14 years since the August war - results and expectations in the International Criminal Court

14 years have passed since the August war between Russia and Georgia in 2008. The war of August 2008, and therefore Russia's aggression, killed hundreds of people, among them many civilians suffered and their fundamental rights were violated, 26,888 people (9,081 families) were forced to leave their homes.

This year, it should be noted that against the background of the invasion of the Russian Federation in Ukraine in February 2022, the investigation process conducted by the Office of the Prosecutor of the International Criminal Court on the possible international crimes committed during the August 2008 war has moved to a new stage. In particular, on June 30, 2022, the Pre-Trial Chamber of the International Criminal Court, based on Article 58 of the Rome Statute, issued arrest warrants against 3 former high-ranking officials of the South Ossetian separatist regime, **Mikhail Mindzaev**

, **Hamlet Guchmazov** and **David Sanakoev**.

The Pre-Trial Chamber confirmed that the alleged criminal acts committed by all three high-ranking officials were related to the armed conflict[1] and, therefore, the qualifying elements of war crimes are present.[2] The representatives of the separatist regime illegally detained and transferred to the isolation cell (the so-called 'КПЗ'), mainly, ethnic Georgian civilians. The pre-trial chamber noted that the illegal arrests were collective measures directed against a specific ethnic group (Georgians), which, among other facts, is confirmed by the question posed to the persons during the arrest: **whether they were ethnically Georgian or not**.[3] Finally, the purpose of arresting the civilian population was to afterwards exchange them with the Georgian side.[4]

During the war, **Mikhail Mindzaev** occupied the position of the so-called Minister of Internal Affairs of the *de facto* administration of South Ossetia. He is accused of committing war crimes between August 8-27, 2008, including illegal detention of civilians, torture and inhumane treatment, indignities, hostage-taking and forced displacement.[5] Mikhail Mindzaev's office and detention center were located in the same building. Mindzaev himself publicly confirmed the facts of the detention of the civilian population and the outstanding role of the *de facto* Ministry of Internal Affairs in this process. Furthemore, Mindzaev was in the isolation cell when the detainees were forced to spit and step on the Georgian flag.[6]Mindzaev controlled the pre-trial detention center located in the building of the Ministry of Internal Affairs, personally participated in the interogations of the detained population, while the guards were physically and verbally abusing them; He knew that the detainees were in inadequate living conditions; Finally, he supported and encouraged the commission of these actions. Accordingly, there is a reasonable doubt that Mindzaev is an indirect perpetrator or abettor of torture, inhuman and degrading treatment.[7] Mindzaev, along with other persons, is considered to be an indirect co-perpetrator of the hostage-taking of the civilian population and their exchange.[8]

Hamlet Guchmazov was the head of the pre-trial detention center. The Pre-Trial Chamber established that there is a reasonable doubt that Guchmazov was directly or indirectly involved in the illegal arrest and hostage-taking of the civilian population. As the head of the pre-trial detention center, Guchmazov gave various instructions or assignments to the guards.[9] Guchmazov observed the facts of torture, inhuman and degrading treatment of detainees and, in some cases, himself carried out actions,

such as inflicting severe physical pain on detainees.[10]

David Sanakoev was the so-called Ombudsman (Public Defender) of the *de facto* government of South Ossetia. He is accused of committing war crimes during the period of August 8-27, 2008, including taking civilians as hostages and their illegal transfer.[11] Sanakoev took part in negotiations with the Georgian side for the exchange of hostages, and represented the side of the *de facto* government.[12] At the same time, Sanakoev attended at least five times the forcible transfer of hostages and signed the protocols of their transfer. The protocol, on the other hand, confirmed that the detained persons "voluntarily left the institution in Tskhinvali and they had no complaints regarding the treatment in the detention center".[13] The chamber established that with these actions, Sanakoev contributed to the hostage taking of the civilian population and their subsequent transfer to the territory controlled by the Georgian side.[14]

The Pre-Trial Chamber found in its arrest warrants that there was evidence to support the existence of a group with a common goal; In particular, a group with a common goal was taking hostages of the civilian population and using them as "tools for trade". The group tried to arrest and convict the representatives of the Georgian authorities, including General Dumbadze, whose arrest was not related to the 2008 conflict, the so-called Transfer to the *de facto* government of South Ossetia. To achieve this goal, members of the group, namely Borisov, Sanakoev, Guchmazov and the former president of the separatist South Ossetian regime, Eduard Kokoit, committed criminal acts.

It should be noted that the prosecutor, in his appeal to the pre-trial chamber, did not request the issuance of an arrest warrant for Eduard Kokoit, however, the chamber indicated his possible criminal actions as a member of a group with a common goal.[15]

In addition, it should be noted that, besides the representatives of the separatist regime, the involvement of Russian officials in the August 2008 war is confirmed by many international institutions, including the European Court of Human Rights.[16] Also, the EU fact-finding mission[17] indicated that prior to the armed conflict, Russian officials already had *de facto* control over South Ossetian institutions, particularly those responsible for security. In particular, the *de facto* government: the Ministries of

Defence, Internal Affairs, Civil defence and Emergency Situations, the State Security Committee, the State Border Guard Service and the so-called Presidential Administration was mainly staffed by Russian representatives or persons of South Ossetian origin with Russian citizenship who had previously held equivalent positions in Russia. During the active phase of hostilities, the key power agencies (Ministry of Internal Affairs, Minister of Defence and Emergency Situations, Chairman of the State Security Committee, Secretary of the Security Council) were managed by former high officials of the Russian army.

In this regard, it should be noted that the punishment of only the representatives of the *de facto* government: Mindzaev, Guchmazov and Sanakoev (if they are found guilty) will not eliminate the challenge to international peace and security, because the scale of military clashes proves that the circle of criminals who were under the control of the Russian Federation, is quite extensive.

It should be emphasized that the prosecutor, in the application for the issuance of the arrest warrant for the given three persons, charged only alleged war crimes. Based on this, it is important for the prosecutor to continue the effective investigation of the facts of crimes against humanity, because the prosecution of these crimes should not remain outside the attention of international justice. In this regard, the coalition emphasizes that the report prepared by many international organizations, local non-governmental organizations and the Georgian government describes the ethnic cleansing of the Georgian population in the Tskhinvali region and other actions that are directly related not only to the commission of war crimes, but also to crimes against humanity.[18]

Based on all of the above, we call for:

The Office of the Prosecutor of the International Criminal Court:

- to request the issuance of an arrest warrant before the pre-trial chamber of the so-called former president, Eduard Kokoit of South Ossetian;

- to continue effective investigation of the alleged crimes against humanity;

- In order to receive more information about the investigation and to discuss important issues for the investigation, to meet with the Georgian Coalition for the International Criminal Court (a letter was submitted to the Prosecutor's Office on March 28, 2022 regarding the said meeting

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In addition, we call on the Office of the Prosecutor of the International Criminal Court and the member states of the Rome Statute to effectively cooperate and act to enforce the arrest warrants, and for the Georgian authorities to activate all possible mechanisms to bring the relevant persons to court.

Member organizations of the Georgian Coalition for the International Criminal Court:

Georgian Young Lawyers' Association (GYLA)

Justice International

Center for Psychosocial and Medical Rehabilitation of Torture Victims (GCRT)

Rights Georgia

Human Rights Center (HRC)

[1] Detention Order of Mikhail Mayorovich Mindzaev, Pre-Trial Chamber of the International Criminal Court, 30 June 2022, available at:< https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05214.PDF>, [Last accessed: 07.08.2022].

[2] See, Elements of Crimes, International Criminal Court, 2011, Introduction to article 8, available at: <https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>, [Last accessed: 07.08.2022].

[3] *Supra* note 1, par. 17.

[4] Ibid, para. 18.

[5] Ibid, para. 1.

[6] Ibid, paras. 39-40.

[7] Ibid, para. 46.

[8] Ibid, para. 49.

[9] Hamlet Guchmazov arrest warrant, Pre-Trial Chamber of the International Criminal Court, June 30, 2022; paras. 39-40, available at:< https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05215.PDF>, [Last accessed: 07.08.2022].

[10] Ibid, para. 42.

[11] David Georgevich Sanakoev arrest warrant, Pre-Trial Chamber of the International Criminal Court, June 30, 2022; para. 1, available at:< https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05216.PDF>, [Last accessed: 07.08.2022].

[12] Ibid, para. 25.

[13] Ibid, para. 29.

[14] Ibid, paras. 31-32.

[15] The pre-trial chamber discussed the given issue in all three judgments, among them, see Mindzaev's arrest warrant on para. 48; Guchmazov's arrest warrant on para. 44; Sanakoev's arrest warrant para. 27.

[16] *Georgia v. Russia (II),* application no. 38263/08, 21.01.2021.

[17] See Reports of EU Fact-Finding Mission (Volume I < https://www.mpil.de/files/pdf4/IIFFMCG_Volume_I2.pdf>, [07.08.2022] Volume II < https://www.mpil.de/files/pdf4/IIFFMCG_Volume_II1.pdf>, [07.08.2022].

[18] See: See Human Rights Watch, □□□□□□□□ Villages in South Ossetia Burnt, Looted □□ 13 August 2008 <https://www.hrw.org/news/2008/08/12/georgian-villages-south-ossetia-burnt-looted>, [07.08.2022]; Government of Georgia, □□□□□□ Report Concerning the National Criminal Proceedings of Georgia over the Crimes against Humanity and War Crimes related to the August 2008 Armed Conflict A□ November 2014, GEO-OTP-0003-0003, (Current document is confidential and mentioned as Annex E.7.1 of prosecutor □□ request https://www.icc-cpi.int/CourtRecords/CR2015_19375.PDF>, [07.08.2022]; Ethnic Cleansing of Georgians Resulted from Russian Invasion and Occupation since August 8, 2008, < https://www.osce.org/files/f/documents/6/b/34091.pdf?fbclid=IwAR1SKYtuae8nS6Q8YFbiZGKu > [07.08.2022]; In August Ruins, Report of the Georgian Non-Governmental Organizationson Violation of Fundamental Human Rights & International Humanitarian Law August War, 2008, Prepared and published with the support of the Open Society Georgia Foundation, <https://osgf.ge/wp-json/wi/validate/v1/file?wifile=wp-content/uploads/2010/05/აგვისტოს-ნანგრევებში.pdf>, [07.08.2022].