



Kharkiv Human Rights Protection Group (KHPG)

The KHPG has been registered as a legal entity in November 1992.

KHPG is active in three main areas:

- providing assistance to individuals whose rights were abused;
- developing human rights education and promoting legal awareness;
- providing analysis of the human rights situation in Ukraine.

Address: 27 Svobody St., Apt. 4, 61002, Kharkiv, Ukraine, <http://khpg.org>, e-mail: khpg@ukr.net

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Human rights in the territory controlled by the Government of Ukraine along the delimitation line and in so-called Luhansk People's Republic and Donetsk People's Republic

Summary: Human rights in the territory controlled by the Government of Ukraine along the delimitation line human rights on so-called Luhansk People's Republic and Donetsk People's Republic, main problems in investigation of grave HR violation.

2017

Human rights in the territory controlled by the Government of Ukraine along the delimitation line

1. Almost 3 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 ("LPR") and Donetsk People's Republic ("DPR").

2. 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 LPR and the DPR and, in particular, the human rights situation, both at the normative level and in practice.

3. Contact line (delimitation line, "grey zone") – the conditional delimitation of Donetsk and Lugansk regions, in fact – buffer zone of settlements and territories controlled by the Government in which the authorities of Ukraine do not conduct or carry not in full its powers, including the territories of self-proclaimed LPR and DPR.

Typical human rights violations in the so-called "grey zone"

Dead and wounded as a result of shelling and explosions

4. According to the High Commissioner of UNHCR from mid-April 2014 till December 1, 2016 in Donbas were killed at least 9758 people, including more than 2,000 civilians. A further 22,800 people were injured. In this number includes soldiers and civilians who died or were injured on both sides of the conflict. Data of Ukrainian authorities are different.

Inappropriate demining

5. Since the beginning of the military conflict in the Donbass 1,205 cases undermining of people were recorded. The data provided by the Ministry of Defence of Ukraine are the next: 403 of the victims - civilians, 68 of them - children¹.

6. It did not take appropriate actions for reducing the number of accidents of mine explosion of civilians and soldiers on mines and other explosive devices. Demining is very slow and selective.

Problems in the investigation of cases of causing deaths and injuries of civilians

7. The facts of causing deaths and injuries in parts of Donetsk and Luhansk regions controlled by Ukrainian authorities are registering into the Unified Register of pre-trial investigation (hereinafter - URPI), but the investigation is quite inefficient.

8. Firstly, the local police often do not register information about the crime with the purpose to reduce the negative statistics on crimes related to the conducting of ATO.

9. Even if such information were included to the URPI, there is no single approach how to qualify such crimes. In particular, some episodes of killings and injuries of civilians was submitted to the URPI under Article 258 of the Criminal Code of Ukraine (hereinafter - the CCU) - terrorism, and some - for article 115 of the CCU (premeditated murder), if people were injured – under Article 15 and Article 115 of the CCU (attempt to murder).

10. Secondly, criminal proceedings are opening by local police and automatically transferring to the Office of Security Service of Ukraine (hereinafter - SSU) in the Donetsk and Luhansk region, located in Mariupol and Severodonetsk, respectively, for further investigation, which does not conduct appropriately, according to the interviewed victims.

11. Thirdly, persons who were injured or relatives of dead persons are often not recognized as victims in these criminal proceedings. For obtaining of this procedural status they need to

¹ <https://hromadske.ua/posts/oberezhno-miny-spetsproekt-siri-zona>

send motion to the investigator, who in most cases refusing to satisfy it and there is need to appeal such refusal to the investigating judge.

12. Fourthly, there is a tendency to underestimate the number of deaths of civilians using incorrect indication of causes of death. In particular, the KHPG's monitors received confidential information about the fact of a pressure to forensic experts with the purpose to induce them to change the real causes of death related to the ATO (mine-explosive trauma, gunshot wound, etc.) to domestic (household injury, explosive injuries that not concerning the ATO), or even the natural causes of death (heart attack, pneumonia, etc.).

Violations of property rights - destroyed and damaged property

13. During the all period of conducting the ATO the violations of the silence had occurred almost every day on the contact line. It caused many damages and destruction of residential buildings, multifamily and private. Both sides of the conflict are using weapons of lethal force, to the civilian targets as well, particularly in residential areas, residents do not know when the next attack will be. These attacks are not planned and controlled so as to reduce or minimize harm to the civilian population of the use of lethal force.

14. For almost 3 years Ukraine has not developed an effective mechanism for compensation of damage that was caused to real and personal property of civilians. There is no court practice in civil proceedings for recovering such damages. Some settlements have no district inspectors of police or their schedule contains only a few hours a week. Citizens, whose property was destroyed or damaged, are unable to contact the police for initiating the criminal proceeding's opening.

Violations of children's rights to a safe environment and education

15. The KHPG's monitoring team had recorded the next situation: there is no proper school in the territory controlled by Ukraine (Lopaskino, Lobachevo towns) so children every day in a small boat are crossing the river to the uncontrolled by Government territory. This situation is well-known by Tryohizbenka military and civilian administration, but no steps to address it has not been done.

16. In addition, children under three years of constant fighting received varying degrees of psychological trauma associated with the situation. Many children saw injury or death of relatives or friends, which led to grave consequences for the normal development of the mind, but there is still no state program for the relevant psychological rehabilitation.

Violation of the right to a safe crossing of the delimitation line

17. There are some problems in check point of entry and exit "Stanitsya Luhanska" – the only one checkpoint in Luhansk region that is working. It is the need of significant of logistic, reducing of time for waiting and creating normal conditions for people crossing the delimitation line, especially for those who couldn't wait long because of state of health. The safety should be ensured for civilians, passing through the line of demarcation and for persons providing this crossing.

18. In addition, we are concerning of frequent attacks to the check-points that lead to injuries and deaths of civilians (the latest case - December 2016 – check-point "Mayorske"), as well as numerous cases of subversion in mines and shells near check-points on roadsides.

Human rights in the so-called Luhansk People's Republic and Donetsk People's Republic

Violations of human rights in the quasi regulatory framework of the LPR and DPR

19. Human rights and fundamental freedoms are violated in the LPR and DPR already at the normative level.

20. The Constitution of the LPR 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”, 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.

21. Direct violations of human rights are also laid down in ordinary legislation. The acts ‘On the mass media’ prohibit the distribution of foreign periodicals without the 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 DPR and LPR without accreditation. All of them are disproportionate restrictions on freedom of expression, protected by Article 10 of the Convention.

22. The requirement of accreditation laid down in the acts applies to all journalists coming to the DPR and LPR, not just to foreign ones. It should be noted that an accreditation in the LPR and DPR means much more than just the registration of journalists: it actually introduces access control. Without presenting an accreditation pass a journalist cannot speak to any official.

23. 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 DPR and LPR. For example, “wilful refusal by a 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 LPR is a medieval vestige, directly contradicting Article 1 of Protocol 4 to the Convention (prohibition of imprisonment for debt). The Criminal Code of the DPR provides for death penalty as a punishment.

24. So, 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.

Civil and political rights and freedoms

25. In the 16th report of the UN High Commissioner for Human Rights states that "armed groups regularly subjected detainees to torture and ill-treatment" and provides many examples (pp. 47-56). There are many reports of enforced disappearance. Thus, in July 2016, three young taxi drivers had gone missing in Luhansk in one day between 22.00 and 23.00. At this time in the curfew begins. All three missed drivers had special permission for working during the curfew. Young people were working in taxi service. They received calls by radio to different areas of the city and after that they gone missing. A few days later all three cars were found in different parts of the city. One of the taxi drivers, 27-year-old Dmitry Krylov, found the morning after the disappearance, he was dead without knife or gunshot wounds.

26. On freedom of opinion, freedom of speech, freedom of information, freedom of assembly and freedom of association in the self-proclaimed republics inhabitants should not even dream. In the local media there are no alternative points of view, media is using very aggressive terminology. Even just an attempt to speak impartially on the Internet can lead to repression. So, bloggers from Luhansk Eduard Nyedyelyayev and Gennadiy Benytskiy were accused of "extremism" (punishment - up to 4 years in prison) for publishing in their blogs critical materials on “authorities of LPR”. Both were forced to publicly confess (we can only guess that means for this purpose), Nyedyelyayev even confessed on spying. Two young football team fans of “Zorya” from Luhansk - Vlad Ovcharenko and Artem Akhmerov were accused of "treason" (sanction - to 15 years imprisonment) by just sharing their views.

27. 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.

28. It should be noted that the number of hours for teaching Ukrainian language and literature drastically reduced. For example, for Ukrainian literature it's only one hour a week.

The social and economic rights in the DPR and LPR

29. 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).

30. Our analysis of the food component in the minimum consumer basket in the cities of Ukraine and DPR/LPR shows that the prices on almost all food products except bread/grains are higher in the LPR and DPR 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 LPR and the DPR have remained unchanged, i.e. they are significantly lower than in Ukraine. Petrol is also noticeably cheaper.

31. According to the data from the Ministry of Economic Development of the so-called DPR, '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 DPR: Donetsk (962.0 thousand people), Makeyevka (382.8 thousand) and Gorlovka (210.0 thousand people). A similar distribution was recorded 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.

32. 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.

33. Thus, with the higher prices on staple foods, the income received by residents of LPR and DPR 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.

34. The right to medical assistance is very limited. 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.

Recommendations:

35. The parties of the armed conflict should take all measures to stop the fighting and violence in the conflict zone.

36. The parties of the conflict should immediately release all persons arbitrarily deprived of liberty.

37. Efforts should be taken to exclude situations where firearm attacks on the opposite side are carried out from the territory of residential areas.

38. To take a unified government program for compensation of damage which was inflicted for real property and other types of property of civilians that have been damaged as a result of armed conflict and / or establishment of judicial practice regarding such compensation.

39. The parties should take all measures for development an appropriate infrastructure for settlements on the contact line, supporting kindergartens, schools, hospitals et cetera.

40. To strengthen control over the procedure on the check points of entry and exit, make "transparent" procedure for public control over the passage of civilians crossing checkpoints, to open more "windows" to minimize queues at checkpoints.

41. The normative documents and the practice at check points in the case of firearm attacks on the surrounding areas should be changed in order to protect people crossing the delimitation line.

42. Ukrainian authorities should take all measures to ensure that pensioners residing in the territory of the self-proclaimed DPR and LPR receive their pensions.

43. To conduct a proper demining of all territories.