

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*



**CIVIL ORGANIZATION
«KHARKIV HUMAN RIGHTS PROTECTION GROUP»**

HUMAN RIGHTS VIOLATIONS IN THE LNR/DNR

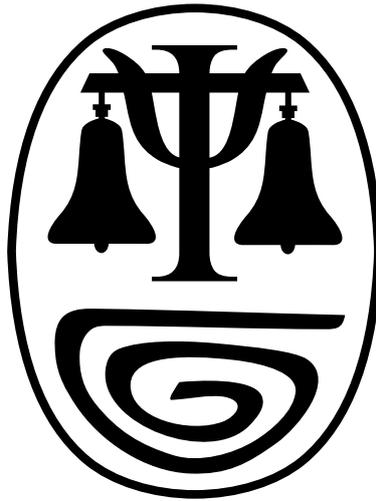
LEGISLATION AND PRACTICE

**HDIM
WARSAW 2016**

AUTHORS

Yevgeniy Zakharov

Civil Organization «Kharkiv Human Rights Protection Group»



"JUSTICE FOR PEACE IN DONBAS" COALITION

The Coalition was established in December 2014 and includes 17 NGOs, mainly from the Ukrainian regions of Donetsk and Luhansk.

The Coalition members are:

Alchevsk Human Rights Analytical Centre, Centre for Civil Liberties
/ Euromaidan SOS, Civic Organization "Kharkiv Human Rights Protection Group," Donbas SOS,
Donetsk "Memorial," Eastern-Ukrainian Centre for Civic Initiatives, Ecological and Cultural Centre
"Bakhmat," Human Rights Centre "Postup" / Vostok SOS, Luhansk Regional Human Rights Centre
"Alternative," Luhansk Rights Defence Group, Public Committee for Protection of Constitutional Rights
and Freedoms of Citizens, Public Movement "Ochyshchennya," Public Organization "Mirny bereg,"
"Social Action" Centre NGO, Starobilsk District Public Human Rights Women's Organization "Victoria,"
Starobilsk Public Organization

CONTEXT

More than 2.5 years have passed since the start of the Russian Federation's aggression on the territory of Donbas and the beginning of an armed conflict. The Russian aggression led to the establishment of the self-proclaimed Luhansk People's Republic ("LNR") and Donetsk People's Republic ("DNR"). The quasi-states of LNR and DNR have already created their quasi-regulatory frameworks.

The territory not controlled by Ukraine is currently home to a large number of Ukrainian citizens. Those citizens are the same as the citizens of Ukraine living in the controlled territories. Yet the inhabitants of the DNR and LNR cannot disobey the quasi-regulatory framework applicable on the territory of the DNR and LNR, as they would face repressions. Therefore, although all regulatory acts of the two quasi-states are illegal, it is irrelevant from a practical point of view for people living in the territory not controlled by Ukraine.

Since there are no prospects for an early end to the occupation of Donbas territories, it is necessary to examine the social reality that has emerged in the LNR and the DNR and, in particular, the human rights situation, both at the normative level and in practice. What continues to be an important task is further information search and documentation of extraordinary human rights violations which took place in the years 2014-2015 (arbitrary executions, enforced disappearances, torture, unlawful imprisonment and detention, etc.).

MONITORING METHODOLOGY

The purpose of monitoring is to collect information on human rights violations in the DNR and LNR. Monitoring sources are divided into passive ones (i.e. computerised collections of law with regulations of the DNR and LNR, online articles and discussions in the social media) and active ones, such as reports from informants about the socio-economic situation in various localities within the LNR and DNR, judicial decisions, the application of the LNR and DNR legislation in the administrative practice, as well as extraordinary human rights violations during the active phase of the military conflict, i.e. from May 2014 till February 2015.

On the basis of the collected information, the experts from the Kharkiv Human Rights Protection Group ("KhPG") analysed the legislation of the LNR and DNR as of 1 July 2016 as well as judiciary and administrative practices, against the benchmark of international standards of human rights, in particular the European Convention on Human Rights ("the Convention") and the practice of the European Court of Human Rights. This document contains a summary of that study. We also plan to further monitor the legislative work in the DNR and LNR and the practice of law application in courts and administration.

MONITORING RESULTS

VIOLATIONS OF HUMAN RIGHTS IN THE QUASI REGULATORY FRAMEWORK OF THE LNR AND DNR

The review of the legislation of the self-proclaimed DNR and LNR indicates that it can be divided into three types:

- Ukrainian legislation, which applies to the extent not inconsistent with, respectively, the Constitution of the DNR of 14 May 2014 and the Constitution of the LNR of 18 May 2014;
- Legislation of the DNR and LNR borrowed fully from the legislation of the Russian Federation (Criminal Code of the DNR, Civil Procedure Code of the DNR, Act of the DNR of 14 August 2015 № 84-IHC "On defence" and other acts) or borrowed from the legislation of the Russian Federation with some editorial amendments (Act of the DNR of 25 December 2015 № 99-IHC "On the tax system", Act of the LNR of 3 July 2015 № 28-II "On the state civil service of the LNR" and others);
- Legislation of the DNR and LNR developed independently, with no direct equivalents (for instance, the Act of LNR of 23 October 2015 № 71-II "On special economic and other sanctions", the Act of DNR of 21 August 2015 № 76-IHC "On the state supervision in the area of business activity", the Act of DNR of 24 April 2015 № 23-IHC 'On special legal regimes', the Act of LNR of 11 September 2015 № 52-II "On the foundations of state youth policy", the Act of LNR of 11 September 2015 № 49-II "On culture" and others).

A strong influence on the daily life is also exerted by the orders issued by the heads of DNR and LNR as well as legal acts issued by the executive authorities.

Human rights and fundamental freedoms are violated in the LNR and DNR already at the normative level. For instance, the limitations of rights and freedoms formulated in the two Constitutions are not consistent with the approach adopted by the Council of Europe: state intervention into the exercise of the rights and freedoms must be based on the law, pursue a legitimate goal from among an exhaustive list of goals and be necessary in a democratic society.

On the contrary, all rights and freedoms mentioned in the Constitutions of the DNR and LNR, which have borrowed a large part of their provisions from the Constitution of the Russian Federation, are either declared without any restrictions or it is stated that they may be restricted by law, and the principle of proportionality is stated forcibly:

"The rights and freedoms of individuals and citizens may be restricted by the law only to the extent that this is necessary in order to protect the constitutional order, morality, health, rights and lawful interests of others, national defence and security of the state." (Article 48 section 2)

The provision of Article 12 section 4, *"The exercise of the rights and freedoms of humans and citizens shall not violate the rights and freedoms of others,"* is, in reality, ignored on a daily basis, which is why it can be argued that human rights and fundamental freedoms in the DNR and LNR are being constrained almost arbitrarily by the quasi-states. And considering that the provisions of the Constitutions of the DNR and LNR have no direct force, it is virtually impossible to protect the constitutional rights and freedoms in court in case they are violated. It is, therefore, not surprising that the quasi-states apply a curfew, to give an example.

The Constitution of the LNR also contains provisions that lead directly to the violation of the Convention. For example, Article 22 section 5 contains the following "gem": *"Censorship is prohibited, except as provided by law"*, which is in breach of Article 10 of the Convention. Article 5 section 4 reads: *"The sale of land is prohibited in the Luhansk People's Republic"* (chapter "Fundamentals of the constitutional system"), which goes against Article 28 that guarantees the right of ownership, and leads to the violation of Article 1 of the First Protocol to the Convention.

Direct violations of human rights are also laid down in ordinary legislation. The acts 'On the mass media' prohibit distribution of foreign periodicals without permission of the registration authority. This prohibition applies

to the media financed by foreign countries, legal persons or citizens. The same acts ban foreign journalists from working in the DNR and LNR without accreditation. All of them are disproportionate restrictions on freedom of expression, protected by Article 10 of the Convention.

The requirement of accreditation laid down in the acts applies to all journalists coming to the DNR and LNR, not just to foreign ones. It should be noted that such accreditation in the LNR and DNR means much more than just registration of journalists: it actually introduces access control. Without presenting an accreditation pass (this is the actual name of the accreditation certificate issued to journalists), a journalist cannot speak to any official. However, the fact of holding such a pass comes with no guarantee that information will actually be provided.

There are similar unjustified restrictions on the freedom of association which violate Article 11 of the Convention. They relate to the activities of international organisations and to foreign funding. The decree issued by the Head of the DNR № 231 of 2 June 2015 "On the prohibition of activities of foreign non-governmental organisations on the territory of the DNR" prohibits "*activities of foreign non-governmental organisations that have not been accredited by the Special Accreditation Commission for international missions, and heads, staff, administrative and technical staff of international missions.*" Similar provisions exist in the LNR. According to the LNR law "On public associations", public associations are obliged to inform the registration authority about the amount of cash and other assets derived from foreign sources, about the purposes for which these funds and assets are intended and how they are actually used. In addition, there are provisions about foreign agents similar to those present in the Russian legislation: associations which intend to receive foreign funding and engage in political activities must first register in the register of non-profit organisations that perform the function of a foreign agent. No law on public associations has been adopted in the DNR.

Many odious norms that violate human rights can be found in the Criminal Code and Criminal Procedure Code, both of which are part of the quasi-regulatory framework of the DNR and LNR. For example, "*wilful refusal by the head of an organisation or a citizen to repay substantial payable debts or to repay securities after the entry into force of the relevant judicial act*" is punishable with imprisonment of up to two years. This provision of the Criminal Code of the LNR is a medieval vestige, directly contradicting Article 1 of Protocol 4 to the Convention (prohibition of imprisonment for debt). The Criminal Codes of the LNR and DNR criminalise libel and the Criminal Code of the DNR provides for death penalty as a punishment.

The Code of Criminal Procedure of the LNR and DNR sets 48 hours for a court to decide on a preventive measure (72 hours in the Ukrainian Code of Criminal Procedure), but the court may extend the period of detention repeatedly for 72 hours (from the moment when its decision is announced) at the request of the parties in order for them to provide additional evidence justifying the validity or invalidity of the preventive measure chosen. Moreover, the court should only consider the risks, but does not consider whether the suspicion of committing a crime is reasonable or not. This violates Article 5 of the Convention, which protects the right to liberty and security of person.

There is a long list of other direct human rights violations in the quasi-regulatory framework of the LNR and DNR. In particular, numerous flaws can be found in the electoral law. It is also important to note that, unlike the DNR, the courts of the LNR handle only criminal cases, which significantly constrains access to justice in the LNR. The LNR has not yet adopted a Civil code. The issue of citizenships has not been regulated by either of the two republics so far.

The violations of human rights and fundamental freedoms are directly enshrined in the legislation, a fact which will inevitably lead to systematic and massive violations of human rights and entail further violations.

THE POLITICAL SYSTEM OF THE SELF-PROCLAIMED DNR AND LNR

Although the Constitutions of the self-proclaimed republics contain provisions on the division of state powers into legislative, executive and judicial powers, and the authorities of all three branches of government are called independent, the person “number one” in both republics plays a decisive role. Thus, the entire judicial system of the republics is, in fact, subordinated to the heads of the DNR and LNR: judges at all levels are appointed and dismissed by force of their decrees. The heads of DNR and LNR establish the Council of Ministers and decide about its resignation. In addition, the head of the DNR can either combine his position with the position of the President of the Council of Ministers or not, depending on what he sees fit. It is the heads of DNR and LNR that decide on the composition of the Council of Ministers, which must include their deputies. Although formally the person applying for the post of the Chairman of the Council of Ministers should be approved by the Parliament, the head of the republic may appoint the Chairman of the Council of Ministers single-handedly using an authoritarian veto following the two refusals by the Parliament.

It should also be noted that the heads of the DNR and LNR are vested with broad powers in the area of rule-making. In fact, their decrees often govern those legal relations which, in view of their essence and significance, should be regulated by legislative acts. For example, the decree of the head of the LNR “On the governance of the activities adopted by the executive authorities of the LNR” establishes state agencies which are governed by the head of the LNR as well as the public authorities governed by the Council of Ministers of the LNR. The head of the LNR even manages the activities of the State Investigation Committee of the LNR.

In summary, in terms of the form of government, LNR and DNR are presidential republics, whereas in terms of the political regime they are one-man dictatorships.

THE SOCIAL AND ECONOMIC SITUATION IN THE DNR AND LNR

In the spring of 2015 pensioners and public sector employees began receiving regular pensions and salaries/wages in Russian roubles. Payments were made on the basis of the previously received pensions and salaries using the conversion rate of 1 UAH = 2 RUB, even though the actual exchange rate varies from 2.4 to 2.8 roubles, depending on the location. The minimum pension of 2,000 RUB (1,000 UAH) actually turned into 760 UAH (minimum pension on the controlled territories is 1,130 UAH). The number of people who also receive a pension from the Ukrainian Pension Fund is difficult to estimate, but this number is probably not very large. In addition, the introduction of the Savings Bank cards that will simultaneously serve as pension certificates will make it impossible for DNR and LNR residents to continue to receive their pensions. This position of the Ukrainian state cannot be justified: pensioners should receive their earned pension regardless of where they live, and the government should take all measures to ensure these payments rather than fight “pension tourism”. The payment of 2,000 Russian roubles to pensioners would perhaps constitute some kind of meagre compensation for the hardships caused to the inhabitants of the LNR and DNR by the occupation.

Our analysis of the food component in the minimum consumer basket in the cities of Ukraine and DNR/LNR (see below for an example in the table, where the list of products is drawn up in accordance with the decision adopted by the Cabinet of Ministers of Ukraine dated 14 April 2000, No. 656; the conversion rate is 1 RUB = 0.38 UAH) shows that the prices on almost all food products except bread/grains are higher in the LNR and DNR than in Ukraine, with some prices being substantially higher. It is known that a subsidy has been introduced for bread/grains. It should be noted that the prices on utilities in the LNR and the DNR have remained unchanged, i.e. they are significantly lower than in Ukraine. Petrol is also noticeably cheaper.

According to the data from the Ministry of Economic Development of the DNR, the average monthly number of actual population in 2015 in the whole of the Donetsk People’s Republic was 2,277.2 thousand people, of whom 68% live in the three largest cities of the DNR: Donetsk (962.0 thousand people), Makeyevka (382.8 thousand) and Gorlovka (210.0 thousand people). A similar distribution was noted for the average recorded number of people in full-time jobs, which amounted to 346.4 thousand people in the whole Republic, or 15% of the total population. In the three major cities, the figures were, respectively: 146.1 thousand, 55.3 thousand and 30.3 thousand people.

City	Kharkiv	Luhansk, RUB	Luhansk, UAH	Sverdlovsk, RUB	Sverdlovsk, UAH
Bread and grains:					
wheat flour, kg	7.10 UAH	14 RUB	5.32 UAH	15 RUB	5.7 UAH
wheat bread, loaf	3.80 UAH	10.88 RUB	4.13 UAH	11 RUB	4.18 UAH
pasta, kg	10.70 UAH	26 RUB	9.88 UAH	25 RUB	9.5 UAH
rice, kg	16.25 UAH	50 RUB	19 UAH	45 RUB /700 UAH	17.1 RUB/700 g
millet, kg	7.20 UAH	18 RUB/800 g	6.8 UAH/800 g	36 RUB	13.68 UAH
buckwheat, kg	32.95 UAH	95 RUB	18.05 UAH	80 RUB /700 UAH	30.4 RUB/700 g
oatmeal, kg	12.10 UAH	32 RUB	12.16 UAH	38 RUB	14.44 UAH
pulses, kg	14.85 UAH	-	-	33 RUB	12.54 UAH
Potatoes, kg	4.95 UAH	20 RUB	7.6 UAH	12-20 RUB	4.6-7.6 UAH
Vegetables:					
cabbage, kg	2.49 UAH	12 RUB	4.56 UAH	25 RUB	9.5 UAH
tomatoes ,kg	7 UAH	-	-	40 - 45 RUB	15.2 - 17.1 UAH
cucumbers, kg	15.49 UAH	-	-	40 -60 RUB	15.2 -22.8 UAH
carrots, kg	4.99 UAH	30 RUB	11.4 UAH	30 RUB	11.4 UAH
beets, kg	3.49 UAH	17 RUB	6.46 UAH	30 RUB	11.4 UAH
onions, kg	5.19 UAH	30 RUB	11.4 UAH	25 RUB	9.5 UAH
garlic, kg	50 UAH	-	-	150-250 RUB	57-95 UAH
Sugar, kg	14.95 UAH	47 RUB	17.86 UAH	52 RUB	19.76 UAH
Sunflower oil,1l	26.56 UAH	73 RUB	27.74 UAH	80 RUB	30.4 UAH
Margarine, kg	37.19 UAH	90 RUB	34.2 UAH	80 RUB	30.4 UAH
Meat products:					
mutton, kg	-	-	-	-	-
rabbit, kg	-	-	-	-	-
pork, kg	79.90 UAH	250 RUB	95 UAH	280 RUB	106.4 UAH
offal, kg	-	-	-	100 RUB	38 UAH
poultry, kg	37.50 UAH	116 RUB	44.08 UAH	120 RUB	45.6 UAH
lard, kg	46.90 UAH	-	-	120 RUB	45.6 UAH
sausages, kg	28.49 UAH	-	-	140 RUB	53.2 UAH
Herring fish, kg	49.43 UAH	-	-	140 RUB	53.2 UAH
Dairy products:					
whole milk, 1l	11.65 UAH	34 RUB	12.92 UAH	30 RUB	11.4 UAH
butter, kg	61.15 UAH	-	-	200 RUB	76 UAH
hard cheese, kg	59.22 UAH	-	-	300 RUB	114 UAH
soft cheese, kg	24 UAH	300 RUB	114 UAH	53 RUB	20.14 UAH
cream	10.65 UAH /0.5 l	57 RUB /0.5 l	21.66 UAH /0.5 l	160 RUB/1 l	60.8 UAH/1 l
Eggs, 10 pcs.	12 UAH	40 RUB	15.2 UAH	43 RUB	16.34 UAH

The average monthly salary of one full-time employee in 2015 in the regions and cities of the Donetsk People's Republic varies widely: from 4,685 Russian roubles in Gorlovka to 10,850 Russian roubles in Zhdanovka. In Donetsk, the figure was 6,782 Russian roubles. The average monthly payments per retiree are somewhat less varied: in 2015 they ranged from 2,619 Russian roubles in Telmanovski district to 4,368 Russian roubles in Zhdanovka.

Thus, with the higher prices on staple foods, the income received by residents of LNR and DNR is substantially lower than the one in areas controlled by Ukraine. It is very difficult to survive on such income. This is felt particularly acutely by vulnerable groups, such as pensioners, disabled citizens, single mothers and families with many children, who survive on humanitarian aid, primarily from the R. Akhmetov fund.

The difference in prices motivates residents of DNR and LNR to bring cheaper food products from the controlled territories. However, there is a limit of maximum 50 kg of food, costing not more than 5,000 UAH that can be transported across the demarcation line (excluding humanitarian aid). These constraints give rise to different criminal schemes, enabling people to bypass those bans.

The checkpoints of entry and exit (CPEE) along the demarcation line handle an average of 20 thousand people daily. A total of six CPEE have been opened. One of them, located in Zolotoye, is not in operation since it is not supported by the LNR. Among the remaining five points one is intended for pedestrian crossing (in Stanitsa Luganskaya), and four (Gnutovo, Novotroitskoye, Mariinka and Zaitsevo) are intended for vehicle crossing. Only one of the five operating CPEE (in Gnutovo) enables people to cross the demarcation line quickly: queuing here usually takes no more than an hour and the staff are polite and helpful. Queuing in other CPEE may take even up to one day. The queue moves very slowly, as if on purpose. The CPEE staff requires citizens crossing the demarcation line to produce documents that should not be required while crossing. There are many cases where people are denied the possibility to cross the demarcation line without any apparent reason. The CPEE staff demonstrate a rude, cynical and hostile attitude. Such an attitude can only reinforce the already critical attitude towards the Ukrainian state among the residents of the DNR and LNR.

There have been many situations where, as a result of the shelling on territories adjacent to the transport corridor, the operation of checkpoints stopped completely, vehicle traffic was blocked and the people who were stuck between checkpoints were exposed to imminent danger of getting under gunfire.

People living in the two republics are frustrated, and the sense of disappointment, hopelessness and depression prevails. People are tired of the war, uncertainty and disbelief. They do not trust any authorities and do not expect anything good in the future. The negative attitude towards the Ukrainian authorities is supported by aggressive Russian propaganda, and is reinforced by the memory of the dead and wounded, and the deprivation of housing and other property as a result of destruction. The expectations that the young republics supported by the Russian Federation would succeed have been replaced by disappointment. The most optimistic residents continue to hope that these difficulties are temporary and will be overcome. Nevertheless, families with children who attend high school are trying to find possibilities for their children to graduate in the controlled area, pass the final exams and go to college in the controlled area. Pharmacies have hardly any medicines and people specifically cross the demarcation line to get them. Anyone who has the possibility to pay for medical treatment opts for hospitals in Kharkov, Dnepropetrovsk and other cities.

In June and August of 2016 gunfire attacks became more frequent, with both parties using weapons prohibited by the Minsk Agreements. Gunfire in the DNR and LNR was coming from residential areas, which is why the return fire from the Ukrainian side inevitably affected residential neighbourhoods.

RECOMMENDATIONS

- Ukrainian authorities should take all measures to ensure that pensioners residing in the territory of the self-proclaimed DNR and LNR receive their pensions.
- The competent authorities of Ukraine should increase the capacity of the check points of entry and exit, eliminate the queues to the maximum possible extent, prioritise a respectful and courteous attitude of check point staff towards people crossing the demarcation line.
- The normative documents and the practice at checkpoints in the case of firearm attacks on the surrounding areas should be changed in order to protect people crossing the demarcation line.
- Efforts should be taken to exclude situations where firearm attacks on the opposite side are carried out from the territory of residential areas.
- The parties to the armed conflict should take all measures to stop the fighting and violence in the conflict zone.
- The parties to the conflict should immediately release all persons arbitrarily deprived of liberty.

PARTNER ORGANISATIONS

HR HELSINKI FOUNDATION
for HUMAN RIGHTS

MONITORING WAS POSSIBLE THANKS TO THE SUPPORT OF

U.S. Department of State



THIS PUBLICATION HAS BEEN SUPPORTED BY



Auswärtiges Amt



This publication has been supported under the project „European support for effective monitoring of human rights in Eastern Ukraine” implemented by DRA (Berlin) and funded by the German Federal Foreign Office. The conclusions and recommendations of this report are given by the authors and editors of this publication and do not necessarily reflect the views of the German Federal Foreign Office.

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*

