

Question2: Please explain the process and dynamics of acquiring Russian nationality by persons residing in Tskhinvali region/South Ossetia and Abkhazia and explain the reasons for the conferral of Russian citizenship. How do you reconcile this with your assessment of the international legal status of the territories.

The process and dynamics of granting Russian citizenship to persons residing in Tskhinvali region/South Ossetia and Abkhazia can properly be described as the process of illegal passportization of the remaining population of these two regions of Georgia, designed and implemented as a significant component of Russia's creeping annexation of Tskhinvali Region/South Ossetia and Abkhazia, Georgia. It represented a deliberate and well-constructed policy aimed at directly changing the legal status of the local population to establish a pretext for the right to protect its citizens abroad with the actual aim of interfering in the internal affairs of Georgia, including in the scenario of military intervention of the Russian Federation on the territory of Georgia.

The process of implementation of this policy as well as its aims directly contravene the fundamental norms of international law as well as relevant articles of the UN Charter, namely the principles of territorial integrity and sovereignty of Georgia, non interference in internal affairs of sovereign states, and, the principle of resolving disputes through peaceful means. It is important to note that the policy of passportization had been continuously carried out in the regions where the ethnic composition of the local population had already been dramatically changed as a result of ethnic cleansing of the majority of the pre-war local population, mostly Georgians¹.

Continuation of the policy of passportization after the war in August, 2008 and Russia's Occupation of Tskhinvali Region/South Osetia and Abkhazia currently violates requirement of Geneva Convention IV.

The passportization of the remaining local population in these regions clearly posed a great threat to the success of peace process and was contrary to the formal role of a mediator of the Russian Federation.

The process of passportisation of Georgia's breakaway regions also violated EU-Russia Visa Facilitation agreement. In addition, by distribution passports illegally and en masse, Russia breached that very agreement: Para 3 (c) of the above agreement stipulates that 'citizen of the Russian Federation shall mean a person who possesses or has acquired citizenship of the Russian Federation in accordance with its national legislation.' Russian passports in both Abkhazia and South Ossetia were distributed by various sub-contractors mainly affiliated with the Russian Ministry of Defence and none of them are or have been recognized by Russian law as legitimate authorities to issue passports.

There are several elements of the process of passportization which support this analysis:

¹ See declarations of three summits of OSCE heads of states adopted unanimously by all member states, including by Russia itself, in Budapest (1994), Lisbon (1996) and Istanbul (1999) as well as by the UN General Assembly in May 2008

- the process was not driven by individuals willing to accept Russian citizenship on ad hoc basis, it was designed and implemented en masse as part of specific policy of the Russian Federation;
- the process was neither sporadic, nor disorganized, it was well prepared and coordinated among various agencies of the Russian Federation;
- the implementation of this policy had been conducted with complete disregard of the national legislation of Georgia, citizens of which were en masse granted Russian citizenship, thus clearly violating sovereign rights of Georgia and principle of good neighbourly relations;

Active preparations for massive passportization of the remaining populations of both regions started in the summer of 2002. It is noteworthy that initially the same policy was designed to cover at that time semi de facto independent region of Adjara as well. However after 2004, when the central authorities managed to integrate Adjara into the political life of Georgia, all preferential treatment from the Russian Federation of this region, including simplified visa regime for its population was terminated.

Having resolved to pursue illegal passportization of Georgian nationals, Russia amended the relevant legislation in order to facilitate and even legalize the process. Specifically, the Russian State Duma passed amendments to the Law on Citizenship, which evoked a strong protest from Georgian President Eduard Shevardnadze.² It is noteworthy that in parallel to that active use of the concept of protection of nationals abroad had become an integral part of the Russian Foreign Policy.

The illegal distribution of Russian passports to the population of the Tskhinvali region/South Ossetia and Abkhazia was executed in an accelerated manner. Immediately after the Rose revolution of November 2003, on November 29, Igor Ivanov met the leaders of Russia's proxies in Georgia: Eduard Kokoity from South Ossetia, Aslan Abashidze from Abkhazia's de facto Prime Minister Raul Khadjimba. One of the decisions taken at the meeting was to accelerate the process of granting Russian citizenship to residents of these three Georgian territories. On December 5, the Russian mass media reported that the Ministry of Foreign Affairs was preparing tens of thousands of blank passports for these regions.

In Tskhinvali Region/South Ossetia and Abkhazia actual issuance of passports was carried out by entities which were not state agencies ordinarily tasked under the legislation of the Russian Federation to grant citizenship as well as to issuing passports. Passports were issued by non state actors, such as Russian Communities Congress in Abkhazia (foot – Georgian MFA protest note of 21.07.99), subcontracted by various state agencies including Russian MOD).

It is to be noted, that pre-printed Russian Passports were also brought in by the Russian army in August 2008. On August 9th the Military Police of the Georgian Armed Forces came across a vehicle with 2 Russian soldiers, who ran away abandoning the vehicle and leaving behind a bag full with Russian Passports. These passports were issued in the same period of time, although issuing time imprinted in the passport varies from 2000 to 2008. The passports had been printed not long before August and bore the same unique identification codes. The mentioned fact is incoherent from the legal point of view as well: according to the Russian Law on Citizenship ,

² “Georgia Protests about Russian Citizenship Law Amendments,” Rustavi-2 Television 1600 GMT, 10 June 2002, in BBC Monitoring,

the passport numbers are successive and they increase according to the date of issue, whereas in this case consecutive passport numbers are used on documents, issue dates of which range by several years. An identification codes of other passports the verify above mentioned as well. Presumably, 4,600 similar passports have been issued during five days which makes more than 1,400 passports per day.

None of these passports are signed by owners. All of the photos in the passports are old, most likely taken from other documents, as traces of previously removed stamps are visible. According to the Georgian Central Registry, none of the Georgian citizens whose names are given as passport holders have forfeited their Georgian citizenship.

The policy of granting Russian citizenship to the local population has been further encouraged with economic and social incentives: Russia paid pensions that were higher than the pensions paid in the rest of Georgia to Russian passport holders; they received other social benefits and could cross the border with Russia without impediments. These incentives served twofold aims, encouraging the process of passportization as well as further economic dependence of these regions over the Russian Federation.

Before the Russian aggression in August 2008, the majority of residents of the Tskhinvali region/South Ossetia and Abkhazia, with the exception of about 42,000 ethnic Georgians residing in the Gali District, had received Russian passports. (for example According to Elbruce Kargyev, Ambassador of the Russian Federation in South Ossetia, the Ministry of Foreign Affairs of the Russian Federation issued 32,519 passports to the residents of the Tskhinvali Region/South Ossetia.³) In order to receive the passport, the person had to *inter alia* show proof of residence on the territories beyond the control of the central government; thus even the IDPs from these regions could not benefit from the simplified regime since they did not have residence proof issued by the proxy regimes.⁴

Moreover, this policy has been implemented in light of the unilateral introduction of visa regime with the rest of Georgia in 2002. A Russian passport naturally enables its holder to move freely across Russian territory. Thus the mechanism provoked the interest of the local population in obtaining Russian citizenship, at a time when the movement of Georgian citizens in and to Russia has been fully restricted. As discussed below, the Russian Federation unilaterally imposed a visa regime for Georgian nationals that would not apply to the people residing in the conflict zones if they had obtained Russian passports under a simplified regime. The Tskhinvali proxy regime therefore offered temporary passports of the “South Ossetian Republic” to Georgian nationals, provided they withdrew from their Georgian citizenship; a fact that has not been the case with respect to Russian nationals.

Process of passportization continued more rigorously following the Russian-Georgian war in August 2008, including the forcible passportization of ethnic Georgians residing on the territory of the occupied Akhagori district. The statement in this regard has been made by the OSCE High Commissioner on Ethnic Minorities, Mr. Knut Vollebaek. The High Commissioner, in his

³ Idem.

⁴ Vice-President: In the process of issuance of national passports of citizens of Abkhazia mass violations have taken place that will seriously affect the issue of security of the country; available at <http://www.regnum.ru/news/994089.html>

letter of November 27, 2008, addressed to the OSCE Chairman in Office, expressed concern about the situation, in particular in the Gali districts, since ethnic Georgians residing in those territories, are under the danger of losing their identity, language and culture. The practice of illegal pasportization, especially in Akhagori and Gali districts has also been brought to the attention of the Chairman-in-Office. According to the High Commissioner, the situation in those districts is especially alarming, since ethnic Georgian residents face “imposing of ... Russian citizenship”⁵ since they are given no choice other than to accept Russian passports, or to leave their homes.” By now more than 90% of the population of occupied the Tskhinvali Region/South Ossetia have already received passports of the citizens of the Russian Federation.⁶ It is noteworthy that the population of Abkhazia (south ossetia?) took part in the elections of the President of the Russian Federation, which was held on March 14, 2004.

This practice of the Russian authorities has been condemned by the international community. The European Union emphasized in its document that this action was a challenge to the territorial integrity and sovereignty of Georgia, which could be considered as a *de facto* annexation of those regions.”⁷

Statement in this regard has been made by the OSCE High Commissioner on Ethnic Minorities, Mr. Knut Vollebaek. The High Commissioner, in his letter of November 27, 2008, addressed to the OSCE Chairman in Office: “States should refrain from conferring citizenship en masse to residents of other States, which is in violation of the principles of sovereignty and good neighborly relations. The presence of one's citizens or "ethnic kin" abroad must not be used as a justification for undermining the sovereignty and territorial integrity of other States.”⁸

Russia actively used results of the pasportization process for the sake of interference in internal affairs of Georgia even before the war. On various instances the executive branch of the Russian Government noted that its intensified relations with the proxy regimes of Abkhazia and the Tskhinvali Region/South Ossetia were aimed at the protection of the interests of the residents of said regions, including the citizens of the Russian Federation.

Russia used this pretext during the August of 2008 as well. Despite the attempts of the Russian authorities to justify the use of force “for the protection of the nationals abroad” it cannot, for the purposes of international law, invoke this right since its has no direct and genuine link with them as was defined by the International Court of Justice in the *Nottebom* case (Lichtenstein v. Guatemala). In the *Nottebom* case the Court opined that “a State cannot claim that the rules it has laid down are entitled to recognition by another State unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defense of its citizens by means of protection as against other States.”

⁵ http://www.osce.org/documents/html/pdftohtml/35655_en.pdf.html

⁶ “Almost all the Residents of South Ossetia have Received Russian Citizenship” <http://rus.postimees.ee/?id=122840>

⁷ Declarations and Recommendations adopted by EU Parliamentary Cooperation Committee at its 3rd meeting on 18-19 June 2001, IRE/PCC/GH/KM/es, 27 June 2001, para. 27.

⁸ https://www.osce.org/hcnm/item_1_32663.html

In the current situation, under international law, no state is bound to recognize Russia's link with the population in Abkhazia and the Russian Federation has no standing to exercise any protection of "its citizens" in Abkhazia due to the lack of genuine link required by international law. Moreover, the existence of the right to use force for the protection of nationals abroad is not universally supported in international law; in particular, it is unprecedented for a neighboring state who claims to be an intermediary in the conflict and is a peacekeeper, to pursue a policy aimed at changing the ethnic composition of the disputed territories and then use force under the pretence of the "protection of the nationals." Any tolerance of such a policy and practice would be contrary to the spirit of the UN Charter, and principles of sovereignty and friendly relations between states.

Since Russia is an occupying power, any action aimed at an artificial change of the composition of the local population or the settling of its own population, as well as any kind of forcible transfers or deportations is a violation of international humanitarian law and the IV Geneva Convention in particular.