



Statehood – Between Fragility and Consolidation

“Justice” in a Lawless Space

The “People’s Republics” of Donetsk and Luhansk as Examples of Dispute Resolution in Rebel Areas

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For the people living in areas of Ukraine controlled by separatists since 2014, beyond the sphere of influence of Kiev's state power, rule of law is a pipe dream. The “people's republics” can try as they might to construct the façade of an orderly legal system – behind it is the arbitrariness of Russia's whims, while human rights violations are systematic.

Dispute Resolution in Unrecognised States and Rebel Areas

The problem of effective jurisdiction within lawless spaces is much more extensive than one might assume at first glance. Nor is it limited to the last eight years, or merely to the Ukrainian territories in the Donets Basin not under Kiev's control. On the contrary, a brief (and by no means exhaustive) overview of the last fifty years suggests that this is a recurring phenomenon. Legal uncertainty and areas with a legal vacuum exist, and have existed, on almost every continent: the so-called Islamic State controlled parts of Syria and Iraq for a time, the Tamils ruled areas of Sri Lanka for years, and the FARC in Colombia controls entire regions¹ – and all of them had so-called legal organs that dispensed “justice”.

Legal decision-making in disputed territories is of relevance even outside those territories. For instance, will judgements by administrative authorities or courts in Northern Cyprus (the so-called Turkish Republic of Northern Cyprus) concerning property there be recognised internationally either now or in the future?

The longer central governments exert no effective control over parts of what is internationally recognised as their own territory, the greater the unresolved legal questions become. Even if we limit ourselves to the post-Soviet space, the sheer number of quasi-states, which are not recognised or recognised by only a handful of other states, is significant. Abkhazia (the so-called Autonomous Republic of Abkhazia) and South Ossetia (the so-called Republic of South Ossetia) in the territory of Georgia; Nagorno-Karabakh (the

so-called Republic of Artsakh) in the territory of Azerbaijan; the territory of Transnistria (the so-called Pridnestrovian Moldavian Republic) in the territory of Moldova; and, more recently, the parts of Ukrainian territory in the eastern Donbas (the so-called Luhansk People's Republic and the Donetsk People's Republic) and the so-called Autonomous Republic of Crimea not under the control of the central Ukrainian government. Thus, even prior to the Russian attack on the entire Ukrainian territory, there were several cases in the region in which existing state boundaries were violated or an attempt was made to shift them, which arose after the dissolution of the Soviet Union in 1991. Since the expansion of the Russian war of aggression and the occupation of further Ukrainian territories, these legal questions have arisen in other areas of the country, too. The following Ukrainian administrative districts are, or have been, occupied, in whole or in part: Kherson, Zaporizhzhia, Kharkiv, Dnipro, Sumy, and Mykolaiv.

The spectrum of associated legal problems is no less extensive: it ranges from the “major” area of criminal law, and specifically the question of which criminal and procedural codes are valid, to the “minor” questions of civil and administrative law that impinge upon the daily lives of those affected, and are thus no less important. Are certificates of marriage and divorce valid if they are issued by de-facto authorities which are not recognised internationally? What rules apply to property titles, notices of pension, or other certificates? In Transnistria, which has existed for three decades (!) as an unrecognised de facto state, this affects questions such as the following: can “local” licence plates, issued by agencies in an unrecognised territory, be used to

travel to neighbouring countries?² Is a diploma from a university in an unrecognised territory comparable with other diplomas? And can such a diploma receive an apostille or other documentation of authenticity to enable its holder to use it as the basis of professional activity in other countries?

Since 2014, Russian leadership has used violence to maintain influence in Ukraine.

Back to criminal law: what is punishable under one set of rules or another, and what is not? Is the death penalty in force or not? What statutes of limitation apply? This article will outline the major legal problems and highlight the developments in the so-called people's republics of Donetsk and Luhansk since 2014, since Russia seems poised to repeat the strategy it used in the Donbas in the newly occupied territories in the east and southeast of Ukraine.

Russian-Style "Justice": The Donetsk and Luhansk "People's Republics"

Since 2014, Russian leadership has used violence and military intervention to maintain or regain influence in Ukraine. Viktor Yanukovych's presidency seemed likely to see further Ukrainian integration into the Russian sphere of influence, but the situation changed fundamentally for Moscow with the Euromaidan movement and the "Revolution of Dignity". Large parts of the political elites, and an active part of Ukrainian society, now favoured a European, democratic path for their country. Fearing loss of control over its neighbour, Russian leadership commissioned a covert military operation in February 2014 in Crimea that culminated in the annexation of the peninsula.

During those weeks of revolution and political turmoil in Ukraine, the Kremlin used the power vacuum to consolidate support for anti-Maidan forces in the eastern part of the country, which

then attempted to seize power in many cities in the region, including Kharkiv and Odessa. They failed in most cases, but succeeded in the Donbas. The pro-Russian anti-Maidan rebels gained control of large swathes of the Donbas and, in the spring of 2014, proclaimed the "Donetsk People's Republic" (Donezkaya Narodnaya Respublika, or DNR) and the "Luhansk People's Republic" (Luganskaya Narodnaya Respublika, or LNR).³ The ideological foundation was the concept of the "Donetsk Republic" (Donetskaja Respublika) and "New Russia" (Novorossiya) in which an autonomous Donbas, and close ties between the region and Russia, were justified both historically and culturally. These ideas had been disseminated in eastern Ukraine since the 2000s with Russian backing, and resonated especially well with groups that associated an independent Ukraine with the economic and social decline of what used to be the most important industrial region in the Soviet Union.⁴

The Ukrainian transitional government deployed its own military forces against the separatist rebellion in Donetsk and Luhansk in April 2014. After a chaotic initial phase, in the summer of 2014 the so-called Anti-Terror Operation succeeded in winning back some territory from the rebels, who were nevertheless able to hold the two "people's republics", even if only with Russian support. In August 2014, a defeat of the "DNR" and "LNR" loomed, and Russian troops intervened directly in combat operations near Ilovaisk.⁵ This escalation of the war prompted Germany and France to intervene diplomatically and mediate a peace treaty. After the Minsk agreements were concluded (Minsk I in September 2014, and Minsk II in February 2015), fighting focused on the so-called line of contact dividing the Donets Basin into two areas – one controlled by the Ukrainian government, the other not. During negotiations in Minsk, the Russian leadership denied any responsibility for combat actions, and was able to avoid being named in the agreement as a party in the conflict by sticking to the narrative that the fighting was an internal Ukrainian conflict.

Shortly after the founding of the “DNR” and “LNR” in April 2014, the rebels attempted to establish a monopoly on the use of force, and develop quasi-state structures. At first, the take-over seemed to proceed quickly and with negligible resistance, since many local politicians, administrative staff, and security forces in elevated positions had fled, and the locally dominant party, Yanukovych’s “Party of Regions”, had lost control of the anti-Maidan forces.⁶ After the proclamation of the “people’s republics”, further steps were taken to simulate legitimacy and democratic structures in the pseudo-states. First, the rebels organised a “referendum” on independence from Ukraine with the unsurprising result that 90 per cent of votes went for independence. Then they constructed a “People’s Soviet” as a parliament with a mock opposition, and reconstructed security forces and a justice system. Symbols of nationality (anthem, flag, and crest) were introduced. The choice of colour

and symbol was to indicate both proximity to Russia (“DNR”: Russian double-headed eagle) and regional location (“LNR”: crest framed in ears of wheat). In the following years, the two “republics” made attempts to establish a foreign policy. At a low level, they fostered contacts across their “national borders” through proxies in Russia, but also via associations and individuals in Western Europe.

Russian influence was critical in these processes, and greatly increased, especially during the power stabilisation phase. The local players of the early days were increasingly replaced by “delegates” from Russia. By now, leading personnel in the administrative structures are either appointed directly by Moscow or approved by Russian authorities; in any case, their decisions are dependent on the Kremlin.⁷ Since 2014, the budgets of the “republics” have been dependent on Russian payments.⁸ Special



Unsurprising result: The May 2014 “referendums” for the East Ukrainian separatist areas produced the outcome favoured by local rebels and the Kremlin alike: independence from Ukraine. Source: © Sergei Karpukhin, Reuters.

bilateral commissions were created through which the majority of the budget of both “republics” was (and still is) financed from Russia.⁹ Officially, such commissions serve only to coordinate humanitarian aid from Russia. Moreover, structures in the two pseudo-states follow the Russian model: in many cases, modified Russian legislation is in force, and the territories are integrated into the Russian (shadow) economy. The procedure for issuing Russian Federation passports has also been simplified.¹⁰

The justice systems in the so-called people’s republics are quite similar to the Russian justice system.

The “people’s republics” thus emerged as de-facto states exercising power over the territory and population of one third of the Donbas. They are entirely dependent on Russia.¹¹ These close ties to Russian structures are particularly pronounced in the judiciary, which serves as a decisive instrument for establishing and securing authoritarian rule in such pseudo-states. While the Crimean Peninsula was quickly integrated into the dominion of the Russian Federation, the “republics” proclaimed by the rebels were not. These pseudo-state constructs enjoyed no international recognition. According to international law, they are illegally founded states not recognised by the international community.

The Russian Judiciary as a Blueprint: Legal Systems in the “DNR” and “LNR”

The justice systems in the so-called people’s republics are quite similar to the Russian justice system, especially with respect to structures and personnel. Only a few months after the “DNR” was proclaimed, the first legal decisions had already been reached. In August 2014, the “Council of Ministers”, acting as a government, passed an ordinance concerning military courts in the “Donetsk People’s Republic”, and in

October 2014 passed a resolution entitled “On justice” regarding the establishment of judicial structures.¹² In the “LNR”, it took about a year for the “People’s Council”, acting as a parliament, to pass its first law regarding the justice system, which it did in April 2015.¹³ Here, we see great differences between the two self-proclaimed republics, which are due to the greater importance of the “DNR” for Moscow. The “DNR” commands a much larger and economically more robust area in the Donbas, around the Donetsk metropolis. Therefore, establishing pseudo-state structures quickly there seems to have been a Russian priority.

In a transitional phase following the founding of the pseudo-states in 2014, Ukrainian law remained largely in force, at least in cases in which it was useful for the “republics” in establishing their own state structures and did not conflict with military and political objectives. Gradually, legislation was transformed, and in many cases replaced by Russian and Soviet laws. First, the newly created government organs of the “republics” enacted wartime legislation. The next step was passing criminal law and procedures based on the 1961 USSR code.¹⁴

As of March 2020, the “Donetsk People’s Republic” had a pseudo-state jurisdiction with various organs: a supreme court, general-jurisdiction courts (district, municipal, and inter-district courts), arbitration courts, and a military court.¹⁵ A similar justice system emerged in the “Luhansk People’s Republic”.¹⁶ The two “republics” also established a system for legal training. Qualification and recognition of judges is carried out through formally independent structures, which are, however, affiliated with Russian ones.

Who Dispenses Justice in the “People’s Republics”?

Part of the personnel in the justice systems of the two de-facto states are judges and officials who already held those positions in the towns and cities of the Donbas prior to the 2014 change of power. Among them are employees of the Ukrainian justice system suspected of

corruption before 2014 who nevertheless (or precisely thereby) could reasonably hope to rise further under the Yanukovych presidency (2010 to 2014). Yanukovych's removal and the "Revolution of Dignity" left them susceptible to prosecution. The remainder of the justice system personnel was appointed after the "republics" were proclaimed, with leadership positions in particular frequently filled by Russian nationalists.¹⁷ This demonstrates a common practice in separatist areas in various countries in the post-Soviet space (not only the Donbas) which is also evident in their respective legal systems: those who supported pro-Russian parties in the region before the 2014 change of power, and were prepared to adapt, continued to have good professional prospects. This said, the deployment of Russian jurists to key positions in the two "people's republics" indicates that Moscow wants direct control of developments in the Donbas, and does not fully trust even supposedly loyal Ukrainian personnel. Ukraine responded with legal action to some of its legal personnel shifting to the service of the "people's republics": according to Ukrainian law, service in the unrecognised "republics" is classified as high treason, and several judges have received corresponding convictions in absentia.¹⁸

The international public is scarcely conscious of the wide variety of consequences for the Ukrainian justice system since the Donbas war began in 2014.

Justice as an Instrument of Authoritarian Rule

Legislation and the practice of jurisprudence in the separatist "republics" are primarily subordinate to the interests of power consolidation within the "republics", and to the military and ideological confrontation with democratic Ukraine. This is reflected in both criminal law, which allows prosecution for political reasons, and practical investigative techniques.

Furthermore, it is difficult to obtain independent information about prosecutions in the so-called republics, and most information come from people in prison.¹⁹ Within the "republics", a sizeable number of victims are soldiers who have been captured, or civilians suspected of cooperating or sympathising with Ukrainian authorities. The crackdown on alleged political opponents is aimed at intimidating the population and substantiating their own propaganda, which claims that the "republics" are threatened by aggressive Ukrainian policies.²⁰ According to the Ukrainian security services, about 300 Ukrainian citizens were considered political prisoners in Russia, the two so-called people's republics in the Donbas, and Crimea until 24 February 2022. At the same time, several major trials were held in Russia and Crimea. The trials of Ukrainian director Oleg Sentsov and military pilot Nadiya Savchenko attracted international attention.²¹ Other political prisoners, such as journalist Stanislav Aseyev and scientist Igor Kozlovsky, were sentenced in the "republics".²² From there, former prisoners report systematic torture, unacceptable detention conditions, and unfair trials.²³

According to the Prosecutor General of Ukraine, law enforcement agencies had, by the end of 2020 (i.e. well before the extensive Russian invasion of February 2022), initiated more than 2,000 criminal proceedings against individuals in the law enforcement agencies and justice institutions of the "republics" who issued these political verdicts and carried them out. These cases primarily involve war crimes, most of them illegal detention, torture, and murder.²⁴

The international public is scarcely conscious of the wide variety of consequences for the Ukrainian justice system since the war in Donbas began in 2014. The Ukrainian state prison service reports that with the loss of part of its territory, the Ukrainian state lost control of 28 prisons housing 16,200 people. These institutions are now controlled by an unjust regime. Just a few hundred inmates have been transferred to territory controlled by the Ukrainian government in the last few years to serve their time.²⁵ Others find themselves subjected to a different "legal



"Welcome to Slaviansk": Pro-Russian separatists symbolically execute an effigy of a Ukrainian soldier in the Donetsk region in May 2014 – a foretaste of the arbitrary rule that has affected inhabitants of the "people's republics" ever since and which now threatens to spread to newly occupied territories in Ukraine. [Source:](#) © Yannis Behrakis, Reuters.

system" in which the death penalty was instituted shortly after the "republics" were proclaimed. So far, few death sentences have been issued, most of them for serious violent crimes. Other means have been used against political prisoners, however. Ukrainian sources say that repeated extrajudicial executions of hostages have been documented.²⁶

Ukraine's Reaction – Between Non-recognition and the Search for Pragmatic Solutions

For the last eight years, Ukraine has refused to recognise judicial decisions reached in the so-called people's republics, or in Crimea. From

the Ukrainian point of view, all judicial authorities still operating in the occupied territories have been stripped of their powers, which are now exercised by courts in government-controlled areas. Nevertheless, successive Ukrainian governments have attempted to provide citizens in the occupied territories with access to public services, and with legal protection. For instance, a special procedure for confirming dates of birth and death has been introduced for residents of the occupied areas. Ukrainian courts approve the issuance of birth and death certificates for relatives residing in the occupied territories on the basis of documents issued by administrative agencies of the "people's republics".

School graduates in the occupied territories can undergo an external test in territory controlled by Ukraine so as to obtain their university entrance qualification, without having to have their diplomas or school certificates recognised.²⁷ Additionally, pension funds, social protection services, migration services, tax services, and courts and law enforcement agencies in the areas controlled by the government also provide services to residents of the occupied territories. Because a large number of public services are digitalised,²⁸ some documents can be issued, and services provided, without the recipient leaving the occupied territories. Most legal services require travel to areas controlled by Ukraine, however.²⁹ This means that some citizens, especially mobility-impaired or low-income individuals, for whom travel across the so-called line of contact was practically impossible, had limited access to the justice system. The European Court of Human Rights recognised the problem as early as 2018, and certified that Ukraine had done everything possible.³⁰

The legal situation in the “people’s republics” is different from that in Crimea.

Thus, the justice systems of Ukraine and of the separatist “republics” exist side by side, with absolutely no interaction. Ukraine does not recognise verdicts from courts in the so-called “people’s republics”. At the same time, pragmatic solutions have been found in individual cases. Until 24 February 2022, both sides accepted de facto verdicts by the other side on “political” issues – frequently charges of treason or terrorism – by officially recognising the condemned person as a prisoner, and putting them on the lists of people to be exchanged.³¹

Nonetheless, successive Ukrainian governments faced a dilemma. Necessity dictated that practical solutions be found for the unsettled legal situation, since Ukrainian citizens in the territories occupied by pro-Russian separatists were the

ones suffering. At the same time, any de facto recognition of the justice system in the pseudo-republics had to be avoided. The challenges involved in any future reintegration of rebel-occupied territory into the Ukrainian justice system seem even greater. Before February 2022, the Ukrainian government had taken the first steps towards establishing a transitional justice system. The Ukrainian Ministry of Reintegration of Temporarily Occupied Territories had begun to develop a legislative package as part of the state transition policy encompassing criminal liability, lustration (the examination and, if necessary, removal of politically charged or corrupt persons from office), prosecution and justice, prisoner release, *inter alia*.³² The Konrad-Adenauer-Stiftung’s Ukraine office in Kharkiv had, since 2020, been organising international conferences in cooperation with the Kharkiv Law Academy, which considered the German experience of reunification, and, alongside Ukrainian experts, discussed its potential implementation in the Ukrainian case.³³ It should be noted that the starting situation for legal questions in the “people’s republics” is different from that of territories occupied by Russia directly. The residents of separatist areas in the Donbas are issued birth certificates, driving licences, and certificates of inheritance from an unrecognised government, so they are unable to use these documents almost anywhere outside the “republic”. In Crimea, Russia created an occupying administration issuing documents in the name of the Russian Federation that are therefore internationally recognised. However, in such cases, the Ukrainian government attempts a uniform response: as such, no decisions are recognised.

Repeat of Russia’s 2014 Strategy: Administering “Justice” in the Newly Occupied Territories of Ukraine

The developments of the past weeks and months indicate that the Russian leadership intends to use similar strategies to establish and stabilise its power in the newly occupied territories in the east and southeast of Ukraine. Both options – founding pseudo-independent

“republics” and direct integration into Russian territory – seem to be on the table. The legal system will once again be a decisive instrument for legitimisation and stabilisation of Russian power. Shortly after the Russian capture of the Ukrainian units remaining in Mariupol, which had barricaded themselves in the Azovstal steel works in the preceding weeks, “DNR” agencies announced the initiation of legal proceedings. The Rossiyskaya Gaveta, a Russian newspaper, quoted Denis Pushilin, chairman of the “People’s Council” of the “Donetsk People’s Republic”, speaking of a tribunal that awaited the Azovstal prisoners.³⁴ In the “LNR”, official sources announced similar actions in the interest of (according to an online portal in Luhansk) sanctioning supposed human rights violations and war crimes that the “Kiev regime” had committed in the Donbas since 2014.³⁵ It can be assumed that these planned “tribunals” were the result of direct instructions from Moscow, and intended to confirm the propaganda line that Ukrainian “fascists” had planned and executed a genocide in the Donbas. If such proceedings go forward in the so-called people’s republics, they will provide additional support for the Russian narrative of a Ukrainian civil war. Ukrainian human rights activists have been expressing grave concerns about the fate of prisoners facing the threat of being turned over to the “courts” of the “people’s republics”. Given the experience of political prisoners over the last eight years, the Ukrainian side expects further severe human rights violations.

In the “people’s republics”, the mere appearance of the rule of law is what counts.

Lawlessness as an Instrument for the Usurpation of Power

There can be no true administration of justice as we understand it, either currently or in the future, in the areas in the east and southeast of Ukraine that are not under the control of the

central government in Kiev. Many fundamental rules, such as the right to due process, are being disregarded. In the so-called people’s republics, quasi-judicial institutions and procedures are intended, instead, to create the mere appearance of the rule of law. Regardless of the designation of persons or institutions involved in the de facto administration and enforcement of “justice”, the provisions applied in the “people’s republics” have no proper legal basis. Eight years after the proclamation of the so-called people’s republics, their legal systems remain fragile.

The judiciary personnel, if they are Ukrainian citizens, have been convicted in absentia in Ukraine. Verdicts by “courts” and enforcement organs of the “people’s republics” are not internationally recognised, and it is difficult to see how these problems can be retroactively solved. The justice systems of the two “people’s republics” conform to Russian structural, personnel, and financial requirements, and parts of them even follow Soviet legal traditions. It is clear that independence, rule of law, and democracy in both “republics” are only window dressing.

The opposite of rule of law is arbitrary rule. The affected population lives in quasi-states without legal security. Cross-border commuters felt this clearly even before the most recent major Russian invasion of Ukraine at the end of February 2022. In the free and the occupied parts of Ukraine, there are de facto two different, incompatible justice systems. This is especially true of criminal law, which is often used as a weapon to combat political opponents. Numerous charges and proceedings for treason or terrorism in the “people’s republics” demonstrate this. Before the current war broke out, document circulation had benefitted from a certain pragmatism on the part of Ukrainian authorities, especially in the area of civil status certificates; however, after the all-out Russian attack, no continuation of this approach can be expected. Any Ukrainian recognition of the “legal system” or “authorities”, to say nothing of “statehood”, of the so-called people’s republics remains out of the question. Instead, it is to be expected that arbitrary rule and lawlessness

will again be instruments of power propagation in the territories newly occupied by Russia.

Many problems, including those of legal nature, are currently insoluble, and will have to be dealt with later in the event of a peace process. Past reunification processes show how difficult it is to solve transitional legal issues. In the alignment of the legal systems of the GDR and the Federal Republic in 1990, the scope of the German Reunification Treaty alone highlights how complex an adjustment of two partly colliding legal systems can be, even under peaceful conditions. In any case, the situation in the disputed territories of Ukraine remains very dynamic, which makes it difficult to make any statements about likely future developments. This is true not only of the war as a whole, but also regarding any future peace process, and subsequent resolution of the legal questions highlighted here.

- translated from German -

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