore remains one of the most persistent weaknesses of AIP1 protection in occupation contexts.

These doctrinal and practical differences have profound consequences for individuals. Persons displaced from their homes due to conflict and occupation often face decades of uncertainty. Structures deteriorate, communities fragment, land may be used by others, and the emotional and cultural connection to the family home weakens with time. Their experience differs fundamentally from that of applicants in ordinary regulatory disputes, who navigate a functioning legal environment and whose claims can be resolved

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<sup>201</sup> *Chiragov and Others v. Armenia*, ECtHR, Grand Chamber, Judgment of 16 June 2015

through compensation or administrative adjustment. The situation of displaced Georgians from Abkhazia and South Ossetia therefore reflects deeper structural limitations within the Convention system when applied to geopolitical contexts marked by contested sovereignty and prolonged military presence. This contrast underscores that A1P1 jurisprudence, though doctrinally coherent, operates with very different levels of effectiveness depending on the stability and accessibility of the domestic legal order in which it is meant to function.

For Georgia, these differences are especially relevant. The situations in Abkhazia and South Ossetia closely resemble other occupation-type contexts examined by the ECtHR. People have been forcibly displaced, they cannot return, jurisdiction is contested, and no effective domestic remedy exists. The resulting protection gap is not merely a procedural inconvenience but a structural issue that affects the substantive enjoyment of the right to property. Although A1P1 formally applies in full, the practical enforceability of this right remains limited, creating a disparity between legal doctrine and lived experience. This gap also reveals how the Convention's enforcement model presupposes the existence of functioning state institutions, a presupposition that breaks down in situations where the territorial state lacks effective control but remains the primary duty bearer under international law.

The Georgian cases thus illustrate both the strengths and the limitations of the ECtHR's framework. The Court consistently acknowledges Russia's effective control, recognizes the continuing nature of the violations, and affirms Georgia's inability to secure rights in territories beyond its control. However, remedies remain largely declaratory, and displaced persons receive recognition rather than restitution. This mirrors earlier experiences in Cyprus and in cases involving the Nagorno-Karabakh conflict,<sup>202</sup> confirming that the Convention system struggles to deliver tangible outcomes when enforcement depends on political compliance. At the same time, these judgments demonstrate the Court's role in documenting violations, affirming legal responsibility, and creating an authoritative record that may shape future political or diplomatic processes, even if immediate restoration of rights remains unattainable.

These findings have important implications for broader debates on accountability and reparations for property violations in occupied regions and help explain why the Georgian context serves as an essential case study for understanding both the potential and

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<sup>202</sup> D. J. Harris, M. O'Boyle, E. P. Nates, & C. M. Buckley, *Law of the European Convention on Human Rights*, 5th ed. (Oxford: Oxford University Press, 2023), chap. 20, "Article 1, First Protocol: The Right to Property," 1. Introduction, pp. 870–871.

the limits of AIP1 in situations of long-term occupation. They also set the stage for the analysis developed in the final chapter of this thesis.

To provide a clearer understanding of the doctrinal and practical differences between regular property disputes and occupation-related property cases, the following table summarizes the main ECtHR and other relevant international court decisions discussed in this chapter. It presents each case with key details, including the context, court findings, doctrinal points, and practical enforcement challenges. By laying out both regular and occupation cases side by side, the table highlights the specific difficulties that arise under prolonged occupation, including evidentiary challenges, restitution feasibility, and state responsibility, making it easier for the reader to grasp the issues without reading the full text of each case.

**Table 1. Doctrinal and Practical Differences between Regular and Occupation-Related Property Cases**

Feature	Regular Property Cases	Occupation-Related Property Cases
<b>Sovereignty / Control</b>	Full domestic sovereignty; national courts are fully operational <i>(Sporrong and Lönnroth v. Sweden, 1982; Beyeler v. Italy, 2000)</i>	Partial or no effective domestic control; de facto authorities exercise control <i>(Loizidou v. Turkey; Georgia v. Russia II; Georgia v. Russia IV; Chiragov and Others v. Armenia; Ilaşcu and Others v. Moldova and Russia)</i>
<b>Access to Property</b>	Physically accessible; temporary disputes <i>(James and Others v. United Kingdom, 1986; Brumărescu v. Romania, 1999)</i>	Denied or severely restricted; prolonged occupation prevents access <i>(Loizidou v. Turkey; Chiragov and Others v. Armenia; Ilaşcu and Others v. Moldova and Russia,; Georgia v.</i>

		<i>Russia II; Georgia v. Russia IV; Taganova and Others v. Georgia and Russia)</i>
<b>Proof of Ownership / Evidence</b>	Title deeds, administrative records, official correspondence <i>(Beyeler v. Italy, 2000; Sporrong and Lönnroth v. Sweden, 1982)</i>	Original documents often unavailable; alternative evidence accepted such as satellite imagery, historical records, witness statements <i>(Loizidou v. Turkey; Chiragov and Others v. Armenia; Ilaşcu and Others v. Moldova and Russia; Georgia v. Russia II; Georgia v. Russia IV)</i>
<b>Domestic Remedies</b>	Fully functional domestic courts; remedies enforceable <i>(James and Others v. United Kingdom, 1986; Brumărescu v. Romania, 1999)</i>	Domestic remedies limited or impossible; ECtHR may waive exhaustion due to ineffectiveness <i>(Loizidou v. Turkey; Chiragov and Others v. Armenia; Ilaşcu and Others v. Moldova and Russia; Georgia v. Russia II; Georgia v. Russia IV)</i>
<b>Nature of Violations</b>	Discrete, one-off violations or administrative acts <i>(Sporrong and Lönnroth v. Sweden, 1982; Beyeler v. Italy, 2000)</i>	Continuing violations doctrine; denial of property access persists <i>(Loizidou v. Turkey; Chiragov and Others v. Armenia; Georgia v. Russia II; Georgia v. Russia IV; Taganova and Others v. Georgia and Russia)</i>

<p><b>Enforcement / Practical Relief</b></p>	<p>National authorities enforce restitution or compensation effectively <i>(James and Others v. United Kingdom, 1986)</i></p>	<p>Judgments often declaratory; enforcement depends on international pressure or cooperation of occupying authorities <i>(Loizidou v. Turkey; Georgia v. Russia IV)</i></p>
<p><b>Individual Impact</b></p>	<p>Usually financial loss or temporary inconvenience <i>(Brumărescu v. Romania, 1999, Beyeler v. Italy, 2000)</i></p>	<p>Long-term displacement, loss of economic, cultural, and social ties <i>(Chiragov and Others v. Armenia; Ilaşcu and Others v. Moldova and Russia, Taganova and Others v. Georgia and Russia)</i></p>
<p><b>Legal Doctrine / ECtHR Approach</b></p>	<p>Lawfulness, legitimate aim, fair balance under Article 1 of Protocol Number 1 <i>(Beyeler v. Italy, 2000; Sporrong and Lönnroth v. Sweden, 1982)</i></p>	<p>Effective control principle, extraterritorial jurisdiction, continuing violations, proportionality, fair balance under Article 1 of Protocol Number 1 <i>(Loizidou v. Turkey; Georgia v. Russia II; Georgia v. Russia IV; Ilaşcu and Others v. Moldova and Russia; Chiragov and Others v. Armenia)</i></p>
<p><b>Remedies</b></p>	<p>Restitution in kind or monetary compensation typically enforceable <i>(James and Others v. United Kingdom, 1986; Brumărescu)</i></p>	<p>Restitution in kind often impossible; financial compensation or symbolic remedies used; practical enforcement uncertain <i>(Loizidou v. Turkey; Georgia v. Russia IV, Taganova and Others v. Georgia and Russia)</i></p>

<b>Timeframe for Resolution</b>	<p>Domestic procedures generally timely <i>(James and Others v. United Kingdom, 1986; Brumărescu v. Romania, 1999)</i></p>	<p>Proceedings may span decades; enforcement delayed due to occupation and political factors <i>(Loizidou v. Turkey; Taganova and Others v. Georgia and Russia; Chiragov and Others v. Armenia; Georgia v. Russia II)</i></p>
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*Source:* Compiled by the author based on the indicated case studies from the HUDOC database.

### 3. ENFORCEMENT AND EFFECTIVENESS OF PROPERTY RIGHTS PROTECTION IN THE CONTEXT OF OCCUPIED TERRITORIES

#### *3.1. Structural and Practical Challenges in Implementing Article 1 of Protocol No. 1 in Occupied Territories*

The jurisprudence of the Court under A1P1 confirms that the guarantees of the ECHR regarding the peaceful enjoyment of possessions extend to contexts involving prolonged displacement, occupation, and the exercise of factual control by foreign or unrecognized authorities. It is important to note that scholarly work supports this doctrinal expansion. For instance, Marko Milanović and Tatjana Papić argue that the ECHR must apply in “contested territories” where a state loses control over parts of its territory, because the Court’s current approach to positive obligations based on sovereignty can be problematic. Despite this doctrinal clarity, the practical application of the Convention framework in such situations reveals significant structural, procedural, and political challenges that rarely arise in ordinary domestic property disputes.

In conventional cases, the ECtHR examines whether an interference with property is lawful, pursues a legitimate aim, and strikes a fair balance between the interests of the individual and the community. Enforcement then typically occurs through the functioning institutions of the respondent state, such as administrative authorities, domestic courts, or compensation schemes. However, when territories are under effective control of foreign or de facto powers, there is often a profound disconnect between the formal recognition of violations and the ability to restore property rights in practice. The relevant authorities capable of implementing remedies may be absent, unwilling to cooperate, or operating outside conventional legal or international-law structures, leaving displaced populations in persistent uncertainty and vulnerability.<sup>203</sup>

A central issue in occupation-related cases is the attribution of responsibility through the principle of effective control. The Court has consistently held that formal sovereignty is not determinative; instead, the state exercising factual authority capable of affecting the enjoyment of possessions bears responsibility under the ECHR. In *Georgia v. Russia II*, for example, the Court determined that Russia exercised effective control over Abkhazia and South Ossetia and therefore was responsible for violations of property rights in these regions, even in the absence of formal annexation. This approach builds on earlier jurisprudence, notably *Loizidou v. Turkey*, where the Court emphasized that effective

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<sup>203</sup> Council of Europe, *Factsheet on Armed Conflicts and the ECHR*, pp. 2–5

control rather than formal territorial sovereignty triggers the obligations of the respondent state. Also, it is argued that the Court's extraterritorial jurisdiction should rest on control rather than rigid sovereignty, because control better captures when a state functionally impairs individuals' Convention rights.<sup>204</sup> The recognition of effective control enables displaced persons to bring claims to the ECtHR despite the absence of formal domestic remedies, providing a critical procedural avenue. At the same time, however, the principle highlights a structural limitation: responsibility alone does not guarantee enforceability. When a state rejects the ECtHR's findings or denies that it exercises effective control, the recognition of violations remains largely declaratory, without tangible restoration of rights.

Consequently, the ECtHR's capacity to ensure practical redress is heavily dependent on the cooperation and political will of the state exercising control over the territory, exposing a systemic vulnerability within the Convention framework. By recognizing effective control, the Court legally affirmed that Abkhazia and South Ossetia remain under de facto Russian occupation, a judgment with profound implications for future human rights litigation and political accountability.<sup>205</sup>

Another significant aspect of occupation-related property disputes is the temporal dimension of violations. Unlike domestic property disputes, which typically concern a single expropriation or regulatory act, the primary harm in occupied territories is the prolonged denial of access to property. The Court has developed the doctrine of continuing violations to address this situation, treating each day that displaced individuals are denied access as a new interference with their possessions. This approach preserves the admissibility of applications even decades after displacement and allows the Court to recognize ongoing harm that predates the ratification of the ECHR or the applicant's ability to submit a claim. While the continuing violation doctrine is indispensable in preserving access to justice for displaced persons, it also underscores a structural problem, which means that unless the controlling authorities facilitate return or restitution, violations continue indefinitely. As a result, judgments may formally recognize rights but fail to produce practical relief, leaving displaced populations in a state of prolonged uncertainty and deprivation.

The practical challenges of proving property ownership in occupied territories further complicate the enforcement of rights under the ECHR. In domestic property

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<sup>204</sup> Sarah Miller, "Revisiting Extraterritorial Jurisdiction: A Territorial Justification for Extraterritorial Jurisdiction under the European Convention," *European Journal of International Law* 20, no. 4 (November 2009): 1223–1246

<sup>205</sup> Natia Seskuria, "Georgia's Historic Victory: Implications of the ECHR Ruling," *Middle East Institute*, 11 February 2021

disputes, applicants typically rely on administrative records, title deeds, correspondence, and court documentation to establish ownership and demonstrate interference. In contrast, in areas affected by occupation, these sources are often destroyed, inaccessible, or controlled by de facto authorities, leaving displaced persons with limited conventional evidence. For instance, individuals displaced from Abkhazia or South Ossetia may lack updated property documents, while local registries may be non-functional or entirely unavailable.<sup>206</sup>

The ECtHR has adapted to these challenges by accepting alternative forms of evidence, such as historical registries, corroborated witness statements, satellite imagery, and reports from monitoring bodies, including the United Nations High Commissioner for Refugees, the Organization for Security and Cooperation in Europe,<sup>207</sup> and the COE.<sup>208</sup> While this flexibility allows the Court to substantiate claims in the absence of conventional documentation, it cannot fully compensate for the structural absence of functioning domestic institutions, leaving applicants at a significant disadvantage compared to individuals in ordinary domestic property disputes.

The principle of exhaustion of domestic remedies, central to the Convention system, illustrates another structural limitation in occupation-related cases. In regular domestic property disputes, applicants are required to pursue remedies through national courts before applying to the Court, ensuring subsidiarity and reinforcing domestic judicial authority. In occupied territories, however, domestic remedies are often nonexistent or purely theoretical, as national courts and administrative bodies are unable to operate effectively. Displaced persons in Abkhazia or South Ossetia, for instance, cannot access local authorities to claim restitution or compensation, and de facto administrations may refuse to recognize property rights or issue necessary documentation. While the Court acknowledges the absence of effective domestic remedies and treats it as part of the violation, it cannot create functioning institutions or compel de facto authorities to respect property rights. This structural limitation prevents the transformative application of court judgments and perpetuates the protection gap for displaced populations.

Enforcement represents perhaps the most critical challenge in occupation-related property cases. After the court delivers a judgment, the CM is responsible for supervising its execution. In practice, however, the Committee's effectiveness depends on the cooperation of the respondent state. In politically sensitive cases such as *Georgia v. Russia*

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<sup>206</sup> Council of Europe, *Consolidated Report on the Conflict in Georgia – SG/Inf (2010)8*

<sup>207</sup> OSCE/ODIHR, *Human Rights in Areas Affected by the Conflict in Georgia*, November 2008

<sup>208</sup> Council of Europe, *Consolidated Report on the Conflict in Georgia (April–September 2023)*

*II, Chiragov v. Armenia, and Cyprus v. Turkey*, states have often refused to comply with the Court's findings, challenged jurisdiction, or denied effective control over the territory, resulting in judgments that remain largely symbolic. This stands in stark contrast to typical domestic property disputes, where effective administrative and judicial systems enable the practical enforcement of decisions via restitution, compensation, or alternative remedies. The absence of political will, coupled with structural impediments, diminishes the Court's rulings to mere instruments of legal recognition rather than effective mechanisms for the restoration of property rights in practice. The CM supervises the execution of ECtHR judgments, but its effectiveness depends on the cooperation of the state found responsible. In Georgia, where Russia denies effective control and local authorities cannot operate in the occupied territories, the Committee's role is limited to monitoring and issuing recommendations. Experience from other long-term conflicts shows that enforcement may remain symbolic when political obstacles exist, which underlines that even well-reasoned court judgments do not automatically ensure restitution or compensation.

These gaps in enforcement have serious effects on people. Displacement over decades and not being able to get to property weaken personal, economic, and cultural ties. Homes get run down or are used for something else, communities break down, and the link to family property gets weaker over time. People are still unsure, financially unstable, and socially vulnerable even when the Court officially says that violations have happened because there is no real way to enforce the law. These experiences are very different from those of people who are applying for domestic property disputes, who have to deal with working legal systems and can count on predictable enforcement mechanisms to get their money back or get paid. The cases involving Georgia, Cyprus, and Nagorno-Karabakh illustrate that although the Convention offers crucial legal acknowledgment, it cannot ensure the tangible enforcement of property rights in situations of ongoing occupation and political obstruction.

The challenges described above show that there is a structural problem with the Convention system. The doctrinal framework for the peaceful enjoyment of possessions under A1P1 is coherent and formally consistent in both domestic and occupation-related cases; however, its practical effectiveness is significantly limited in territories under foreign or de facto control. Recognizing violations, assigning blame, and acknowledging that deprivation is ongoing do not, by themselves, provide real protection. We need to fix these problems in both the courts and politics. Some possible steps are to strengthen the Committee of Ministers' oversight, make it easier to gather evidence in cases from occupied territories, set up ways for groups to get paid when restitution isn't possible, and support

independent international administrative arrangements to check property claims and keep records in places where domestic institutions don't work. Such measures could enhance the capacity of the Court to ensure meaningful protection for displaced populations and mitigate the persistent protection gap.

The structural obstacles that arise in Georgia's occupied territories become clearer when the practical consequences for displaced persons are examined in a consolidated way. The experiences of individuals from Abkhazia and South Ossetia reveal that the challenges are not limited to the legal classification of effective control or the attribution of responsibility but extend to the everyday realities of documentation, access, remedies, and compensation.

In conclusion, the challenges of enforcement and practical implementation demonstrate that while the Convention formally acknowledges property rights under A1P1, it frequently fails to translate this acknowledgment into genuine protection for individuals compelled to vacate their residences. Political resistance, the lack of domestic remedies, evidentiary challenges, and structural enforcement constraints collectively create a persistent disparity between legal recognition and practical implementation of rights. While the ECtHR plays an essential role in documenting violations, clarifying legal responsibility, and creating an authoritative record, its ability to restore the substantive enjoyment of possessions remains constrained. The situations in Georgia, Cyprus, and Nagorno-Karabakh show both the strengths and weaknesses of the Convention framework in situations of long-term occupation and foreign control. They also show how important it is to make changes to the system so that formal recognition can lead to real protection

The table below summarizes these obstacles by grouping them into key elements that determine whether A1P1 rights can be exercised in practice. It highlights who exercises control in each region, how many people are affected, what specific barriers prevent them from accessing or proving their property rights, and whether any realistic mechanisms for restitution or compensation exist. By presenting these factors together, the table shows how the gap between formal recognition of violations and the practical enjoyment of rights widens over time when effective domestic institutions are absent and cooperation from the controlling authorities is unavailable. It also provides a factual foundation for the following analysis, which evaluates how these structural problems influence the overall effectiveness of the convention system in Georgia.

**Table 2. Overview of Displacement, Effective Control, and Property Rights Challenges in Georgian Occupied Territories**

<b>Region</b>	<b>Controlling Power / Effective Control</b>	<b>Estimated IDPs</b>	<b>Main A1P1 Obstacles</b>	<b>Availability of Remedies or Compensation</b>
Abkhazia	Russian Federation together with Abkhaz de facto authorities	≈ 200,000 <sup>209</sup>	No access; <sup>210</sup> Destroyed/absent registries, loss of documents; <sup>211</sup> Lack of remedies <sup>212</sup>	No functioning general restitution or compensation system; Access to de facto courts does not enforce rights under Georgian law; Any ECtHR awards face practical enforcement limitations, highlighting systemic protection gaps Enforcement depends on compliance by de facto authorities or Russia. <sup>213</sup>

<sup>209</sup> UNHCR, *Protection of Internally Displaced Persons in Georgia*, April 2008, pp. 5–6

<sup>210</sup> “Violations of civilian property rights in Abkhazia! Russia’s condemnation,” *ECHR Case Law*

<sup>211</sup> UNHCR, *Protection of Internally Displaced Persons in Georgia*, April 2008, p. 21, and *Overview of the Situation of Internally Displaced Persons in Georgia*, July 2009, p. 8

<sup>212</sup> European Human Rights Advocacy Centre (EHRAC), “Court finds violations by Russia of property and family rights for those forced from property in Abkhazia (Taganova and Others v. Georgia and Russia).”

<sup>213</sup> *Georgia v. Russia (II)*, App. No. 38263/08, ECtHR, Grand Chamber, 21 January 2021; *Georgia v. Russia (IV)*, App. No. 39611/18, ECtHR, Second Section, 28 March 2023; *Taganova and Others v. Georgia and Russia*, Apps. Nos. 18102/04 and 4 others, Second Section, 21 January 2025.

South Ossetia / Tskhinvali Region	Russian Federation together with South Ossetian de facto authorities	≈ 60,000 <sup>214</sup>	Borderization, inaccessible property; <sup>215</sup> No effective remedies <sup>216</sup>	No functioning restitution or compensation system; No access to de facto judicial bodies; Nonrecognition of ownership documents; Enforcement depends entirely on ECtHR judgments, which are limited in practice. <sup>217</sup>
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*Source:* Compiled by the author based on the sources indicated in the footnotes.

### 3.2. Recommendations for Strengthening the Protection of Property Rights in Occupied territories

Property rights of displaced persons in occupied territories need to be protected through a coordinated set of institutional, legal, and international measures that respond directly to the challenges identified in the earlier chapters of this thesis. As shown, the realities of long-term displacement often create barriers that traditional legal frameworks cannot address effectively. These barriers are particularly evident when individuals cannot access their property documentation because such records have been destroyed, lost, or removed as a result of conflict, occupation, or other circumstances related to prolonged territorial control by foreign or de facto authorities. Therefore, the protection of property rights cannot be limited to a strict or literal reading of statutory rules. Instead, it must include practical, flexible solutions that correspond to the lived experiences of displaced communities and take into account the specific challenges of occupied territories, including

<sup>214</sup> UNHCR, *Protection of Internally Displaced Persons in Georgia*, April 2008, pp. 5–6

<sup>215</sup> UNHCR Statement: Internal displacement estimate rises,” 12 September 2008, *Civil Georgia*, <https://civil.ge/archives/590938>

<sup>216</sup> “Georgia: new internal displacement action plan; tensions in South Ossetia,” 2008, *Civil Georgia*

<sup>217</sup> *Georgia v. Russia (II)*, App. No. 38263/08, ECtHR, Grand Chamber, 21 January 2021; *Georgia v. Russia (IV)*, App. No. 39611/18, ECtHR, Second Section, 28 March 2023; *Taganova and Others v. Georgia and Russia*, Apps. Nos. 18102/04 and 4 others, ECtHR, Second Section, 21 January 2025.

the inability to access local authorities, administrative offices, or functioning domestic courts.

In order to support the claims of displaced persons and to reduce the gap between the legal rights guaranteed under AIP1 and their practical enforcement, it is essential to introduce procedures that accept indirect and alternative forms of evidence. The analysis presented in this thesis has shown that displaced persons frequently lack access to the documents that traditionally prove ownership, such as title deeds, registration records, or administrative correspondence. Because of this, reliable testimonies, historical records, reports from monitoring organizations, satellite images, and other credible sources should be accepted when original documents are unavailable. Using such evidence greatly increases the chances of successful restitution or compensation, particularly in areas like Abkhazia and South Ossetia, where long-term occupation has severely limited access to land, public archives, and functioning local institutions. This approach also aligns with the European Court of Human Rights' interpretation of Article 1 of Protocol Number One, which emphasizes that the protection of property must remain practical and effective, even when conventional domestic remedies are unavailable or inaccessible.

Additionally, international standards stress the importance of providing realistic and accessible procedures for displaced persons. These standards, which have been discussed in earlier sections, underline that states should ensure clear guidance on how claims may be submitted, what types of evidence are acceptable, and how the submission process can be adapted to the constraints imposed by occupation. Such procedural clarity is necessary because the prolonged absence of effective domestic institutions often makes it impossible for individuals to follow normal administrative steps or to access functioning legal mechanisms in the occupied territories. Therefore, a flexible procedural framework should be developed to account for the extraordinary circumstances faced by displaced populations, ensuring that individuals are not deprived of their rights simply because they cannot meet the conventional evidentiary or procedural requirements.

As the case studies and doctrinal analysis demonstrated, restitution of property in kind should remain the primary remedy wherever possible. This remedy restores both the material and symbolic aspects of ownership and reflects the principle that individuals should have the opportunity to recover their original property. However, it is equally important to recognize that long-term occupation, demographic transformations, physical destruction of property, or ongoing security concerns may render restitution in kind impossible. In such situations, financial compensation or other alternative remedies should be provided to ensure that displaced persons are not left without meaningful protection.

This dual approach, combining restitution and compensation, reflects the practical realities in the Georgian regions of Abkhazia and South Ossetia/Tskhinvali Region and aligns with the European Court of Human Rights' recognition that protected property encompasses not only formal ownership titles but also use rights, long-term interests, and legitimate expectations. Therefore, adopting this comprehensive approach is crucial to bridging the gap between formal recognition of property rights and their practical enjoyment.

Furthermore, the analysis highlighted that legal rights alone are insufficient unless supported by functioning institutions capable of enforcing them. The lack of domestic control in occupied territories makes it extremely difficult for national authorities to implement property rights effectively. Consequently, independent international or multilateral organizations may play an important role in assisting displaced persons. Such organizations can collect and evaluate evidence, review claims using flexible standards, and administer restitution or compensation schemes in cases where national institutions are unable or unwilling to act due to political pressures or limited capacity. By performing these functions, international or multilateral bodies help reduce the enforcement gap and ensure that property rights recognized under AIP1 are given practical effect, rather than remaining formal or symbolic declarations.

At the same time, strengthening national institutions is also necessary to ensure the effective implementation of property rights. Training for legal professionals, registry officials, administrative personnel, and enforcement staff is essential to improve the quality and reliability of property-related decisions. Enhancing institutional capacity contributes directly to the effectiveness of domestic procedures, increases compliance with judgments of the ECtHR, and creates better conditions for displaced persons to pursue and obtain remedies. This process also helps to build trust in legal institutions, which is particularly important when formal enforcement mechanisms are weakened by prolonged occupation or political obstacles.

Moreover, international cooperation is a key component of protecting property rights in occupied territories. Neutral organizations such as the United Nations, the Organization for Security and Cooperation in Europe, and civil society groups can systematically collect and preserve evidence regarding property ownership, destruction, and forced displacement. The documentation gathered through these efforts plays an important role in establishing factual records, supporting individual claims, and informing future policy decisions. Such cooperation also ensures that property protection remains part of broader peacebuilding, reconciliation, and reconstruction initiatives. As the analysis has demonstrated, legal measures alone are insufficient to fully resolve the consequences of

occupation. Therefore, linking restitution and compensation procedures to broader political, social, and reconstruction strategies increases the likelihood that displaced persons will ultimately recover their rights in a meaningful and sustainable manner.

In conclusion, the protection of property rights in occupied territories under Article 1 Protocol No. 1 requires a combination of flexible evidentiary standards, appropriate remedies, strong institutional support, and sustained international involvement. These recommendations are directly grounded in the analysis and findings of this thesis and reflect the need to ensure that the European Convention on Human Rights remains effective even in situations of prolonged occupation, such as those experienced in Abkhazia and South Ossetia/ Tsk. When these elements are implemented together, displaced persons are better able to exercise their rights in a practical, meaningful, and realistic way, thereby bridging the gap between formal legal recognition and actual protection on the ground.

## CONCLUSIONS AND PROPOSALS

1. The doctrinal baseline established by the thesis confirms that Article 1 of Protocol No. 1 guarantees the peaceful enjoyment of possessions through a three-step test, namely that any interference must be lawful, must pursue a legitimate public aim, and must maintain a fair balance between individual and public interests. This test forms the basic framework the European Court of Human Rights applies in both ordinary property disputes and occupation-related cases. It also serves as the starting point for understanding how the Court deals with contested territories.

2. The extraterritorial case law of the European Court of Human Rights shows that the Court follows a functional view of jurisdiction, meaning that responsibility is linked to actual control on the ground rather than formal sovereignty. The doctrines of effective control and decisive influence, in particular, allow the Court to attribute obligations to a state when it directly or indirectly has the ability to affect the enjoyment of property in an occupied or otherwise controlled area.

3. When compared with regular domestic property cases, situations involving occupation display several distinctive doctrinal and procedural features, such as the ECtHR's treatment of long-term denial of access as a continuing interference with possessions. The Court also accepts broader and more flexible evidence, including materials from monitoring bodies and other converging sources, and it reduces the margin of appreciation because structural barriers in occupied territories make proportionality justifications more difficult. As a result, the legal test remains identical in theory but functions differently in practice where local institutions and remedies are absent.

4. The Georgian case law presented in the thesis illustrates these features clearly, since the ECtHR found that Russia exercised effective control over Abkhazia and South Ossetia/Tskhinvali Region during the relevant periods and that displaced persons experienced ongoing losses of access, use, and enjoyment of their property. At the same time, the Court acknowledged the realistic limits on Georgia's positive obligations and noted the practical steps Georgia attempted despite lacking territorial control.

5. The comparison with Northern Cyprus, Transnistria, Crimea, and Nagorno-Karabakh shows a generally consistent approach, since the Court repeatedly relies on indicators such as effective control, continuing violations, and flexible evidentiary standards to safeguard property rights beyond a state's formal borders. However, the case law also reveals uncertainty regarding the distinction between effective control and decisive influence, which continues to create unpredictability for applicants and states.

6. A central finding of the thesis concerns the enforcement gap, meaning that even when the ECtHR recognizes a violation of Article 1 of Protocol No. 1, the judgment often remains declaratory. This situation frequently arises where the controlling power or de facto authorities refuse to cooperate, where local institutions cannot provide remedies, and where political obstacles impede the Committee of Ministers' supervision of execution. As a result, formal recognition seldom leads to restitution, effective compensation, or actual restoration of property rights for displaced persons.

7. The practical consequences for displaced persons are severe and long-lasting, since factors such as loss of documentation, destruction or re-registration of property, administrative barriers imposed by de facto authorities, and physical restrictions on movement make legal remedies ineffective in many cases. Strasbourg case law ensures legal continuity and formal protection, but it cannot on its own overcome the real-world barriers that prevent owners from enjoying their possessions.

8. To address these challenges and enhance the practical protection of property rights under Article 1 of Protocol No. 1, the following proposals focus on measures that are feasible within the Convention system and that tackle the procedural, evidential, and enforcement obstacles identified in the thesis.

9. To reduce evidentiary barriers in displacement cases, domestic authorities and international monitoring bodies should adopt flexible and formally recognized standards for proving property. Verified historical registries, consistent witness statements, reports from trusted monitors, and authenticated satellite or photographic material should be accepted when original documents are unavailable. Closer cooperation in collecting and preserving such evidence would also make future claims easier to substantiate.

10. To strengthen the practical effect of Strasbourg judgments in occupation contexts, the Committee of Ministers should develop targeted execution strategies for long-running cases. These strategies should include clearer timetables, reporting formats adapted to situations of non-cooperation, and the possibility of promoting interim measures, such as neutral and internationally administered compensation schemes, when direct implementation by the respondent state or local authorities is not feasible.

11. To improve access to remedies and narrow the enforcement gap, impartial claims and documentation mechanisms should be established under international or multilateral auspices. These bodies would register pre-conflict property rights, examine restitution and compensation claims using flexible evidentiary rules, and provide interim relief where full restitution is not possible. Their effectiveness would depend on cooperation with actors such as the Council of Europe, the OSCE, United Nations agencies,

and civil society organizations, which can offer credibility, expertise, and on-the-ground capacity.

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## SUMMARY

### **Peaceful Enjoyment of Possessions in Occupied Territories: Limits of Effective Control and Challenges of Enforcement under the ECHR**

**Nana Ochkhikidze**

This thesis examines how property rights are protected under Article 1 of Protocol No. 1 of the European Convention on Human Rights in territories under foreign or de facto control, focusing on occupied regions of Georgia. While the European Court of Human Rights applies clear and predictable principles when interpreting Article 1 of Protocol No. 1, these rules often lose force in long-term occupation. Displaced people face major obstacles, as they cannot freely access their homes, many property records are destroyed or missing, effective remedies are lacking, and controlling authorities are uncooperative. Consequently, even when the Court finds a violation, this rarely leads to restitution, compensation, or real enjoyment of property.

The thesis therefore argues that there is a significant gap between the legal standards set by the Court and the lived experience of individuals affected by occupation. Although the doctrine of effective control allows the Court to assign responsibility, it does not provide tools for overcoming the structural and political barriers that block enforcement. Long-term displacement, the behavior of de facto authorities, and the lack of institutional support widen the distance between rights on paper and real-world protection.

To address these challenges, the thesis argues that progress depends on a combination of practical and institutional measures that link legal recognition to real enforcement. It calls for better methods to gather evidence in occupation-related cases, a stronger role for the Committee of Ministers in supervising compliance with judgments, and mechanisms that provide collective compensation when individual restitution is not possible. The approach also includes supporting independent organizations that document conditions on the ground and improving cooperation between international institutions and civil society actors so that monitoring, assistance, and follow-up become more effective and easier to access.