

Human rights in unrecognized states (experience of the Lugansk People's Republic and the Donetsk People's Republic)

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"The world is changing...
I feel it in the ground.
I feel it in the water.
So do I in the area of
unrecognized states".

Part I. The Lugansk People's Republic

The Lugansk People's Republic (LPR) was proclaimed on 27 April 2014 in the territory of the Lugansk region of Ukraine. The Basic Act of the LPR (Constitution) was adopted on 27 April 2014 and went into effect on 18 May 2014.



According to Art. 7 of the Constitution, the Republic has its own Constitution and legislation applied throughout the territory of the LPR. The legislative acts of the Republic must be published.

Unpublished acts do not apply. Normative legal acts of the Republic affecting the rights, freedoms and obligations of a person and a citizen cannot be applied if they are not published for general information.



State authorities of the LPR, local self-governing bodies formed on the territory of the LPR, officials, citizens and their associations are obliged to comply with the Constitution, acts, and other normative legal acts of the Luhansk People's Republic.

According to Art. 12 of the Constitution, human rights and freedoms are recognized and guaranteed in accordance with generally recognized principles and norms of international law.

The concept of natural human rights is enshrined in the Constitution. Fundamental human rights and freedoms are inalienable and belong to everyone since birth. Human rights and freedoms are directly applicable. They determine the meaning, content and application of laws, the activities of the legislative and executive authorities, local self-government and are provided by justice.



The constitution contains a standard list of human rights (right to life, freedom from torture, right to security of person, presumption of innocence, etc.).

The LPR's Act "On Normative Legal Acts in the Lugansk People's Republic" establishes a hierarchy of normative legal acts. Codes, acts and other normative legal acts of the LPR may not contradict the Constitution. Acts should not contradict the Codes.

The republic has adopted the main acts on civil society institutions: on public associations (2014), on trade unions (2014), on mass-media (2014), on elections (2015), etc. However, there is no act on a referendum.



A system of law enforcement agencies has been formed: the police (act of 2014), prosecutor's office (act of 2014), courts (act on the judicial system of 2015), bailiff service (order of the Ministry of Justice of 2016), advocacy (act on advocacy and the legal profession 2018).

The LPR has adopted and is implementing the necessary codes: Criminal Code (2015), Criminal Procedure Code (2015), CCP (2018), APC (2018), Code of Administrative Offenses (2016).



The LPR pays much attention to the norms of international law. Thus, according to the constitution, the rights and freedoms of man and citizen are recognized and guaranteed in accordance with the generally recognized principles and norms of international law (part 1 of article 12).

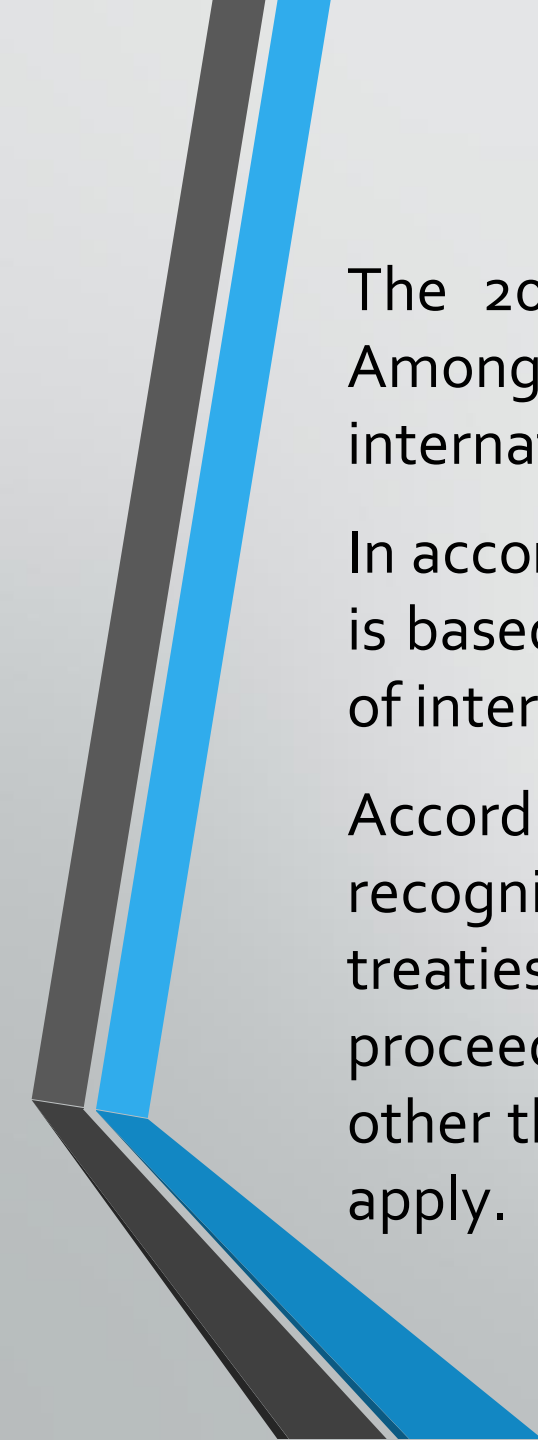
Everyone has the right, in accordance with international treaties, to apply to interstate bodies for the protection of human rights and freedoms, if all available domestic remedies have been exhausted (part 3 of article 39).

However, the Constitution does not contain a provision on the place of international law in the legal system of the Republic.



At the same time, the Act "On International Treaties of the LPR" 2018 establishes the following:

1. International treaties of the LPR, along with the generally recognized principles and norms of international law, are an integral part of its legal system.
2. If an international treaty of the LPR establishes rules other than an act, then the rules of the international agreement are applied.
3. The provisions of officially published international agreements of the LPR, which do not require the issuance of domestic acts for application, are directly applicable in the Republic. For the implementation of other provisions of international treaties of the Republic, the relevant legal acts are adopted.



The 2015 Martial Law Law contains references to international norms. Among them are the generally recognized principles and norms of international law (Preamble, Articles 1, 2, etc.) The UN Charter (Article 1).

In accordance with Part 2 of Art. 1 of the Criminal Code of the LPR The Code is based on the Constitution and generally recognized principles and norms of international law.

According to Art. 1 of the Criminal Procedure Code of the LPR, generally recognized principles and norms of international law and international treaties of the LPR are an integral part of the legislation governing criminal proceedings. If an international agreement of the Republic establishes rules other than those provided for by the Code, then the rules of the agreement apply.



However, Republic has few of its own international treaties.

Among the important ones are the Treaty of Friendship, Cooperation and Mutual Assistance between the LPR and the Republic of South Ossetia 2018.

As for the norms of international law in the field of human rights, only the UN Charter and international customs can be named.



Part II. The Donetsk People's Republic

The Donetsk People's Republic was proclaimed on 27 April 2014 on the territory of the Donetsk region of Ukraine. The Basic Act (Constitution) of the Donetsk People's Republic was adopted on May 14, 2014.

The Constitution took effect on the day of its official publication, i.e. on 16 May 2014.

Acts and other legal acts that operated on the territory of the Republic prior to this Constitution entering into force apply in so far as they do not contradict the Constitution of the Donetsk People's Republic (Art. 86 of the Constitution).



On June 2, 2014, the Decree of the Council of Ministers of the DPR "On the application of legislation on the territory of the DPR in the transition period" was adopted. According to this decree, acts and other legal acts in force on the territory of the DPR before the entry into force of the DPR Constitution are applied to the extent that they do not contradict the DPR Constitution (Art. 2 of the Decree). Thus, the legislative acts of Ukraine, which were in force on 16 May 2014 – the date of the "fixed" legislation of Ukraine, are considered the legislation of the DNR.

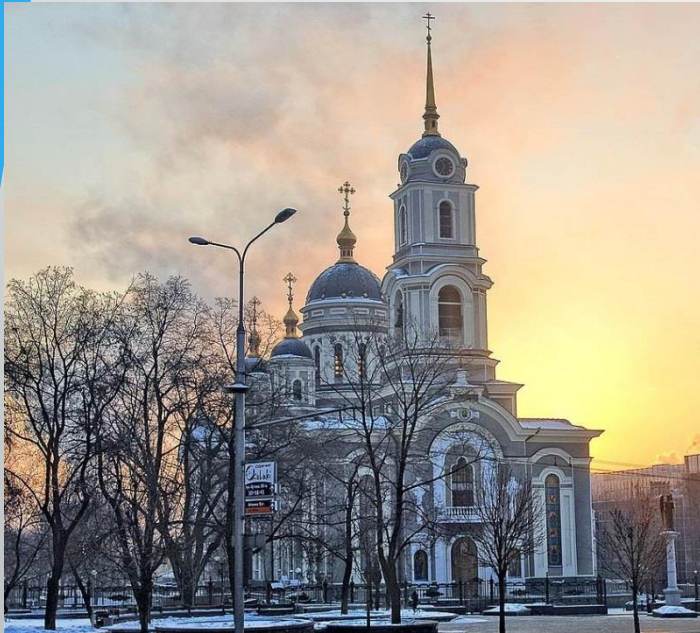
In addition, the Act № 72-IGK "On Normative Acts" of 2015 approved the hierarchy of normative acts in the republic.



The DPR has formed a legal basis for the action of civil society (acts on the media 2015, on citizens' appeals 2015, elections 2014 and 2017, on freedom of religion and religious associations 2016, etc.

In accordance with Art. 80 of the Constitution, Justice in the DPR is administered only by courts.

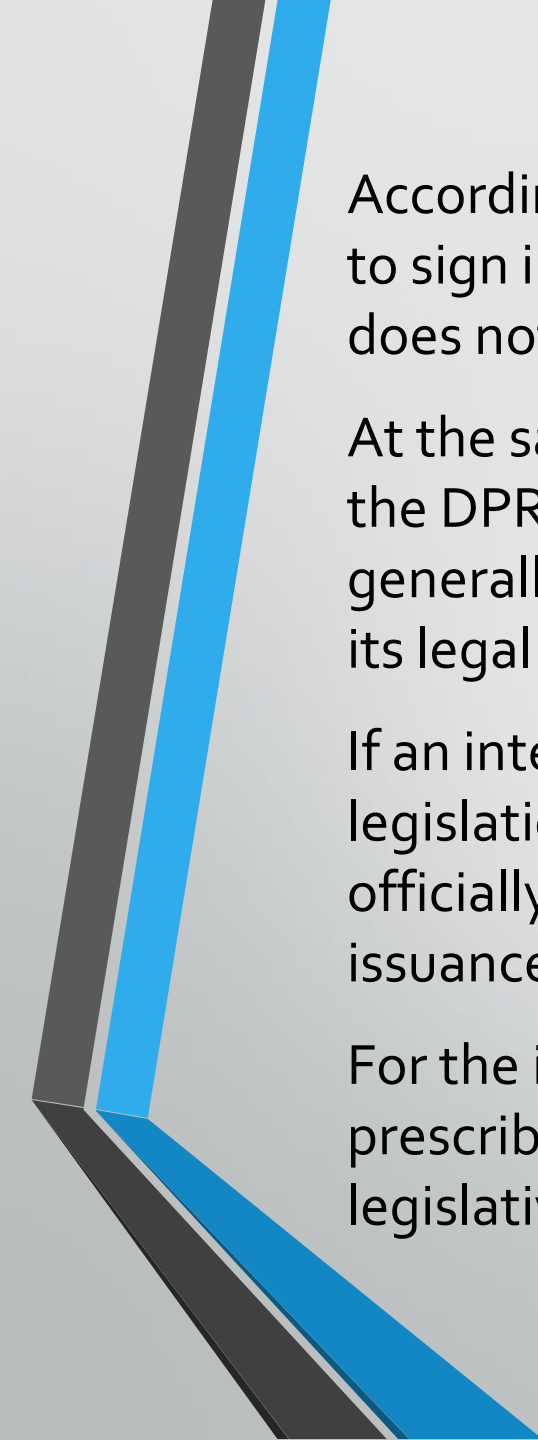
The republic has the DPR Supreme Court and other courts, the powers, procedure for formation and activities of which are determined by the legislation of the republic.



In addition, the DPR has issued and applied acts: "On the Police (2015), "On the Prosecutor's Office" (2018), "On the Judicial System of the Donetsk People's Republic" (2019), "On the Supreme Court of the Donetsk People's Republic" (2020), "On the Bar and Advocate Activity" (2020).

Criminal Code (2014), Criminal Procedure Code (2018), Civil Code (2019) were developed and adopted.

The Chairman of the Supreme Court of the DPR issued an order "On approval of the temporary procedure for arbitration proceedings" of 2019.



According to Article 56 of Part 4 of the Constitution, the Head of the DPR has the right to sign international treaties on behalf of the republic. However, the DPR Constitution does not indicate the place of international norms in the legal system of the Republic.

At the same time, the issue is set out in detail in the act “On international treaties of the DPR”. According to Art. 4 international treaties of the Republic, along with the generally recognized principles and norms of international law, are an integral part of its legal system.

If an international treaty of the DPR establishes rules other than the current legislation, then the rules of the international treaty are applied. The provisions of officially published international agreements of the DPR, which do not require the issuance of domestic acts for application, operate directly in the Republic.

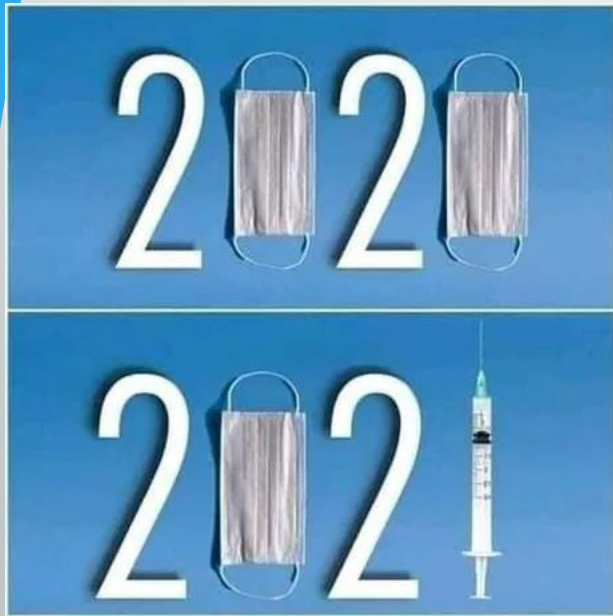
For the implementation of other provisions of international treaty of the DPR, in the prescribed manner, simultaneously with the act of ratification, the necessary relevant legislative acts are adopted and acts of a bylaw are brought into line with them.



As you can see, the norms of the DPR- law are similar to the norms of the law on international treaties of the LPR and the corresponding acts of the Russian Federation.

However, the DPR still has few treaties. I can name the Treaty of Friendship between the DPR and the Republic of South Ossetia in 2017.

At the same time, the DPR does not have acts on public associations and parties, on non-profit organizations, on referendum. Some of them are being developed, some are not. The Republic does not have its own Code of Administrative Offenses, Code of Civil Procedure and APC - the acts of Ukraine are used.



Conclusion

As you can see, the LPR and the DPR have an appropriate legal framework to ensure human rights in their territories. The legislation of republics is based on the Russian experience.

The situation with respect for human rights in both republics can be described as satisfactory.

The authorities are working. Civil society exists.

Courts and law enforcement agencies are functioning, cases are being considered.

Human rights are generally observed in the Republics.

Thanks for your attention

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