

Case Note

DEATH PENALTY IN SO-CALLED DONETSK AND LUHANSK PEOPLES REPUBLICS: ARBITRARY EXCESSES OF PRO-RUSSIAN REBELS OR “BACK TO THE SOURCES”?

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Summary: 1. Introduction. – 2. Death penalty official “legalization” in DPR as a step back to the USSR. – 3. Death penalty as the highest degree of social protection or a duty to protect the people? – 4. Human rights violations and tragic human toll caused by L / DPR leadership. – 5. Conclusions.

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ABSTRACT

The article raises the issue of formal “justification” and direct practice of the death penalty in certain areas of Donetsk and Luhansk regions (hereinafter ORDLO) of Ukraine affected by the uprising and subjected to Russian aggression. The first cases of executions of Ukrainian patriots by rebels and their Russian curators (Igor Girkin, Arseniy Pavlov (Motorola), etc.) date back to April 2014. The massacres were carried out mainly out of court – on the orders of field commanders. However, collective courts were seldom held for propaganda purposes, where “saboteurs” and banal marauders and rapists were sentenced by show of hands. In August 2014, the so-called “Criminal Code” was “enacted”, Article 58 of which established the death penalty for “especially serious crimes” without specifying their list. Instead, life imprisonment officially became the highest punishment in the self-proclaimed neighbouring Luhansk People’s Republic. At the same time, the leadership of both “republics” announced that the current legislation of the Russian Federation is taken as the basis of their criminal legislation. Instead, death sentences are handed down and enforced de facto out of court in both the DPR and the LPR. This practice of dividing death sentences into relatively small de jure and mass ones, de facto uncontrolled sentences (by decision of field commanders or security officials), has been characteristic of Soviet practice since the dawn of the 20th century – late 1917 to be precise. The concern of global human rights structures with the issues of observance of the fundamental human right – the right to life – in the ORDLO was reflected in a special Report of the Office of the UN High Commissioner for Human Rights (2020). It is noted that the death penalty is maintained in temporarily occupied territories, and sentences are handed down and enforced.

1 INTRODUCTION

Examination of the “legislation” of the self-proclaimed Donetsk People’s Republic and Luhansk People’s Republic remains something of a taboo in the scientific thought of domestic researchers. These pseudo-state formations have been unconstitutional from the very beginning of their existence, therefore illegitimate, therefore illegal, etc., with all the attendant consequences for the academic scientist (however, unfortunately, the author of this scientific research does not have access to classified publications in special editions of services of Ministry of Internal Affairs and Security Service of Ukraine). There is nothing special to investigate here because it is not a “law” in its classical sense but the pseudo-legal efforts of the marginalized.

Even in the USSR, where official political doctrine and related scientific thought considered an organized crime (“thieves in law”) to be absolute marginals and “cursed heritage” of the previous era, law enforcement officers-professionals were actively investigating the ideology and customary norms (so-called *ponyatiya* – concepts) of the criminal world. These studies had already been widely disseminated at the beginning of the 1990s. The practical value of such research surpassed the forced need for the scientist to actively “dig in the shit” of criminal society and its ideological statements, as well as theoretical justifications of “*ponyatiya*”.

Without claiming the specific scientific novelty of the historical and legal research proposed to the reader’s attention, we insist on its certain practical importance. We hope that the results of this scientific research will be compelling not only for the domestic reader but also to the world community, interested in eliminating as soon as possible the threats to peace created by Russia’s aggression against Ukraine in 2014. It is interesting to consider and understand how and why the death penalty appeared in the criminal «legislation» of the self-proclaimed republics and how much of its roots lie in Soviet law. Where else, apart from the

self-proclaimed republics of the post-Soviet space, the death penalty remains, and for which criminal acts is it envisaged?

We think that the possibility of using the death penalty in the rebel-held regions of South-Eastern Ukraine can be explained by a constellation of reasons. First, it is an attempt to appeal to public opinion of the population. For example, in the neighbouring Russian Federation in 2021, about 41% of the population considers as possible to use the death penalty for several crimes, such as rape of minor, serial murders, terrorism and coup preparation, premeditated murders, drug trafficking (41% of Russians are not against the reintroduction of the capital punishment – poll, 2021). Another factor that works on the popularity of the death penalty in the rebel-held region is propaganda. Waging war against Ukraine, the rebels impose on marginalized groups the stereotype of “punisher”, a criminal in uniform. Moreover, the war zone often becomes a place of various criminal offences – murders, robberies, rapes (including rapes of minors), etc. To absolve themselves from responsibility for this state of affairs and their inaction, the leadership of the self-proclaimed republics demonstrates uncompromisingness by demanding that criminals be punished “under the laws of war”.

Repeated statements were made in the Donetsk People’s Republic about the need to practice the death penalty, including in the fight against economic crimes (O. Zakharchenko in July 2017). The so-called DPR prosecutors demanded using the death penalty in sentencing Ukrainian patriots (E. Chudnetsov’s trial). However, real death sentences and their execution were relatively infrequent¹. In Luhansk People’s Republic, death sentences have not been officially handed down by courts in recent years², as this is not provided for by the “legislation” of the quasi-state. Finally, the influences of the Soviet past and the legislative norms of the neighbouring Russian Federation and the Republic of Belarus on the “legislation” of the ORDLO (Separate districts of Donetsk and Lugansk regions) cannot be written off.

Even in Ecclesiastes, we find an indisputable opinion: “9. What was, it will be, and what was done, it will be done – and there is nothing new under the sun! ... 10. Sometimes people say about him: “Look, this is [something] new!”. But it has been since the ages before us!”³.

For all reasons, it would be interesting to see how the so-called law of the so-called “People’s Republics” exists an independent phenomenon, and so – a kind of legal tracing of repressive legislation (legal terror) of Soviet Russia and its practical application.

We suggest that the ideology, morality and law of the so-called DPR and LPR are not an independent phenomenon and, therefore, not original, and we will try to prove and scientifically substantiate this assumption. Moreover, we believe that the ideologists and “jurists” of ORDLO are deliberately copying Soviet models, particularly in the general approaches and legal constructions generated by them. This is done in part by giving appeals to its electoral base – the so-called “ohlos”, which are always present in all countries, without exception, from the ultra-totalitarian DPRK to the exemplary democratic United States, and partly from the poverty of their scientific thought, represented primarily by “narrow” practices of law enforcement agencies rather than conceptual legal theorists. In a matter of brevity, we will limit ourselves to only one, essentially narrow, issue – the maximum penalty, in the realities of ORDLO – the death penalty (or life imprisonment).

1 DPR terrorists have decided to impose the death penalty in the occupied territories (2014) 24 Channel <https://news.24tv.ua/teroristi_dnr_virishili_zaprovaditi_smertnu_karu_na_zahopenih_teritoriyah_n521251> date of access 15 Aug 2022.

2 O Stryzhova, ‘The ‘DPR’ grouping allowed the death penalty, and the ‘LPR’ punishes with life imprisonment’ (2016) Radio Svoboda <<https://www.radiosvoboda.org/a/27825663.html>> accessed 15 August 2022.

3 *The Bible or the Scriptures of the Old and New Testaments* (Publication of the Moscow Patriarchate 1988).

We have a sufficient amount of empirical material on ORDLO (most of it, to some extent, is used in the proposed attention of the reader to scientific intelligence). Instead, the systematization of this empirical material and certain theoretical generalizations or attempts at comparative law studies in domestic and world scientific thought have not yet been identified.

In turn, historical and legal works on the introduction and application of the death penalty in the USSR, including theoretical developments, are so numerous (K. Kautsky⁴, S. Melgunov⁵, A. Terne⁶, O Solzhenitsyn⁷ etc.) that to mention some of them - by the inevitable default of many others – we consider unacceptable.

2 DEATH PENALTY OFFICIAL “LEGALIZATION” IN DPR AS A STEP BACK TO THE USSR

The death penalty in temporarily occupied territories was officially established by Article 58 of the so-called Criminal Code (Criminal Code of the Donetsk People’s Republic, 2014). Donetsk People’s Republic in August 2014, i.e., less than six months after the uprising (we wonder if the drafters of the “code” knew about the infamous Article 58 of the Criminal Code of the RSFSR from the Stalin era, which provided punishment for various types of “counter-revolutionary” crimes? – Author).

Quotes in the original language (Russian) translated into English:

“1. The death penalty, as an exceptional measure of punishment, may be imposed only for particularly serious crimes against life, as well as for certain crimes committed in wartime or combat situation.

2. The death penalty shall not be imposed on women, as well as on persons who have committed crimes before the age of eighteen and on men who have reached the age of sixty-five by the time the court is sentenced.

3. The death penalty shall not be imposed on a person extradited to the Donetsk People’s Republic by a foreign state in accordance with an international treaty of the Donetsk People’s Republic or on the basis of reciprocity unless in accordance with the law of the extraditing foreign state-provided or non-application of the death penalty is a condition of extradition, or the death penalty may not be imposed on him on other grounds.

3. (So, in the text of the document, where paragraph 3 is repeated twice. – Author. The death penalty by pardon may be replaced by life imprisonment or imprisonment for a term of twenty-five years”⁸.

In Soviet Russia, the official “legalization” of the death penalty was somewhat slower than in the DNR, but with the same uncertainty as to the *corpus delicti* as in paragraph 1 of Article 58 of the DNR Criminal Code. Created by the Second All-Russian Congress of Soviets (where the so-called Soviet power was officially proclaimed), the Sovnark announced in one of the first orders of October 26, 1917, the abolition of the death penalty – to implement the decision

4 K Kautsky, *Terrorism and communism* (J. Ladyschnikow Verlag G.m.b.H. 1919).

5 S P Melgunov, *The red terror in Russia* (PUIKO 1990).

6 A M Terne, ‘In the kingdom of Lenin: Essays of modern life in R.S.F.S.R’ (1922). <<https://topknig.pro/nauka-i-obrazovanie/chelovek/73415-v-tsarstve-lenina-ocherki-sovremennoy-zhizni-v-rsfsr.html>> accessed 15 August 2022.

7 AI Solzhenitsyn, ‘The Gulag Archipelago’ (1973) <https://librebook.me/arhipelag_gulag> date of access 15 Aug 2022.

8 O Stryzhova, ‘The ‘DPR’ grouping allowed the death penalty, and the ‘LPR’ punishes with life imprisonment’ (2016) Radio Svoboda <<https://www.radiosvoboda.org/a/27825663.html>> date of access 15 Aug 2022.

of the Congress⁹. According to some scholars, the first official death sentence in Soviet Russia was announced on June 21, 1918 (a little more than six months after the October coup. – Auth.) against the commander of the Baltic Navy A. Shchastny. A. Shchastny was tried in the Kremlin, and his pre-trial detention cell was located in the next room to Ulyanov-Lenin's office. The defendant was charged with counter-revolutionary agitation, connivance in the navy, non-compliance with the orders of the Soviet government and its systematic discretion in the eyes of sailors. "After a 5-hour (Note it – the Authors.) Meeting, the members of the tribunal found it proven that "Happy" consciously and openly prepared the preconditions for a counter-revolutionary coup d'état". However, long before June 1918, the death penalty was applied de facto out of court.

Already in February 1918, the announcement of the All-Russian Emergency Commission (VCHK), which was published in the press, warned that all "(...) counter-revolutionary agitators (...) all fleeing to the Don to join the counter-revolutionary troops (...) would be mercilessly shot by commission units ... at the scene of the crime"¹⁰. The scientific literature often mentions the mass fusillade in Kyiv by Muravyov's Red troops after Central Rada had left the city (February 1918). A similar situation took place at that time in other cities of the former Russian Empire. S.P. Melgunov points to the so-called revolutionary creativity of the masses: "It is characteristic that orders to execute are issued not only by the central body but by all sorts of revolutionary committees: in Vyatka "for leaving home after 8 o'clock"; in Bryansk for drunkenness; in Rybinsk – for congestion on the streets and at the same time "without warning"¹¹. On July 16, 1918, the NKVD of the RSFSR pointed out that the revolutionary tribunals were not bound by restrictions in choosing measures to combat counterrevolution, sabotage, and others¹². The famous decree on the Red Terror of September 5, 1918, established that: "all persons involved (to the White Guard organizations, conspiracies and riots (...)) are subject to execution"¹³. In June 1919, the German Social Democrat K. Kautsky pointed out the following: "Revolutionary tribunals and emergency commissions were the creatures of terror. Both of them ruled terribly, not to mention punitive expeditions, the number of which cannot be established. Furthermore, the number of "extraordinary" people who died at their hands is unlikely ever to be found. In any case, it reaches thousands. The minimum statistic identifies them at 6,000. Some indicate twice, even three times that number. In addition, an infinite number of people are thrown arbitrarily into dungeons, tortured to death and executed"¹⁴. Disagreeing with the digital calculations of the German theorist of the social democratic idea (they seem understated to us), we agree that the bulk of the victims of the Red Terror were those who fell under the flywheel of extrajudicial repression of the Cheka and various "revolutionary tribunals". Essentially, these were bodies of the political massacre, not justice.

In the "Basic Principles", as well as in the Criminal Code of the RSFSR in 1922, note 2 to Article 13, we may find that "temporarily, as the highest measure of social protection, until its complete abolition, the Central Executive Committee of the USSR is to combat the most serious crimes, threatening the foundations of Soviet power and the Soviet system, [herewith]

9 The newspaper of the Provisional Workers and Peasants Government (1917) <[http://nlr.ru/res/inv/ukazat55/kw_records.php?kw_s=газета%20временного%20рабочего%20и%20крестьянского%20правительства%20петроград&ids=130387&kw_t=ГАЗЕТА%20ВРЕМЕННОГО%20РАБОЧЕГО%20И%20КРЕСТЬЯНСКОГО%20ПРАВИТЕЛЬСТВА%20\(Петроград\)>](http://nlr.ru/res/inv/ukazat55/kw_records.php?kw_s=газета%20временного%20рабочего%20и%20крестьянского%20правительства%20петроград&ids=130387&kw_t=ГАЗЕТА%20ВРЕМЕННОГО%20РАБОЧЕГО%20И%20КРЕСТЬЯНСКОГО%20ПРАВИТЕЛЬСТВА%20(Петроград)>) date of access 15 Aug 2022.

10 The first death sentence in Soviet Russia. (2013). Pravo.ru. <https://pravo.ru/process/view/95518/> date of access 15 Aug 2022.

11 Izvestia on 1918 year. No 27. (1918). <http://nlr.ru/res/inv/ukazat55/record_full.php?record_ID=181482 > date of access 15 Aug 2022.

12 ibid, 8

13 *Criminal law* (Legal publishing house of the Ministry of Justice of the USSR 1948).

14 Collections of legalizations and orders of the Workers' and Peasants' Government (1918). <<https://www.prlib.ru/item/728927>> date of access 15 Aug 2022.

execution is allowed". The authors of the Soviet textbook on Criminal Law¹⁵ stated in this regard the following: "As we can deduct from this wording, the scope of the application of capital punishment was limited to only the most serious types of crimes. In addition, the fusillade was not allowed for those under eighteen and women who were pregnant" (Part 3, Note 2 to Article 1)¹⁶. As a modern Russian source points out: "From 1920 to 1950, maximum sentences were imposed for various crimes: concluding unprofitable contracts, passing an unjust sentence, illegal detention, receiving a bribe, mismanagement of labour in wartime, non-fulfilment of contractual obligations, theft from state warehouses..."¹⁷.

It is immediately obvious that the so-called anonymous legislator followed the same path. Donetsk People's Republic. Complete blurring in the question of the composition of the crime punishable by the death of a "criminal" – as we will see in the future, will lead to new steps in intensifying criminal repression. And not only in the Stalinist Union of the USSR but also in the newly formed DPR.

The rhetoric with which the leaders of the October 1917 coup d'état of 1917 and the uprising in eastern Ukraine in 2014 "justified" the death penalty turned out to be very similar.

3 DEATH PENALTY AS THE HIGHEST DEGREE OF SOCIAL PROTECTION OR A DUTY TO PROTECT THE PEOPLE?

The press service of the self-proclaimed DPR on the introduction of the Criminal Code on Sunday, August 17, 2014, stated that "at the first meeting (so-called - Author) of the Presidium of the DPR Council of Ministers adopted a resolution "On approval of the Criminal Code of the Donetsk People's Republic". The regulatory framework of the Russian Federation is taken as a basis. The DPR Criminal Code provides for the death penalty for particularly serious crimes. "When we end the war, we will follow the path of humanizing our criminal legislation", promised DPR Deputy Prime Minister Oleksandr Karaman. In turn, the First Deputy Prime Minister of the DNR, Volodymyr Antyufeyev explained that "the introduction of the death penalty is not revenge, but the highest degree of social protection, as a duty to protect the people"¹⁸. In this "Statement", as they say, everything is decent – and already well-known to domestic historians of law, the infamous term "highest degree of social protection" ("supreme measure of social protection") and the identity of the imposter, and the unsubstantiated promise of a distant, undefined at the time of "humanization" the question of the death penalty. However, the initiative of Donetsk dignitaries to introduce the death penalty was not supported by their Luhansk colleagues, who also referred to "the need to bring their own legislation to the standards of the Russian Federation."¹⁹.

At the same time, both self-proclaimed "republics" emphasized²⁰ that the main reference point for them is the (modern) Russian legislation. In particular, this was announced at the end of 2014 by the chairman of the so-called People's Council of Luhansk People's Republic, Oleksiy Karyakin: "Yes, we are adapting to Russian legislation. Because Russia supports us

15 Ibid, 17

16 Ibid, 4

17 The death penalty: from the USSR to modern Russia (2018) Pravo.RU <<https://pravo.ru/story/206498/>> date of access 15 Aug 2022.

18 Ibid, 17

19 The DPR's leader Zakharchenko has announced his intention to introduce the death penalty for corruption (2017) GordonUA. <<https://gordonua.com/ukr/news/war/-zaharchenko-zajaviv-pro-namir-vvesti-v-dnr-smertnu-karu-za-koruptsiju-200638.html>> date of access 15 Aug 2022.

20 DPR militants have introduced the death penalty – UN report (2020) GordonUA. <<https://gordonua.com/ukr/news/society/bojoviki-dnr-vveli-smertnu-karu-dopovid-oon-1515648.html>> date of access 15 Aug 2022.

and because, at the same time, we understand that living with Ukraine will be difficult for us. But this does not mean we blindly copy these documents - we take the best we have, both in the Russian Federation and in such republics as Belarus and Crimea" (marked by the Authors)²¹. It is known that since August 1996, in the Russian Federation, death sentences have not been executed owing to a moratorium. However, the death penalty has not been abolished by law in this country, and only the aforesaid moratorium has been imposed on it.

Under the new Criminal Code, which entered into force in January 1997, the list of offences punishable by death has been reduced from 27 to 5:

Article 105, part 2 – murder under aggravating circumstances;

Article 277 – encroachment on the life of a statesman and public figure:

Article 295 – encroachment on the life of a person administering justice or a preliminary investigation;

Article 317 – encroachment on the life of a law enforcement officer:

Article 357 – genocide²².

Here we will briefly point out that the moratorium on the death penalty in the Russian Federation does not mean its actual legislative abolition, which senior Russian officials constantly emphasize. In particular, the head of the Investigative Committee of the Russian Federation, Alexander Bastrykin, said in October 2017 that the moratorium on the death penalty in Russia could be lifted only on the basis of a referendum. In his opinion, in this case, "this measure of punishment should be applied in exceptional cases"²³.

It should be noted that of the 15 republics of the former USSR, 12 abolished the death penalty by law. Azerbaijan, Armenia, Estonia and Lithuania were the first to do so in 1998, followed by Turkmenistan in 1999, Ukraine in 2000 (after the decision of the Constitutional Court of Ukraine of December 29, 1999), Moldova in 2005, Kyrgyzstan in 2007, Uzbekistan in 2008, Latvia in 2012²⁴. In 2021 death penalty was abandoned in Kazakhstan²⁵. Currently, the criminal legislation for capital punishment is prescribed in two former union republics only: Russia (moratorium) and Belarus.

The current national constitution of Belarus provides this punishment for particularly serious crimes (atrocities). Subsequent laws have specified the crimes for which the death penalty may be used. The death penalty can be imposed for crimes committed against the state or individuals. As of 2020, Belarus is the only country in Europe that uses the death penalty as a severest punishment. In 2019, at least two death sentences were carried out²⁶. The last death sentence in this country was handed down in 2021. On January 15 2021²⁷,

21 The DPR have imposed the death penalty. The militants approved their Criminal Code (2018) LB.UA <https://lb.ua/news/2014/08/18/276497_dnr_vveli_smertnyu_kazn.html> date of access 15 Aug 2022.

22 Criminal Code of the Russian Federation (1996) <http://www.consultant.ru/document/cons_doc_LAW_10699/> date of access 15 Aug 2022.

23 Russia has noted a condition for lifting the moratorium on the death penalty (2017) RBK Ukraine <<https://www.rbc.ua/ukr/news/rossii-nazvali-uslovie-otmeny-moratoriya-1507992021.html>> date of access 15 Aug 2022.

24 D V Skrynka, "The death penalty" L.V. Gubersky (Ed.), *Ukrainian diplomatic encyclopedia: in 2 volumes* (Znannia Ukrainy 2004).

25 A Sheremet, "The death penalty has been officially abolished in Kazakhstan. Babel" (2021) <<https://babel.ua/news/74747-u-kazahstani-oficiyno-skasovali-smertnu-karu>> date of access 15 Aug 2022.

26 Constitution of the Republic of Belarus (1994) <<https://pravo.by/pravovaya-informatsiya/normativnye-dokumenty/konstitutsiya-respubliki-belarus/>> date of access 15 Aug 2022.

27 The first death sentence in 2021 was handed down in Belarus (2021) Ukrinform <<https://www.ukrinform.ua/rubric-world/3171557-u-bilorusi-vinesli-persij-u-2021-roci-smertnij-virok.html>> date of access 15 Aug 2022.

the Minsk Regional Court handed down a verdict against Viktor Skrundik and three other Slutsk residents accused of killing pensioners and an attempt to kill an 85-year-old woman.

In Tajikistan, according to the current Criminal Code, as amended in 2021, the death penalty may be imposed for premeditated murder under aggravating circumstances – Article 104, paragraph 2; rape under aggravating circumstances – Article 138, paragraph 2 and terrorism – Article 179, paragraph 3²⁸. Interestingly, the current Criminal Code does not provide for the death penalty for crimes against the state: at least, regarding this, the Asian republic has taken a balanced approach.

So, it is difficult to determine which of them is «more Catholic than the Pope». We can talk about the influence of Lukashenko's Belarus with a stretch; as for the Criminal Code of Tajikistan as amended in 2021 – there are doubts about the fact that anything has been known about it by “lawmakers”-rebels. As we can see, both Donetsk and Luhansk separatists have their own “right” despite some differences in approach. It is difficult to establish which of them is “a bigger papist than a pope.”

4 HUMAN RIGHTS VIOLATIONS AND TRAGIC HUMAN TOLL CAUSED BY L / DPR LEADERSHIP

We should denote that passing death sentences in ORDLO, even for especially serious crimes, grossly contradicts norms of international law and the general moods of the world community, which has continued to recognize Ukraine's territorial integrity since the beginning of 2014. As you know, on May 1, 2000, for Ukraine Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty. This Protocol categorically prohibits the application of this measure of punishment: “No one shall be condemned or executed”. Since certain districts of Donetsk and Luhansk oblasts, temporarily occupied by the self-proclaimed L / DPR, are an integral part of Ukraine, the death penalty extends to these districts as well, despite terrorist attempts to appeal to Soviet or modern Russian legislation.

In December 2014, the self-proclaimed Donetsk People's Republic announced the gradual introduction of the death penalty in its controlled territories. However, according to the militant's representative O. Khodakovsky, an appropriate legal framework is needed to introduce this type of punishment. O. Khodakovsky did not rule out that the question of the possibility of the official introduction of the death penalty on the territory of the DNR could be brought up for public discussion. He stressed that the death penalty had not yet been used as an official punishment in militant-controlled areas²⁹.

However, like Soviet Russia in the first months and years of its existence, the death penalty, de jure abolished, was widely used de facto. Uncertainty over the use of the death penalty did not prevent militants. DPR and LPR to carry out extrajudicial killings of Ukrainian patriots – and not only with them. It is enough to name the names of the deputy of the Horlivka city council V.I. Rybak, tortured on the orders of Bezler and Girkin in April 2014³⁰, or a young football player S. Chubenko³¹, who was shot in July of the same year. In a video interview with D. Gordon,

28 Criminal Code of the Republic of Tajikistan (1998) <http://continent-online.com/Document/?doc_id=30397325#pos=8;-144> date of access 15 Aug 2022.

29 DPR terrorists have decided to impose the death penalty in the occupied territories (2014) 24 Channel <https://news.24tv.ua/teroristi_dnr_virishili_zaprovaditi_smertnu_karu_na_zahopenih_teritoriyah_n521251> date of access 15 Aug 2022.

30 Book of Remembrance of the Dead for Ukraine. Chubenko Stepan Viktorovich (2021) <<https://memorybook.org.ua/27/chubenko.htm>> date of access 15 Aug 2022.

31 Book of Remembrance of the Dead for Ukraine. Rybak Volodymyr Ivanovich (2021) <<https://memorybook.org.ua/20/rybakvol.htm>> date of access 15 Aug 2022.

I. Girkin, the Minister of War of the self-proclaimed DNR, admitted that during the fighting in eastern Ukraine in 2014, at his personal order (my selection), at least four Ukrainian citizens were shot dead. He called them “saboteurs” in an interview. Also, on Girkin’s order, several “militiamen” of DPR were shot for looting and torturing. He shot one of them personally. “Sometimes we hid without even knowing who”, he admitted without the slightest sign of remorse³².

A report prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the spring of 2020 stated that armed groups of militants had repeatedly carried out executions in the early stages of the conflict. Illegal formations operating in the self-proclaimed “republics” were conducted by “military tribunals” or “people’s courts” to hold demonstrations either without any legal basis or on the basis of the USSR legislation on martial law in force during the Second World War – it was specified in the report. The UN Office stressed that these “trials” led to arbitrary or extrajudicial executions and international human rights law violations. The given OHCHR findings are difficult not only to challenge but also to call into question. In particular, independent journalists identified seven of the nine participants in the executions by militants in Slovyansk³³.

Executions at that time were carried out not only in the DPR (and not only by Igor Girkin and his accomplices) but also in the LPR. Thus, in 2014, the media reported that in the city of Alchevsk, which at that time was already in the uncontrolled territory, the so-called people’s court of 300 locals sentenced the accused to rape by a show of hands. It was decided to send another suspect to the “front line” so that he could “die with dignity”³⁴. Here we briefly recall that the opportunity to “wash away the blood” conviction from September 1942 to June 1945 was given to those Soviet soldiers and officers who committed criminal offences but expressed readiness to “defend the homeland” on the front line. The maximum period of stay in penal companies and (for officers) in penal battalions was only three months, after which the soldier received a full exemption from criminal punishment and all previously awarded state awards³⁵. It should be noted that the death penalty in the territories subject to fake “L / DPR” was carried out not only by verdicts of self-proclaimed courts, including military courts but also by direct orders of “commanders”, i.e., avoiding even imitation of court proceedings.

Informed about the real state of affairs in ORDLO (both DNR and LNR), the then (as of May 2018) Deputy Minister for the Temporarily Occupied Territories and Internally Displaced Persons of Ukraine G. Tuka categorically stated that: “in psychopathic “LPR” and “DPR” there is a death penalty”³⁶.

Obviously, the Deputy Minister means the use of the death penalty by the separatists not only (and not so much!) *de jure*, but *de facto*, which, in turn, should be qualified as a common murder. The death penalty is applied according to the verdict of the “court”, i.e., following a certain judicial procedure by authorized persons in accordance with the legislation (as in the Republic of Belarus) or its imitation (DPR). In contrast, the execution of a captive, a hostage, an intelligence agent, a partisan, or even a marauder or a rapist out of court by the armed people’s will must be qualified as murder with aggravating circumstances, regardless of the fact whether the death penalty is enshrined in the current “legislation” or not.

32 Girkin – to Gordon: On my order, citizens of Ukraine were shot (2020) Radio Svoboda. <<https://www.svoboda.org/a/30619397.html>> date of access 15 Aug 2022.

33 Ibid, 21

34 Is the death penalty in L/DPR lawful? (2018) DonbasSOS. <https://www.donbasssos.org/smertna_kara/> date of access 15 Aug 2022.

35 Regulations on Penalty Battalions of the Army in the Field (1942) <<https://history.wikireading.ru/4030>> date of access 15 Aug 2022.

36 G Tuka, ‘In the psychopathic “LPR” and “DPR” the death penalty exists’ (2019) 5 Channel. <https://www.youtube.com/watch?list=PL5eQ15vxDEVxVGn5t6ME9xN_P0M1bEQ1d&v=-W5ttDnHEB0> date of access 15 Aug 2022.

The term “exists” has been used by the official now, so it was at least 2018, not the first months of the uprising in the East. This statement of the official was repeatedly confirmed by prisoners of secret prisons of “young independent republics”. These cases involved mostly extrajudicial repression. For example, Azov combatant Ye. Chudnetsov, who was released after being exchanged from captivity by militants, said on charges of allegedly repenting on Russian TV: “It was important for me to be on camera. Any otherwise you will become one of those who are considered missing in our country”³⁷. However, there have always been infrequent cases of the use of the death penalty by court decisions. Thus, in 2017, a self-proclaimed DPR sentenced a man to death for raping and killing a child. Also, on July 18, 2018, the death sentence was handed down to one of the members of the “Cossacks” formation, which in 2014-2015 was engaged in brutal robberies. According to the Ukrainian human rights’ electronic publication, these sentences have been enforced. At the same time, we recognize that the official judicial institutions of the DPR, unlike the self-proclaimed tribunals, generally avoid the death penalty. Probably also because they consider Ukraine’s official position and world public opinion. The administration of justice by judges of the self-proclaimed republics qualifies Ukraine as a criminal act. For example, the head of the so-called The Supreme Court of the DPR, E. Yakubovsky, was sentenced in absentia in Ukraine to 12 years in prison for participating in a terrorist organization. He was accused of passing illegal sentences as part of the judicial system of the self-proclaimed DPR, including the passing of death sentences³⁸.

However, this firm position of the Ukrainian authorities does not mean that the judicial institutions of the regions affected by the cowardly uprising show feigned humanity or some goodwill, as they are trivially afraid of repression for betraying the Ukrainian oath of allegiance. For example, the already mentioned Azov combatant Ye. Chudnetsov, the so-called DNR Supreme Court, sentenced him to 30 years in prison³⁹. A native of Makeyevka, he was captured as a prisoner in February 2015. the DPR “prosecutor” demanded the death penalty. The verdict stated that the defendant was sentenced to serve a sentence in a maximum-security colony with loss of rights and all the ensuing consequences for “participation in an attempt to seize power by force” in the territory of the DPR. The “DPR prosecutor” demands the death penalty. Judge “mercifully” gives thirty years of imprisonment in a maximum-security colony.

At the end of July 2017, speaking in the video program of the odious Russian writer Z. Prilepin from “Donetsk Front”, the then-leader of the DPR, A. Zakharchenko, said that he already had a decree on the table to introduce the death penalty, if necessary, and corruption will also fall under it, depending on the damage caused by the official to society. Zakharchenko stated that he had a “tough” position on corruption: “It is a disease of any society, a disease of any state, there is no specific recipe for this disease, but the approaches to eradication are, in fact, all their own. I suppose I support a firm position – at one point, I decided to try and imprison these people despite my rank, position and merit before my homeland. I have tightened the laws on corruption, and the punishment will be very severe. We have a decree on introducing the death penalty in case of need; more precisely, it concerns its application. I think that corruption will also fall under it, depending on the damage people (who are at fault) have done to society”⁴⁰.

37 N Dvali, ‘Ex-hostage of the “DPR” Chudnetsov: Why did they knock out teeth? And what’s the point of drilling a knee? They might frighten, but after teeth I had no doubts: if it is needed – they will drill’ (2018) GordonUA <<https://gordonua.com/publications/eks-zalozhnik-dnr-chudnecov-zachem-zuby-vyryvali-a-kakoy-smysl-kolenku-sverlit-mozhet-pugali-no-posle-zubov-ya-ne-sommevalsya-nado-prosverlyat>> date of access 15 Aug 2022.

38 Ibid, 35

39 Ibid, 38

40 Ibid, 20

The video was then posted on the YouTube channel named News-Front. However, for some reason, it did not go beyond populist statements. And a year later, in August 2018, O. Zakharchenko himself passed away, bypassing the courtroom, whose death sentence was passed by an unknown person. Probably, even its Russian curators – for all the same ruthless large-scale corruption.

More than a year has passed since the death of the Donetsk follower of the renewal of the death penalty. The Report of the Office of the United Nations High Commissioner for Human Rights (Spring 2020) states without emotion as follows:

“103. OHCHR is concerned that the Code of Criminal Procedure of the Donetsk People’s Republic in its current form leads to an imbalance in favour of “prosecution” in violation of the right to a fair trial. It is important to note that this “legislation” does not provide for judicial control over pre-trial investigation and pre-trial detention, which is decided exclusively by the “prosecutor’s office”. OHCHR is also concerned that “the Donetsk People’s Republic has introduced the death penalty. OHCHR is aware of two cases in which the Donetsk People’s Republic “court” sentenced him to death, but as of the date of this report, these sentences had not been carried out. Nevertheless, they continue to be of concern because armed groups had already carried out executions in the early years of the conflict (see paragraph 104 below).

104. Both self-proclaimed “republics” established “local courts” based on the territorial structure of Ukraine’s judicial system, which operated in that territory until November 2014.

105. Both self-proclaimed “republics” have taken steps to create a three-tier “judicial system”: the “Supreme Court” of the Donetsk People’s Republic began functioning on January 9, 2015, the Supreme Court of the Luhansk People’s Republic began operating as the Appeal-Cassational court on October 25, 2018.

106. Prior to the establishment of these systems, military formations operating in the self-proclaimed “republics” conducted ad hoc “military tribunals” or “people’s courts” to conduct demonstrations either without any legal basis or under the laws of the USSR on martial law, which operated during World War II. These trials have led to arbitrary or extrajudicial executions and other violations of the international human rights law and international humanitarian law” (Office of the United Nations High Commissioner for Human Rights, 2020)⁴¹.

5 CONCLUSION

The sources of the law of the self-proclaimed “people’s republics” (DPR and LPR), including criminal law, are the “legal developments” of the RSFSR and the USSR of the so-called October Revolution, the construction of socialism, and the Great Patriotic War (1941-1945), as well as legislation of the modern Russian Federation.

Application of the death penalty is a rather dangerous practice, especially for the separatists themselves. Even the most orthodox supporter of the so-called “Russian world” could be executed under such sanction. After all, this has already happened in Soviet history – and during the so-called “Great Terror” of 1937–1938, and after Marshal Lawrence Beria, the first (and last) in the state security system of the USSR, was declared an “enemy of the people”.

Part of the so-called liberal public democratic world habitually continues to look at the

41 Office of the United Nations High Commissioner for Human Rights. (2020). Human rights in the context of the administration of justice criminal cases related to the conflicts in Ukraine April 2014 - April 2020. <https://ukraine.un.org/sites/default/files/2020-08/Ukraine-admin-justice-conflict-related-cases-ukr_0.pdf> date of access 15 Aug 2022.

eastern Ukrainian separatists with tolerance because of the European perception of national liberation movements such as the Scottish (UK), Catalan (Spain) or Lombard (Italy). This is not even a bona fide mistake but an outright and often deliberate crime against European identity and commitment to human rights. The legal consciousness of the ORDLO separatists has nothing to do with the European one; its roots are in the Bolshevik terror.

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