THE RIGHT TO A FAIR TRIAL DURING ARMED CONFLICT

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ABSTRACT

The right to a fair trial is the bedrock of the other fundamental human rights. The scope of this right changes in the time and space, however, the essence remains the same: to protect the individual from the violation of her/his rights and allow to prove her/his truth. Within the scope of international law, enforcement of the right to a fair trial faces the most severe challenges during the operation of the International Humanitarian Law (IHL). Taking into consideration the reality of the contemporary Georgia, namely armed conflict hotspots in the country, occupation and pending investigation of the International Criminal Court (ICC) in the situation of Georgia (concerning the alleged international crimes committed in the context of an international armed conflict), the right to a fair trial in that regard has specific relevance. Aim of the present paper is to introduce readers to the efficiency of the right to a fair trial during armed conflicts; to analyse what is the national/international legal framework for the functioning of the military court and assess whether aforementioned court can satisfy international standards to guarantee the right to a fair trial. Present paper reviews practice of the European Court of Human Rights (ECtHR), Constitutional Court of Georgia and International Military Tribunals.

INTRODUCTION

For more than half a century, the right to a fair trial is recognized as a fundamental right under international law, which is expressed in different forms and directions. The element of "justice" is inseparable from this right. According to Ulpian's definition, the term - justice refers to the constant and unceasing desire of rendering to everyone her/his right. [1] Different legal perceptions of justice and dynamic of its development guarantee the permanent relevance of the right to a fair trial. Within the scope of international law, enforcement of this right faces the most severe challenges during the operation of the IHL.

When the very existence of a state is at stake, it is indisputable that focusing on the protection of individual rights is burdensome. This is clearly illustrated by Article 15 of the European Convention on Human Rights (ECHR), according to which, in time of war high Contracting Parties are allowed to take measures derogating from the certain obligations under the Convention. However, a right to a fair trial constitutes a sui generis phenomenon in that regard as well.

The research objectives of the present paper are: 1) the operation of the right to a fair trial in legal disputes which are arisen during and as a result of the ongoing armed conflicts and 2) the scope of the aforementioned right and challenges faced during its enforcement. For that purpose, the legal basis of this right in IHL, International Criminal Law and IHRL will be examined. Special emphasis is made

[1] Oliver J. Lissitzyn, *The Meaning of the Term Denial of Justice in International Law*, The American Journal of International Law, 1936, 632.

on the challenges faced to Georgia in that regard and therefore the Paper analyses the Georgian legislation as well.

Paper in the first place reviews the concept and scope of the right to a fair trial and its development through the time. Then it addresses the meaning which a right to a fair trial has acquired in international and national law and scope of this right. For that purpose, charters and subsequent practice of the military tribunals in different post-conflict situations will be analysed. Finally, the author suggests the hypothesis, which will attempt to reveal different aspects (which has not been analysed before) of the right to a fair trial to wider society.

1. THE CONCEPT OF THE RIGHT TO A FAIR TRIAL

a) The essence of the right to a fair trial for the contemporary international society

The right to a fair trial, since the Universal Declaration of Human Rights (1948) (UDHR), has been enshrined in the international legal instruments. [2] Articles 8, 10 and 11 of the UDHR establish a right to a fair trial as a principle and determine the State's role in the enforcement of the human rights guaranteed under the Constitution and Law. Thus, this is an ideological foundation, based on which subsequent norms of international law have developed. The right to a fairs trial is mutatis mutandis reflected in the norms of the IHL.

The right to a fairs trial, which is reflected in a number of international legal instruments, has developed as a complex phenomenon. Therefore, in order to determine its role even within the narrow scope of the armed conflicts, it is necessary to analyse a number of regional and international agreements as well as decisions of the institutions functioning on the basis of the mentioned agreements. ECtHR (which constitutes the main interpreter of the ECHR) established that the right to a fair trial is a fundamental principle for the existence of a democratic society. [3] "*In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 para. 1 would not correspond to the aim and the purpose of that provision*".[4] Under this norm, the Court shall constitute an organ having the power to give a binding decision which may not be altered by a non-judicial authority.[5]

The right to a fair trial not only strengthens individuals' capabilities, but it also sheds light on the absolute necessity of the principle of the separation of powers. "*Independence from the executive; impartiality and guarantees afforded by its procedure are those crucial criteria which shall be the characteristics of the Court as an institution.*"[6]

[2] UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III).

[3] კორკელია კ, ქურდაძე ი, ადამიანის უფლებათა საეთაშორისო სამართალი ადამიანის უფლებათა ევროპული კონვენციის მიხედვით, თბილისი, 2004, 155-156.

[4] Delcourt v. Belgium, Application no.2689/65, 17 Jan 1970, European Court of Human Rights [ECHR], ¶25.

[5] Findlay v. The United Kingdom, Application no. 22107/93, 25 February 1997, European Court of Human Rights [ECHR], ¶77.

[6] Belilos v Switzerland, Admissibility, merits and just satisfaction, App No 10328/83, Case No 20/1986/118/167,

The latter is especially important when the combatant of an adverse party (having no faith with regard to the impartiality of the Court reviewing its case) faces trial before the Military Court (of an adverse party).[7]

According to the interpretation of the Human Right Committee, principle of an independent and impartial tribunal within the meaning of Article 14, paragraph 1, of the International Covenant on Civil and Political Rights (ICCPR) (1996) is violated in the situation where the functions and competences of the judiciary and the executive are not clearly distinguishable and this gives the latter ability to control the former.[8] The above-mentioned is a brief list of the criteria which apply to the independent and impartial Court in general. For dispelling any doubts, a number of international institutions expressed in their decisions the necessity to apply, by analogy, the same requirements to the military tribunals.[9]

b) Right to a fair trial within the scope of the national law

First of all, it shall be noted that in the Georgian national law (except international agreements, which are part of the Georgian national legislation) there are given different concepts of the right to a fair trial. These concepts might be classified as a constitutional-procedural[10] and legal-material. Such classification is due to the analysis of the legal sources, which are used by the Constitutional Court of Georgia as well as by the Common Courts of Georgia.

There are a number of norms in the national law that protect a right to a fair trial. The types of these norms and their hierarchy vary. The primary source in national law guaranteeing mentioned right is the Constitution of Georgia. Article 31 of the Constitution of Georgia serves as a fundamental basis for this right and its subsequent interpretation in Georgian doctrine. Special emphasis shall be made on the title of the Article, namely – "Procedural Rights". As it is evident from the wording, the title is designated to determine the general nature of the norm, however, the 1st paragraph of the Article clearly refers to the material content of the norm, according to which: "*Every person has the right to apply to a court to defend his/her rights. The right to a fair and timely trial shall be ensured*." This norm does not have a temporal limitation. Moreover, it is not limited to the group of persons, who enjoy the concrete right. It protects every person's right to apply to the Court. Therefore, this norm is applicable during armed conflicts and in peacetime and protects both civilians' as well as combatants' right to apply to the Court.

A/132, [1988] ECHR 4, (1988) 10 EHRR 466, IHRL 76 (ECHR 1988), 29th April 1988, European Court of Human Rights [ECHR]; ¶64.

7 Hague poisoning: Bosnian Croat general's cyanide impossible to detect – inquiry, The Guardian, accessed: 2019.12.09, https://www.theguardian.com/law/2018/jan/01/hague-poisoning-bosnian-croat-general-cyanide-inquiry-slobodan-praljak

8 Ol Bahamonde v. Equatorial Guinea, Communication No. 468/1991, U.N. Doc. CCPR/C/49/D/468/1991, 11 June 1993, Human Rights Committee, ¶ 7.2.

9 Weissbrodt D, Rudiger Wolfrum, The Right to a Fair Trial, Springer, 199, 749.

10 კუბლაშვილი კ, ძირითადი უფლებები, თბილისი, 2008, 341.

As it was already mentioned, the right to a fair trial has developed as a complex phenomenon. Therefore, in order to understand the essence and scope of this right, it is necessary to simultaneously analyze human rights guaranteed under the IHL, the role of the State in that regard and the national legal system regulating state's obligations.

According to paragraph 2 of Article 31, "*Every person shall be tried only by a court that has jurisdiction over the case.*" The norm has imperative character and therefore State is obliged to comply with this jurisdictional rule, in relation to the disputes arisen during the armed conflicts as well.

The legislator foresees that the situation of armed conflict not only creates a specific legal regime for the individuals and State, but it also affects the nature of the legal disputes. Therefore, article 59(3) of the Constitution of Georgia enables State to create military court during martial law. The Article does not proscribe norms, based on which this institution shall operate. However, the Constitution on itself sets certain preconditions for establishing a military court, namely:

I.**Existence of Martial Law** - According to the constitution the creation of the military court is allowed during martial law (the latter has concrete legal definition under the Constitution), which is declared in cases of an armed attack, or a direct threat of armed attack on Georgia. "Armed attack on Georgia" is not limited to the attack on the territory of Georgia. Therefore, this article can be interpreted broadly. On the other hand, it shall be noted that, as it is evident from the wording of the Article, legislator narrowed the scope of the nature of the attack, and it is limited only to the "armed attack"

II.**Institutional Procedure** – According to the Constitution of Georgia, the President of Georgia shall, upon recommendation by the Prime Minister, declare martial law and shall immediately present this decision to Parliament for approval. This provision furthermore proves the importance of martial law, since it requires the uniform position of the executive and legislative bodies of the State.

The decision to declare martial law shall enter into force upon its announcement. Therefore, after the announcement of martial law, the establishment of the military tribunal is legal. However, according to the Constitution, if Parliament does not approve the decision regarding martial law following a vote, it shall become void and therefore the legality of the military court might be doubted. However, as it was already mentioned, the establishment of the military court itself will be legal, even if Parliament does not approve the decision regarding martial law. This is due to the fact that the legal act adopted in such a form cannot be rendered as illegal and accused person shall not be tried again on the same charges by the different Courts, since it will jeopardize enforcement of the justice. Therefore, a military court shall function despite the existence of martial law. However, the parties are not restricted to challenge the jurisdiction of the Court.

It is crucial to note that, according to the Constitution of Georgia, the right to a fair trial shall not be restricted or suspended even during a state of emergency or martial law, contrary to other fundamental rights, restriction or suspension of which are allowed. [11]

Thus, according to the above mentioned, fundamental principles and preconditions for the establishment of the military court have been determined, however other details on the functioning of the mentioned court have not been analysed yet. The latter is regulated by the Articles 2 and 3 of the Organic Law of Georgia on Common Courts, according to which: military courts, with the purpose of dealing with criminal cases related to the situation of armed conflict, shall.be created during periods of martial law, in accordance with the Decree issued by the President of Georgia and only within the common court system. The structure of the Court, membership issues, jurisdiction and rules of procedure shall be determined by the same Decree.

The discussed provision narrowed the scope of the functioning of military Court (it shall deal exclusively with the criminal cases) and it also established specific criteria for each individual case, namely it shall be related exclusively to martial law. The latter on another hand gives us an opportunity to prove that, Court together with the norms of the criminal law shall use international and national norms that regulate armed conflicts. As for the provisions which are applicable to the military court, even though they fall within the special regime, all the interpretations of the different aspects of the right to a fair trial adopted by the Constitutional Court of Georgia shall be applicable upon them. Even though the contexts of the interpretation of the right to a fair trial for the Constitutional Court of Georgia and for the military court are not the same, the essence of the right is identical and uniform.

The right to access to the military court shall constitute a crucial constitutional guarantee for the protection of the individual's rights and freedoms, "Rule of Law"/"Legal State" and the principle of the separation of powers. [12] The Constitutional Court of Georgia in a number of decisions upheld that enforcement of the right to a fair trial is connected to the principle of "Rule of Law"/"Legal State" and notably determines its essence. [13] As for the latter, it implies that "Authority shall be based on Constitution, Law, and Justice in general".[14]

[11] Article 71(4) of the Constitution of Georgia, Communiqués of the Parilament of Georgia, N31-33, 24.08.1995.

[12] Citizens of Georgia - Giorgi Kipiani and Avtandil Ungiadze v. the Parliament of Georgia, N1/3/421,422, 10.11.2009, Constitutional Court of Georgia;

[13] Citizens of Georgia – Vakhtang Masurashvili and Onise Mebonia v. The Parliament of Georgia, N1/3/393,397, 15.12.2006, Constitutional Court of Georgia.

[14] Georgian Young Lawyers Association and Mrs. Ekaterine Lomtatidze v. The Parliament of Georgia, N1/3/407, 26.12.2007, Constitutional Court of Georgia;

Thus, a person which is subjected to the jurisdiction of the military court, despite the situation of armed conflict, shall be guaranteed the right to a fair trial, without any restriction. The right to a fair trial constitutes the crucial mechanism for the settlement of the disputes between the individual and state. This right also guarantees effective enforcement of constitutional rights and protects individuals from arbitrary treatment.[15]

2. THE IMPACT OF ARMED CONFLICTS ON THE RIGHT TO A FAIR TRIAL

a) The law applicable to armed conflicts

Since the inception of humankind, war has been the most extreme form of interstate relations in international law. For instance, the very first interstate treaty, whose text is known to have survived, is a peace treaty. [16]

International law makes a fundamental distinction between *jus ad bellum* and *jus in bello*.[17] *Jus ad bellum* determines the legality of the use of force, [18] whereas *jus in bello* establishes the humanitarian rules applicable to armed conflicts. The right to a fair trial is a part of the latter corpus of law, as this right has an indispensable role to play even when the sovereignty and territorial integrity of a State is at stake.[19]

Under international law, no uniform definition of war exists; thus, the state of war in intrinsically connected to an armed conflict. *Jus in bello* applies whenever there is a de facto an armed conflict, however the definition of an armed conflict is not provided for by IHL.[20] In this relation, the International Criminal Tribunal for the former Yugoslavia (ICTY) proposed a general definition of armed conflicts. In the *Tadic* case, the Tribunal states that "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State".[21] This is the framework for the discussion of the boundaries of the right to a fair trial in the context of armed conflicts.

FAIR TRIAL GUARANTEES IN ARMED CONFLICTS

International Armed Conflicts (IACs) are those which oppose States. Accordingly, the rules applicable to them, with the exception of customary international law rules, do not apply to Non-International Armed Conflicts (NIACs).[22] Fair trial

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[15] Citizen of Canada Husein Ali and citizen of Georgia Elene Kirakosiani v. the Parliament of Georgia, N1/1/403,427, 19.12.2008, Constitutional Court of Georgia.

[16] <https://www.unmultimedia.org/s/photo/detail/239/0239282.html> last modified last modified December 9, 2019.

[17] ძამაშვილი ბ, სამხედრო კონფლიქტების სამართალი, თბილისი, 2015, 15.

[18] Greenwood Ch, The Relationship between ius ad bellum and ius in bello, 1983, (9(4) Review of International Studies), 184.

[19] Nijhoff N, International Humanitarian Law and Human Rights Law, Leiden, 2008, 55.

[20] ICC Bemba Confirmation of Charges Decision 15 June 2009, para. 220.

[21] ICTY, Tadić Trial Judgment 7 May 1997, para. 561.

[22] Fleck D, The Handbook of International Humanitarian Law Third edition, Oxford, 2013, 603.

guarantees are expressly provided for in the 1949 Geneva Conventions (GCs), including the Third Geneva Convention, relative to the treatment of prisoners of war. These provisions are important as far as the they establish certain rights and obligations, which cannot be located within the purview of NIACs. Article 82 of the Third Geneva Convention provides for the circumstances for taking judicial or disciplinary measures against a prisoner of war and for the exercise of the jurisdiction of the Detaining power. In accordance with that provision, a prisoner of war shall be subject to the laws, regulations and orders in force in the armed forces of the Detaining Power; the Detaining Power shall be justified in taking judicial or disciplinary measures in respect of any offence committed by a prisoner of war against such laws, regulations or orders; If any law, regulation or order of the Detaining Power shall declare acts committed by a prisoner of war to be punishable, whereas the same acts would not be punishable if committed by a member of the forces of the Detaining Power, such acts shall entail disciplinary punishments only. Thus, the provision restricts the application to prisoners of war of laws, regulations and orders not applicable to members of the armed forces of the Detaining Power. It can be considered to guarantee equality before the court and to provide a solution - infringements of laws, regulations or orders specially laid down for prisoners of war should entail disciplinary punishment only. Such attitude is inspired by the pragmatic attitudes of IHL towards certain settings.

Moreover, combatants may take part in licit acts of war ('combatants' privileges'). Against that background stands the lawful violation of the right to life. Thus, courts should tame the interests of national governments, when holding responsible members of the opposing parties armed forces. Acts of these persons should be considered impartially and without a discriminatory application of existing legislation.

No prisoner of war may be tried or sentenced for an act which is not forbidden by the law of the Detaining Power or by international law, in force at the time the said act was committed; No moral or physical coercion may be exerted on a prisoner of war in order to induce him to admit himself guilty of the act of which he is accused; No prisoner of war may be convicted without having had an opportunity to present his defence and the assistance of a qualified advocate or counsel[23] - these are the essential fair trial guarantees as established by the Convention. It should be noted, that unlike the European Human Rights Law, IHL does not prohibit death penalty, however the death penalty may not be pronounced against a protected person who was under eighteen years of age at the time of the offence.

THE RIGHT TO A FAIR TRIAL IN NIACS

In NIACs, the existence of an organized armed group is an essential requirement. Unlike IACs, the 'combatant privilege' does not apply and the fair trial guarantees are characterised with scarcity. The latter is determined by the State sovereignty and non-intervention principles. When the situation at hand involves internal affairs,

[23] Article 99, International Committee of the Red Cross (ICRC), Geneva Convention Relative to the Treatment of Prisoners of War (Third Geneva Convention), 12 August 1949, 75 UNTS 135.

the States strive to restrict the scope of international obligations. However, the lack of guarantees does not *per se* indicate the possibility to disregard the essential of the right to a fair trial. In accordance with Article 3 Common to GCs, the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples are and shall remain prohibited at any time and in any place whatsoever with respect to persons taking no active part in the hostilities. [24]

The last sentence of that provision is of core importance, as it refers to the universal judicial guarantees. Thus, it prohibits the victor's justice. Moreover, the court should be regularly constituted and the passing of sentences and the carrying out of executions without previous judgment is prohibited. This provision makes the fair trial guarantees dynamic and relevant to the growing developments – initially, the existence of fair trial guarantees was at stake, whereas today the extent of that right undergoes expansion.

Article 3 common is further supplemented by Article 2 of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). It guarantees the presumption of innocence, right to appeal, right against self-incrimination, right to public hearing, etc. However, unlike the Article 3 Common, Protocol II cannot be considered to be part of customary international law and, thus, it is not applicable to each and every type of armed conflict.

b) Human Rights Law along the lines of International Humanitarian Law

International Humanitarian Law and International Human Rights Law developed in radically different ways. The differences in their sources and in the manners in which they view various issues raise questions about their simultaneous interaction. In this regard, International Court of Justice made a clear definition in the so called *Wall Case*.[25]

According to the reasoning of the Court, during any kind of armed violence, be it interstate or not, both domains of international law remain active. Having set specific situations apart, the Court concluded that some of the rights exclusively fall in the field of Humanitarian Law, some are covered by International Human Rights Law, while some of them are a part of both spheres. The Court recognized International Human Rights Law as *Lex Generalis*, which continues being active under any circumstances, while it declared International Humanitarian Law as *Lex Specialis*,[26] which applies to specific cases within its scope and supersedes over the norms regulated in other ways.[27] What is more, during long-lasting occupation, it is

[24] Article 3 common to the four Geneva Conventions.

[25] ICJ, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory.

[26] ICJ, Advisory Opinion, Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, para. 25.

[27] ICJ, Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian

possible for certain economic, social and cultural rights to influence the realization of humanitarian law norms.[28]

It is particularly interesting that by virtue of the provisions of Article 15 of the European Convention, the right to a fair trial does not fall in the category of the rights that may not be derogated from at times of war.[29] It should be noted in this respect that there are virtues guaranteed by Article 6, which may not be derogated from regardless of war. Therefore, Article 6 can be considered as the right that is subject to partial derogation. [30] This is clearly illustrated by the 7th Additional Protocol of the Convention, which is an integral part of the document.
In addition, the right to a fair trial is also guaranteed by the provisions of international criminal law. The Rome Statute stipulates four international crimes at the time of which, violation of the right to a fair trial during an armed conflict may be characterized as a war crime and/or the crimes against humanity envisaged by Article 7 §1 h) and §2 (g) of the Statute, when the nature of the act allows for it.[31]

3. THE RIGHT TO A FAIR TRIAL AS THE COLLECTIVE GAIN OF THE HUMANKIND

In a broader sense, the right to fair trial does not only imply the right of a person under its jurisdiction to stand before a fair trial, but it is also a collective virtue. It was stated as early as a century ago that "not only must justice be done; it must also be seen to be done".[32]

Apart from legal reasoning, another main achievement of international tribunals and ad hoc courts is peace for the peoples of the specific epoch.[33] Peace is the fundamental aim pronounced by the UN Charter,[34] which cannot demonstrate its profoundness without the supreme value in a modern state – human. Fair trial is precisely the necessary instrument that can meet the requirements of victims during and after an armed conflict and can simultaneously apply a proper punishment to an offender based on the graveness of the crime. It is absolutely true that the right to a fair trial emerged as a result of vertical relations between a state and an individual and viewing it through the horizontal lenses of international law is inconsistent with its original essence. However, considering the assumption that, according to the Montevideo Convention,[35] its population, i.e. people, [36] are an integral part of a

Territory.
9 July 2004, para. 106.

[28] Doswald-Beck L, Fair Trial, Right to, International Protection, Oxford, 2013, 13.
[29] Legal Digest of International Fair Trial Rights, Warsaw, 2012, 22.
[30] <https://www.ejiltalk.org/joint-series-on-international-law-and-armed-conflict-fair-trial-guarantees-in-armed-conflict/> last modified December 9, 2019.
[31] Rome Statute, 17 July 1998.
[32] R v Sussex Justices; Ex parte McCarthy [1924] 1 KB 256, 259 ('R v Sussex Justices').
[33] UN charter, October 24 1945, Article 1.
[34] <https://www.un.org/en/sections/issues-depth/peace-and-security/> last modified December 10, 2019
[35] 1933 Montevideo Convention on the Rights and Duties of States, Article 1.
[36] Marume S.B.M, Jubenkanda R.R, Namusi C.W, Madziyire N. C, An analysis of essential elements of the State, 2016, 25.

state and individuals within the population have the right to start a dispute with the subject having violated their rights, then why should not they have the right to use this possibility collectively? A state whose citizens' rights guaranteed by international law were violated in an armed conflict, can address different international institutions. International courts exist precisely for the realization of this right of a subject of international law and these courts have the authority to examine interstate disputes. The fairness of a court examining international disputes comes under question as early as at its formation. International disputes are characterized by the fact that a subject of international law binds itself with a specific treaty, which is reflected in voluntarily imposing restrictions on one's sovereignty. A state gives a neutral and impartial subject the possibility to examine a case and make a legally binding decision. Hence, the concept of the right to a fair trial in horizontal dimension fundamentally differs from the right to a fair trial active during individual liability. Nevertheless, the two have multiple mutual elements. For instance, the interstate dispute against the Russian Federation in the European Court of Human Rights was marked with complete protection of the right to a fair trial. It is quite unlikely that the dispute with a subject having such political influence as the Russian Federation, regardless of the principle of equality of sovereignty, would have been decided in favour of Georgia without the impartiality of the above-mentioned international institution and protection of legal provisions. [37]

CONCLUSIONS

The right to a fair trial is one of the fundamental human rights, which is guaranteed not only by international human rights law but also by international humanitarian law. Regardless of armed conflict, everyone is entitled to exercising this right properly. This, however, does not preclude the right of a state to derogate from specific aspects of this right. By and large, its fundament remains unchanged even at times of war. The right to a fair trial is strictly guaranteed by different domains of international law both at the national level and the level of international tribunals. In order to better render justice, the Georgian legislation also provides for the possibility of creating a military tribunal during an armed conflict.

Subjects like states are also entitled to the right to a fair trial but not in its classic sense. It is exactly this right that constitutes an effective method for resolving interstate conflicts peacefully. Abandoning this method will place international peace and security in danger, which will in turn have a direct impact on the welfare of the mankind.

[37] EUROPEAN COURT OF HUMAN RIGHTS, GRAND CHAMBER CASE OF GEORGIA v. RUSSIA (I) 31 January 2019.