

*Natalia Cwicinskaja\**

## THE LEGALITY AND CERTAIN LEGAL CONSEQUENCES OF THE “ACCESSION” OF CRIMEA TO THE RUSSIAN FEDERATION

### Abstract:

*On 11 March 2014 Crimea declared independence. Ukraine and international society has not recognised that act. However Crimea's independence was recognised by Russia and on 18 March 2014 an agreement on the accession of the Republic of Crimea to the Russian Federation was signed. Many countries and international organisations have condemned that step, viewing it as illegal annexation. Regardless of how this situation is treated however, it is at present a fait accompli. Such a situation evokes legal consequences both in the internal law of Ukraine and Russia as well as on the plane of international law. The residents of Crimea appear to be in the worst situation. Legal certainty is a fiction for them now. There are also problems on the international plane. Despite the fact that in the opinion of international society Crimea remains an integral part of Ukraine, in practice there are many conflicting problems of a legal nature that cannot be solved, at least for the time being.*

*This article analyses the legality and certain legal consequences of the “accession” of Crimea to Russia and the effect of this accession on the legal situation for residents of Crimea. The article concludes that legal situation of Crimeans will not improve anytime soon, and that the legal problems which have arisen on the international plane will not be resolved soon either.*

**Keywords:** accession, annexation, aggression, Crimea, declaration of independence, Russian Federation, Ukraine

### INTRODUCTION

In March 2014 the accession of Crimea, which was an integral part of Ukraine, to the Russian Federation took place – an event which has put in doubt the validity of certain principles international law. The Russian side has presented the whole situation as an expression of the Crimean people's right to self-determination.<sup>1</sup> But within many

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\* Natalia Cwicinskaja, Ph.D., assistant professor at the Institute of the Eastern Studies, Adam Mickiewicz University. This article was completed on 30 March 2015.

<sup>1</sup> E.g. President Putin's interview to radio “Europe 1” and the TV channel “TF1”, 3 June 2014.

other countries there is a perception that this accession has to be qualified as an illegal annexation.<sup>2</sup> However, regardless of how this situation is treated by international law, we are faced with a *fait accompli*. On 18 March 2014 an agreement was signed between the Russian Federation and the Republic of Crimea on the accession of the Republic of Crimea and Sevastopol to the Russian Federation,<sup>3</sup> pursuant to which the Republic of Crimea became a federal subject of the Russian Federation. Obviously, this fact has not been recognised by the Ukrainian authorities. This whole situation has certain legal consequences, both in the internal legislation of the Russian Federation and Ukraine (which Crimea was an integral part of), as well as on the plane of international law.

This article analyses the legality and legal consequences of the accession of Crimea to the Russian Federation and the effect of this accession on the legal situation of the residents of Crimea. The so-called “transition period” was set by the Russian Federation to last until 1 January 2015. Up until this date the laws adopted by the Autonomous Republic of Crimea were used in the Republic of Crimea, unless they were in contradiction with Russian law. People residing within the territory found themselves in a legal chaos, which some called a “legal vacuum”. Legal certainty, which is one of the basic criteria for the quality of life of both whole societies as well as individuals in the contemporary world, was (and still is) a fiction for the Crimeans.

Part 1 of this article analyzes the legal framework for Crimea’s accession to the Russian Federation and examines whether the supporting documents are in accordance with both, either, or neither of the Russian and Ukrainian laws. Part 2 examines the effects caused by changes in the jurisdiction of Crimea with respect to matters governed by international law. Part 3 analyzes the legal situation of Crimea after the “accession”. The last part summarizes and offers conclusions.

## 1. ACCESSION OF CRIMEA TO THE RUSSIAN FEDERATION

### 1.1. Legal background of the accession

On 17 March 2014 the Republic of Crimea proclaimed itself an independent and sovereign state, with Sevastopol as a city with a special status. That decision was taken

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<sup>2</sup> E.g. *The Opinion by the Legal Advisory Committee to the Minister of Foreign Affairs of the Republic of Poland on the annexation of the Crimean Peninsula to the Russian Federation in light of international law*, available in this volume. See also P. Grzebyk, *Aneksja Krymu przez Rosję w świetle prawa międzynarodowego* (The annexation of the Crimea by Russia in the light of international law), 1 *Sprawy Międzynarodowe* 19 (2014); J. Kranz, *Kilka uwag na tle aneksji Krymu przez Rosję* (Some remarks on the annexation of the Crimea by Russia), 8 *Państwo i Prawo* 23 (2014).

<sup>3</sup> Договор между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов (подписан в г. Москве 18 марта 2014) (The Agreement between the Russian Federation and the Republic of Crimea on the Accession of Republic of Crimea to the Russian Federation and on Forming New Federal Constituent Entities within the Russian Federation [signed in Moscow on 18 March 2014]), *Собрание законодательства РФ* (The Collection of Legislation of the Russian Federation), 7 April 2014, No. 14, item 1570.

on the basis of results of the Crimean referendum and the Declaration of independence of Crimea.<sup>4</sup>

Initially, the referendum was supposed to be held on 25 May 2014 and to raise questions of improvement of the status and competence of the region.<sup>5</sup> However, on 1 March 2014 the Chairman of the Council of Ministers announced that a referendum would be held on 30 March 2014 as the Ukrainian crisis had spun out of reasonable control. On 6 March 2014 the Presidium of the Supreme Council of Crimea adopted Resolution no. 1702-6/14 "On holding the Crimean referendum",<sup>6</sup> according to which the referendum would be held on 16 March 2014. Each time the changes of the dates of the referendum were justified by the increasing aggravation of the political and social situation in Ukraine. Finally, the questions for the referendum planned on 16 March were finalized into the following two: "1. Do you support the reunification of Crimea with Russia with all the rights of a federal subject of the Russian Federation? 2. Do you support the restoration of the Constitution of the Republic of Crimea of 1992 and the status of the Crimea as part of Ukraine?"

Just before the referendum, on 11 March, the Supreme Council of Crimea and the Sevastopol City Council adopted the "Declaration on the independence of the Autonomous Republic of Crimea and the city of Sevastopol".<sup>7</sup> In accordance with the provisions of this document, if a decision to become part of Russia was made at the referendum of 16 March 2014, Crimea, including the Autonomous Republic of Crimea and the city of Sevastopol, would be proclaimed an independent and sovereign state with a republican order.

On 17 March the official results of the referendum were published: 1,274,096 persons entitled to vote in the referendum took part (83.10%); 1,233,002 persons positively answered the first question (96.77%); 31,997 answered affirmatively to the second question (2.51%). After the referendum results were announced, the Supreme

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<sup>4</sup> Постановление Верховной Рады Республики Крым от 17 марта 2014, № 1745-6/14 "О независимости Крыма" (Resolution of the Supreme Council of the Republic of Crimea of 17 March 2014, No. 1745-6/14 "On the independence of the Crimea"), Сборник нормативно-правовых актов Республики Крым (Collection of normative legal acts of the Republic of Crimea), 2014, No. 3, part 1, item 244.

<sup>5</sup> Постановление Верховной Рады АРК от 27 февраля 2014 № 1630-6/14 "Об организации и проведении республиканского (местного) референдума по вопросам усовершенствования статуса и полномочий Автономной Республики Крым" (Resolution of the Supreme Council of the Autonomous Republic of Crimea of 27 February 2014, No. 1630-6/14 "On the organization and holding of the local referendum on improving the status and powers of the Autonomous Republic of Crimea"), Collection of normative legal acts of the Republic of Crimea, 2014, No. 3, part 1, item 203.

<sup>6</sup> Постановление Верховной Рады АРК от 06 марта 2014 № 1702-6/14 "О проведении общекрымского референдума" (Resolution of the Supreme Council of the Autonomous Republic of Crimea of 6 March 2014, No. 1702-6/14 "On holding the Crimean referendum"), Collection of normative legal acts of the Republic of Crimea, 2014, No. 3, part 1, item 208.

<sup>7</sup> Декларация независимости Автономной Республики Крым и города Севастополя (Declaration on the independence of the Autonomous Republic of Crimea and the city of Sevastopol), Collection of normative legal acts of the Republic of Crimea, 2014, No. 3, part 1, item 230.

Council of Crimea adopted the resolution “On the independence of Crimea”.<sup>8</sup> In that document Crimea was proclaimed an independent sovereign state as the Republic of Crimea, and the city of Sevastopol was given a special status within it. At the same time the Supreme Council of the Autonomous Republic of Crimea, on behalf of the Republic of Crimea, requested the Russian Federation to accept the Republic of Crimea as a new constituent entity of the Russian Federation with the status of a republic. On the same day (17 March), the President of the Russian Federation signed an executive order on recognition of the Republic of Crimea as a sovereign and independent state.<sup>9</sup>

The next day, President Putin notified the Federation Council of the Federal Assembly, the State Duma of the Federal Assembly and the Government of proposals by the State Council of the Republic of Crimea – the Parliament of the Republic of Crimea and the Legislative Assembly of the city of Sevastopol regarding the accession of the Republic of Crimea, including the city of Sevastopol, to the Russian Federation and the formation of new constituent territories within the Russian Federation. Such action was taken pursuant to Art. 6 of the Federal Constitutional Law on the Procedure of Admission to the Russian Federation and the Formation within It of New Constituent Territories.<sup>10</sup> Also on 18 March 2014, the Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea to the Russian Federation and on Forming New Constituent Entities within the Russian Federation was signed by the President of the Russian Federation, the Chairman of the State Council of the Republic of Crimea, the Prime Minister of the Republic of Crimea and the Chairman of the Coordinating Council for the establishment of the Sevastopol municipal administration.<sup>11</sup> According to the Agreement the Republic of Crimea is considered to have acceded to the Russian Federation from the date of the Agreement’s signing. Beginning on the day that the Republic of Crimea acceded to the Russian Federation, two new constituent entities were formed within the Russian Federation: the Republic of Crimea and the Federal City of Sevastopol. This document included provisions concerning the accession of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation, including provisions regarding the territories of the new Russian constituent entities, their residents’ citizenship, and the constituent entities’ governmental bodies. The Agreement was applied provisionally from the date of signature and entered into force on the date of its ratification.

The State Duma and the Federation Council ratified the Agreement on 20 and 21 March, respectively. The Federal Constitutional Law “On Accession to the Russian

<sup>8</sup> Resolution of the Supreme Council of the Republic of Crimea, *supra* note 4.

<sup>9</sup> Указ Президента Российской Федерации от 17 марта 2014 № 147 “О признании Республики Крым” (Order of the President of the Russian Federation of 17 March 2014, No. 147 “On recognition of the Republic of Crimea”), The Collection of Legislation of the Russian Federation, 24 March 2014, No. 12, item 1259.

<sup>10</sup> This is discussed in more detail in section 1.3.

<sup>11</sup> See reference in note 3.

Federation of the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol” (FCL) was also adopted.<sup>12</sup> President Putin immediately signed both documents: the FCL and the federal ratification law.<sup>13</sup> According to Art. 1.3 of the FCL, Crimea’s admission to the Russian Federation was considered retroactive as of 18 March.<sup>14</sup>

The unprecedented speed of adoption and implementation of the decisions concerning this issue must be noted. On 6 March 2014 the decision was taken by Crimea’s authorities regarding the referendum that would be held on 16 March 2014 and on 21 March, the Russian parliament finished the process of Crimea’s accession to the Russian Federation.

No one doubted the outcome of the Crimean referendum, which was also swiftly announced the very next day, on 17 March. But the rapid pace of the accession of Crimea and Sevastopol to the Russian Federation was even more amazing: the State Duma and the Federation Council both took their decisions within two days. This was truly breakneck speed for such a significant act, one which changed the borders of the country. It seems that the members of the Russian parliament simply followed the motto: “What is there to discuss, if we are in agreement on everything?”. This whole situation perhaps most precisely was confirmed by Senator Lyskov at the meeting of the Federation Council dedicated to President Putin’s request to use military force in Ukraine, “(...) we are losing the President time”.<sup>15</sup>

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<sup>12</sup> Федеральный конституционный закон от 21 марта 2014 № 6-ФКЗ “О принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов – Республики Крым и города федерального значения Севастополя” (The Federal Constitutional Law of 21 March 2014, No. 6-FCL “On the Accession to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation new constituent entities of the Republic of Crimea and the City of Federal Importance Sevastopol”), The Collection of Legislation of the Russian Federation, 24 March 2014, No. 12, item 1201.

<sup>13</sup> Федеральный закон от 21 марта 2014 № 36-ФЗ “О ратификации Договора между Российской Федерацией и Республикой Крым о принятии в Российскую Федерацию Республики Крым и образовании в составе Российской Федерации новых субъектов” (The Federal Law of 21 March 2014 No. 36-FL “On Ratifying the Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea in the Russian Federation and on Forming New Constituent Entities within the Russian Federation”), The Collection of Legislation of the Russian Federation, 24 March 2014, No. 12, item 1202.

<sup>14</sup> “The Republic of Crimea shall be considered admitted to the Russian Federation as of the date of signing of the Agreement between the Russian Federation and the Republic of Crimea on the Accession of the Republic of Crimea in the Russian Federation and on Forming New Constituent Entities within the Russian Federation.”

<sup>15</sup> Стенограмма триста сорок седьмого (внеочередного) заседания Совета Федерации 1 марта 2014 года, Федеральное собрание Российской Федерации, Совет Федерации, Исх. № Ст-347 от 01 марта 2014, Москва, (Transcript of three hundred forty-seventh (extraordinary) meeting of the Federation Council of 1 March 2014, the Federal Assembly of the Russian Federation, the Federation Council, Ex. Number St-347 of 1 March 2014 Moscow), p. 26.

## 1.2. Secession and Ukrainian law

Ukraine obviously has not recognized the secession of Crimea. In response to the statement by the Russian Foreign Ministry on 11 March 2014 recognizing the legality of the Declaration on the independence of the Autonomous Republic of Crimea and the city of Sevastopol, the Ukrainian Ministry of Foreign Affairs issued a statement the same day, in which it lodged a protest against the position of the Russian Federation and declared the decision on the declaration of independence by Crimea as “unconstitutional, illegal and having no legal effect”.<sup>16</sup> On 14 March 2014 the Acting President of Ukraine issued the order “On reversal of the decision of the Supreme Council of the Autonomous Republic of Crimea of 11 March 2014 ‘The Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol city’”.<sup>17</sup> This document stressed that the decision of Crimea’s Supreme Council had to be set aside because of its incompatibility with the Constitution and laws of Ukraine.

The Constitution of Ukraine upholds the principle of territorial integrity and the inviolability of its borders. According to Art. 2 “The territory of Ukraine within its present border is indivisible and inviolable.”<sup>18</sup> The Constitution also proclaims that any changes with regard to the territory of Ukraine shall be made exclusively on the basis of a national referendum (Art. 73 of the Constitution of Ukraine). It is true that according to the Constitution of Ukraine and the Constitution of the Autonomous Republic of Crimea, organising and conducting a local referendum was within the competence of the Autonomous Republic of Crimea (Art. 138.2 of the Constitution of Ukraine and Art. 18(1)(7) of the Constitution of the Autonomous Republic of Crimea<sup>19</sup>), hence a referendum could be legally carried out in Crimea. The main issue, however, remains whether the topic of the referendum was within the authority and competence of the Crimean local government or exceeded them. Art. 73 of the Constitution of Ukraine gives a clear answer: “Issues with respect to altering the territory of Ukraine shall be resolved exclusively by an All-Ukrainian referendum”. Also, the law of Ukraine “On the national referendum in Ukraine” states that any territorial changes of Ukraine are the subject of a national referendum (Art.

<sup>16</sup> Заява Міністерства закордонних справ України, 11 березня 2014 (Statement of the Ministry of Foreign Affairs of Ukraine, 11 March 2014), available at: <http://mfa.gov.ua/ua/press-center/news/19328-zajava-ministerstva-zakordonnih-sprav-ukrajini> (accessed 30 March 2015).

<sup>17</sup> Указ Президента України від 14 марта 2014 № 296/2014 “Про зупинення дії Постанови Верховної Ради Автономної Республіки Крим від 11 березня 2014 року ‘Про Декларацію про незалежність Автономної Республіки Крим і міста Севастополя’” (Order of the President of Ukraine of 14 March 2014 No. 296/2014 “On reversal of the decision of the Supreme Council of the Autonomous Republic of Crimea on 11 March 2014 ‘The Declaration of Independence of the Autonomous Republic of Crimea and Sevastopol city’”), Офіційний вісник Президента України (Official Journal of the President of Ukraine), 14 March 2014, No. 9, item 261.

<sup>18</sup> Конституція України (The Constitution of Ukraine), Відомості Верховної Ради України (Bulletin of the Supreme Council of Ukraine), 1996, No. 30, item 141.

<sup>19</sup> Конституція автономной Республіки Крим (the Constitution of the Autonomous Republic of Crimea), Collection of normative legal acts of the Republic of Crimea, 1998, No. 12, item 1008.

3.3(2)).<sup>20</sup> Therefore, issues with respect to the territory of Ukraine cannot be resolved by a local referendum, and the decision to hold a referendum on the issue of secession as decided by the local authorities in the Crimea contradicted the existing Ukrainian laws.<sup>21</sup>

This was confirmed by the judgment of the Constitutional Court of Ukraine of 14 March 2014, recognising the decision as unconstitutional.<sup>22</sup> The judgment stressed that the Supreme Council of Crimea, having adopted a Resolution “On holding the Crimean referendum”, violated the constitutional principle of territorial integrity of Ukraine and exceeded its powers. The Constitutional Court of Ukraine ruled that the Resolution “On holding the Crimean referendum” ceased to have any legal effect from the date of the issuance of the decision of the Constitutional Court of Ukraine.

It should be mentioned that the prohibition in the Constitution of Ukraine against holding a referendum on secession is not contrary to international law. The majority of the world’s sovereign states do not recognize any right of secession in their constitutions.<sup>23</sup> So in the light of international law the Ukrainian choice not to grant a right of secession in its Constitution cannot be criticised.

Ukraine considers the territory of the Autonomous Republic of Crimea as temporarily occupied. On 15 April 2014, the Supreme Council of Ukraine adopted the law “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”.<sup>24</sup> This law established a special legal regime on the territory of Crimea and Sevastopol. The Autonomous Republic of Crimea, Sevastopol, internal waters and territorial waters around the peninsula, the air space above them, and exclusive economic zone are considered as occupied territories. The law declares

<sup>20</sup> Закон України “Про всеукраїнський референдум” (law of Ukraine “On the national referendum in Ukraine”, Відомості Верховної Ради України (Bulletin of the Supreme Council of Ukraine), 2013, Nos. 44-45, item 634.

<sup>21</sup> On the accordance of the referendum with Ukrainian law, see further Venice Commission, *Opinion no. 762/2014*, CDL-AD(2014)002.

<sup>22</sup> Рішення Конституційного Суду України у справі за конституційними поданнями виконуючого обов’язки Президента України, Голови Верховної Ради України та Уповноваженого Верховної Ради України з прав людини щодо відповідності Конституції України (конституційності) Постанови Верховної Ради Автономної Республіки Крим “Про проведення загальнокримського референдуму” (справа про проведення місцевого референдуму в Автономній Республіці Крим) від 14.03.2014, № 2-рп/2014 (The Decision of Constitutional Court of Ukraine in relation to the case arising from the constitutional petition of the Acting President of Ukraine, Chairman of the Verkhovna Rada of Ukraine and the Ukrainian Parliament Commissioner for Human Rights on compliance with the Constitution of Ukraine (constitutionality) of the Resolution of the Supreme Council of the Autonomous Republic of Crimea “On holding the Crimean referendum” (the case of local referendum in the Autonomous Republic of Crimea), Офіційний вісник України (Official Journal of Ukraine), 2014, No. 26, item 766.

<sup>23</sup> A. Kreptul listed nine constitutions which contained or still contain procedures for constitutional secession. See A. Kreptul, *The Constitutional Right of Secession in Political Theory and History*, 17(4) Journal of Libertarian Studies 39 (2003).

<sup>24</sup> Закон України “Про забезпечення прав и свобод громадян та правовий режим на тимчасово окупованій території України” (law of Ukraine “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”), Bulletin of the Supreme Council of Ukraine, 2014, No. 26, item 892.

that any activity of bodies and/or officials in the Crimean Peninsula that are created, appointed or elected without the authorization of the Government of Ukraine are unlawful. Moreover, any document or decision issued by self-proclaimed bodies or officials is deemed null and void, and does not bring about any legal consequences.

Ukraine has not recognised the compulsory automatic enrolment of Ukrainian citizens who reside on the temporarily occupied territory to citizenship of the Russian Federation. Pursuant to the law, the responsibility for human rights violations in the temporarily occupied territory shall be borne by the Russian Federation and compensations for material and moral damages caused by the temporary occupation of Crimean territory to businesses and individuals are to be referred to the Russian Federation as the state which carries out the occupation.

According to the above law, the status of this territory also changes the jurisdiction of the courts of Crimea and Sevastopol. The competent courts in Kiev shall accept and consider all cases under the jurisdiction of the Crimean and Sevastopol courts.

### 1.3. Accession and Russian law

The Russian legislation provides clauses for the incorporation of a foreign state or its part into the Russian Federation. Such a possibility is foreseen under Art. 65 of the Constitution of the Russian Federation and the federal law, enacted pursuant to the Constitution, “On the Procedure of Admission to the Russian Federation and the Formation Within It of New Constituent Territories”.<sup>25</sup> Although that law has been in existence for a long time (since 2001), it had never been used previously.

According to Art. 4.2 of the law:

[t]he admission to the Russian Federation as a new entity of a foreign country or its part is carried out by mutual agreement of the Russian Federation and of the foreign state in accordance with international agreement on the admission to the Russian Federation as a new entity of a foreign country or its part ([...]), signed by the Russian Federation with the foreign country.

The law also provides the following procedure for admission of the new entity to the Russian Federation: the foreign state takes the initiative for accession to the Russian Federation of the foreign state or its part; the President of the Russian Federation notifies the State Duma and the Federation Council about this initiative; the Russian Federation and the foreign country sign an international agreement; following the signing of such an agreement the President of the Russian Federation appeals to the Constitutional Court with a request to verify the compliance of the agreement with the Constitution of the Russian Federation; if the Constitutional Court confirms the compliance, the agreement

<sup>25</sup> Федеральный конституционный закон Российской Федерации № 6 – ФКЗ от 17 декабря 2001 “О порядке принятия в Российскую Федерацию и образования в ее составе нового субъекта Российской Федерации” (The Federal Constitutional Law of the Russian Federation No 6 - FCL of 17 December 2001 “On the Procedure of Admission to the Russian Federation and the Formation Within It of New Constituent Territories”), The Collection of Legislation of the Russian Federation, 24 December 2001, No. 52, part 1, item 4916.



in question is submitted to the Federal Assembly for ratification, together with a draft federal constitutional law on the admission to the Russian Federation of the new entity.

As it was described in section 1.1 above, the actions taken by the Russian authorities are, at least formally, compliant with the federal legislation in question. After the agreement was signed, the President of the Russian Federation sent the requisite request to the Constitutional Court. The Court issued its decision on 19 March, in which it recognized the Agreement between the Russian Federation and the Republic of Crimea as compliant with the Constitution. The Court stated that it decided only questions of law and did not assess the political advisability of an international treaty of the Russian Federation. So from the legal and formal point of view of the Russian Federation, the accession of Crimea to the Russian Federation was/is in accordance with Russian law.

However, several questions arise that cannot be overlooked here. First, the Russian President signed the executive order on the recognition of the Republic of Crimea as a sovereign and independent state, referring to the outcome of the referendum. But according to its results, Crimea should be a part of Russia, which is incompatible with the status of “sovereign and independent state”. The issue of state independence was not even put to a vote during the Crimean referendum.

As was mentioned above, according to Russian law a foreign state takes the initiative for accession to the Russian Federation and this particular foreign state has to sign an accession agreement. Therefore, in order to comply with this order, and with Crimea being an integral part of the state of Ukraine, an initiative of this foreign state, i.e. an initiative by Ukraine, would be required. However, the Russian side sticks to the position that after the outcome of the referendum the Republic of Crimea became an independent state, and as such it was recognised by Russia, so the international agreement was signed with the state known as the Republic of Crimea. This is a disputable position since, as was mentioned, the questions raised in the referendum did not refer to the issue of independence, but only of joining Russia.

It thus appears that during the Crimean accession process the sequence of events and the events themselves were artificially created in an attempt to ensure their compliance with the Russian legislation. This position seems highlighted by the astonishing speed of the recognition of the Crimea as a sovereign state by the Russian Federation. That act took place the same day as adoption of the resolution “On the independence of Crimea”. In fact, Russia did not have time to even verify the effectiveness of power in Crimea, thereby executing a premature recognition of it.<sup>26</sup> Traditionally under international law, when a state recognizes the seceding unit prematurely such recognition has been considered to constitute an illegal act.<sup>27</sup>

<sup>26</sup> With respect to premature recognition, see H. Lauterpacht, *Recognition in International Law*, Cambridge University Press, Cambridge: 1947, pp. 7-12; M. Jovanovic, *Recognition of Kosovo independence as a violation of international law*, 3 *Annals: Belgrade Law Review* 108 (2008), pp. 121-122.

<sup>27</sup> See the individual view of B. Roth, member of the ILA International Committees Recognition/ Non-recognition in International Law in Conference Report, Washington 2014, available at: <http://www.ila-hq.org/en/committees/draft-committee-reports-washington-2014.cfm> (accessed 30 March 2015).

## 2. INTERNATIONAL LAW

### 2.1. Status of Crimea under international law

Both authorities, in Crimea as well as in the Russian Federation, explain the events described above by affirming that they are relying on international law. In this context they refer particularly to the right of people to self-determination, as well as the example of secession and unilateral declaration of independence by Kosovo.

First and foremost the question which should be answered is: What is secession and is secession legal under international law? International law does not provide any legal definition of “secession”. Generally speaking, it is a process which results in the creation of new states.<sup>28</sup> But the concept of secession is not a subject of agreement among legal scholars. According to one definition a given set of actions is considered as secession, while according to another definition the same set of actions is treated as dissolution. Hence J. Crawford posits that “[s]ecession is the creation of a State by the use or threat to use force without the consent of the former sovereign”.<sup>29</sup> In turn, M. Kohen designates a method he calls “devolution”: “When a new State is formed from part of the territory of another State with its consent, it is a situation of ‘devolution’ rather than ‘secession’.”<sup>30</sup>

International law does not explicitly provide for a right of secession, but on the other hand neither are there any norms specifically prohibiting secession, hence it may be said that international law neither authorizes nor prohibits secession. Though this was confirmed by the ICJ Advisory Opinion of 22 July 2010 on the compliance with international law of Kosovo’s unilateral declaration of independence, unfortunately that decision did not introduce any concrete instances or clarification of the matter.<sup>31</sup> For this reason the ICJ Advisory Opinion is often criticized for having left the scope of secession and self-determination uncertain.<sup>32</sup>

Let us then look at international practice in this field. According to the W. Sloman-son, beginning with the creation of the United Nations (UN) it was emphasized that the right of nations to self-determination does not automatically mean the right to secession.<sup>33</sup> The principle of self-determination is the right of people to independence and their right to embrace their own political, economic and social system. This has two aspects: internal (i.e. right to protection of minority rights within the country); and

<sup>28</sup> M. Kohen, *Introduction*, [in:] M. Kohen (ed.), *Secession: International Law Perspectives*, Cambridge University Press, New York: 2006, p. 1.

<sup>29</sup> J. Crawford, *The Creation of States in International Law* (2nd ed.), Oxford University Press, New York: 2006, p. 375.

<sup>30</sup> Kohen, *supra* note 28, p. 3.

<sup>31</sup> ICJ, *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, ICJ Rep. 2010, p. 403.

<sup>32</sup> E.g. T. Burri, *The Kosovo Opinion and Secession: The Sounds of Silence and Missing Links*, 8 German Law Journal 881 (2010).

<sup>33</sup> W. R. Sloman-son, *Legitimacy of the Kosovo, South Ossetia and Abkhazia secessions: Violations in search of a rule*, 6(2) *Miscolc Journal of International Law* 1 (2009), p. 15.

external (i.e. right of secession). States very rarely sanction instances of secession.<sup>34</sup> As was noted by M. Kohen, “(...) existing States have shown themselves to be ‘allergic’ to the concept of secession at all times.”<sup>35</sup> Moreover, in order to take effect in international law, secession should be recognized by the international community.<sup>36</sup> There is a duty, under customary international law, not to recognise acts in violation of a norm having the character of *ius cogens*. This has been confirmed by consistent practice of resolutions or decisions taken by international organisations calling for the non-recognition of *de facto* entities created in breach of the prohibition of the use of force,<sup>37</sup> as well as by the International Law Commission (ILC) in its Draft Articles on the Responsibility of States for Internationally Wrongful Acts, adopted in 2001 (Arts. 40, 41).<sup>38</sup> The recent events in the Crimea have again drawn attention to this topic. Obviously, the duty not to recognise acts in violation of *ius cogens* norms is a principle which is broadly accepted, but it is sometimes difficult to determine the exact legal circumstances and consequences of its implementation. Having that in mind, it is necessary to draw attention to the recent Polish initiative regarding a new theme for the ILC: “Duty of non-recognition as lawful of a situation created by a serious breach by a State of an obligation arising under a peremptory norm of general international law.”<sup>39</sup> It should be noted that the acceptance of this topic by the ILC would allow for the development of treaty norms regarding the obligation of non-recognition, which could contribute to the consistent implementation of that obligation.

It may be said that in the practice of States the principle of territorial integrity is the overriding principle, and secession without the consent of the “home” state remains illegal.<sup>40</sup> However, there is also the concept of so-called “remedial secession” in international law.<sup>41</sup> This is a secession of last resort, when the right to self-determination cannot be implemented within a given state. In such a case, in order for the secession to

<sup>34</sup> For a list of the successful post-1945 secessions, see Crawford, *supra* note 29, p. 391.

<sup>35</sup> Kohen, *supra* note 28, p. 3.

<sup>36</sup> E.g. M. Radziejowska, *Law and Lawlessness: The Secession and Russia's Absorption of Crimea*, PISM Bulletin, No. 43(628), 26 March 2014, available at: [https://www.pism.pl/files/?id\\_plik=16914](https://www.pism.pl/files/?id_plik=16914) (accessed 30 March 2015).

<sup>37</sup> See e.g. the cases of Southern Rhodesia (SC Res. 216 of 12 November 1965), South West Africa (SC Res. 276 of 18 March 1970), South African Bantustans (UN G.A. Res. 2775E (XXVI) of 29 November 1971), The Turkish Republic of Northern Cyprus (UN GA Res. 37/253 of 13 May 1983, SC Res. 541 (1983) of 18 November 1983).

<sup>38</sup> For the text and comments to the articles, see the Official Records of the General Assembly, 56<sup>th</sup> session, Supplement No. 10 (A/56/10), Ch. V.

<sup>39</sup> Statement of the Polish representative J. Stańczyk, see GA Official Records, Sixth Committee, A/C.6/69/SR.20, paras. 30-36.

<sup>40</sup> See generally Crawford, *supra* note 29, pp. 391-415.

<sup>41</sup> See L. C. Buchheit, *Secession: The Legitimacy of Self-Determination*, Yale University Press, New Haven: 1978, p. 222; J. Vidmar, *Remedial Secession in International Law: Theory and (Lack of) Practice*, 6(1) St. Anthony's International Review 37 (2010). For a detailed account of the academic support for “remedial secession”, see A. Tancredi, *A Normative 'Due Process' in the Creation of States Through Secession*, [in:] Kohen, *supra* note 28, pp. 171-207.

be recognized by the international community it must apply the doctrine of “exceptional circumstances”.<sup>42</sup>

It has been emphasized in the above-cited judgment of the Supreme Court of Canada that the precise meaning of the term “people” is not entirely certain. But it remains obvious that the concept of “people”, used for the purposes of secession, may cover only a part of the population of a state.<sup>43</sup> Moreover, as noted by the Supreme Court of Canada in the leading judgement in the area, such “people” should be governed as “part of a colonial empire”, be “subject to alien subjugation, domination or exploitation”, and be “denied any meaningful exercise of its right to self-determination within the state of which it forms a part”.<sup>44</sup> So, if this path is applied for in the case of Crimea, it must be proven that there was a situation of domination which deprived the people from representation in the country where they lived, and that there were no possibility of self-realization of their rights within the existing power structure through the use of voting rights and political self-organisation. Crimea has always been seen as a multinational territorial entity. According to the latest Ukrainian census in 2001, Russians accounted for 58.5% of the population in Crimea, the Ukrainians 24.4%, Crimean Tatars 12.1%, Belarusians 1.5%, Tatars 0.4%, Jews, Poles, Moldavian and, Azeris 0.2%, while other nationalities constituted 0.1%.<sup>45</sup> The “people” always had the possibility of self-realization within the existing power structure. The secessionists in the case of Crimea may not be regarded as “people”.

A gross human rights violation – the second circumstance of “remedial secession” – has to take place against members of the people, requiring the secession from the State having power over them. The judgment of the Supreme Court of Canada stressed that the human rights violations should be of a gross nature. Information available on the situation in the Crimea in the years 1991-2014 does not indicate that the Ukrainian authorities participated in any gross human rights violations against Crimeans. Also, the High Commissioner on National Minorities within the Organisation of Security and Cooperation in Europe (OSCE) found no evidence of violations or threats to the rights of Russian speakers during her visit to Kyiv and Crimea.<sup>46</sup>

<sup>42</sup> These circumstances are best determined by the judgment of the Supreme Court of Canada in the Quebec case, *Reference Re Secession of Quebec* [1998] 2 SCR 217:

- secessionists qualify as “people”,
- gross human rights violations,
- secession is a final remedy.

<sup>43</sup> *Ibidem*, para. 124.

<sup>44</sup> *Ibidem*, para. 154.

<sup>45</sup> Про кількість та склад населення України за підсумка-ми Всеукраїнського перепису населення 2001 року: Повідомлення Державного комітету статистики України (About number and composition of the population of Ukraine for the census of 2001: Information from the State Statistics Committee of Ukraine), Статистика України (Statistics of Ukraine), 2002, No. 4, pp. 77-85.

<sup>46</sup> *Developing situation in Crimea is alarming, says OSCE High Commissioner on National Minorities*, 6 March 2014, available at: <http://www.osce.org/hcnm/116180> (accessed 30 March 2015).

The third condition – the lack of other opportunities for effective conflict resolution consistent with domestic or international law<sup>47</sup> – is also not met. As can be seen from the course of events related to the declaration of independence, the conflict between the Ukrainian authorities and the Crimean authorities had not even begun. The Crimean authorities unilaterally declared independence and after the referendum “immediately” became part of the Russian Federation.

Summarizing the above analysis it seems clear that we cannot apply the concept of so-called “remedial secession” to the case of Crimea.

The Crimean Declaration of Independence invoked the right of peoples to self-determination arising from the UN Charter and a number of other international documents. The ICJ Advisory Opinion of 22 July 2010 was also indicated.

The principle of self-determination is included in Art. 1(2) of the UN Charter.<sup>48</sup> Also, the 1966 International Covenant on Human Rights, particularly Art. 1, described the principle of self-determination as including the right of an entire people to determine its political status.<sup>49</sup> Initially that right was used in the colonial context and became the legal basis for the creation of new post-colonial states. Outside of this context the principle of self-determination is different. Later, it was balanced by the principle of the territorial integrity. According to the Vienna Declaration of 1993, the right to self-determination:

shall not be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.<sup>50</sup>

And according to the Declaration on Principles of International Law:

nothing in the foregoing paragraphs shall be construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self-determination of peoples as described above and thus possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour.<sup>51</sup>

<sup>47</sup> E.g. J. Dugard, D. Raič, *The role of recognition in the law and practice of secession*, in Kohen (ed.), *supra* note 28, p. 109.

<sup>48</sup> Art. 1(2) of the UN Charter states: “[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.” *See also* Art. 55 of the UN Charter.

<sup>49</sup> Art. 1 of the International Covenant on Civil and Political Rights provides that “[a]ll peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

<sup>50</sup> Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), UN Doc. A/8082 (24 October 1970).

<sup>51</sup> Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights in Vienna, Report of the world conference on human rights, A/CONF 157/24 (Part 1) (13 October 1993) p. 20.

The above-quoted provisions stress that the right to self-determination does not justify dismemberment if a state is conducting itself in accordance with the right to self-determination. The status of Crimea was designated in the Constitution of Ukraine,<sup>52</sup> as well as in the Constitution of the Autonomous Republic of Crimea.<sup>53</sup> The people of Crimea were able to participate freely in governance and were not being oppressed as a group. So, Crimea cannot separate legally from the Ukraine, because within Ukraine Crimea relied on internal self-determination, as evidenced by *inter alia*, both the Ukrainian and the Crimean constitutions.

The reference to the ICJ Advisory Opinion is also a complete misunderstanding. This ruling gives no opinion whether Kosovo had the right to secede under international law, nor did it consider the question of the existence of a right to secession in general, nor even the legal consequences of a declaration of independence. The opinion is based on a brief analysis of the norms of international law which, as pointed out by the ICJ, in principle does not contain any norms prohibiting a unilateral declaration of independence. As a consequence, the Court could not find such a unilateral act illegal. However, the ICJ noted that there are situations in which the unilateral declaration cannot be considered compatible with the norms of international law, namely when it is "(...) connected with the unlawful use of force or other egregious violations of norms of general international law, in particular those of a peremptory character (*ius cogens*)" (para. 81). So, any violation of international law is not based on the unilateral nature of the declaration, but on the fact that a declaration may be the result of violations of norms of international law. In the case of Crimea, the adoption of the declaration of independence was associated with the use of force. Crimean authorities' actions were supported by armed men, whose identity was not known initially, but later it was determined that they were connected with the security forces and the armed forces of Russia.<sup>54</sup> This once again confirms that the declaration of independence of Crimea on 11 March 2014 was in violation of existing international law.

As was mentioned, the decision to proclaim independence on the part of Crimea was taken on the basis of the results of the Crimean referendum. Contemporary international law is moving in the direction of requiring that all territorial realignments be democratically justified, preferably through a direct democratic decision, i.e. by a territorial referendum.<sup>55</sup> As a corollary it is necessary that such a referendum comply

<sup>52</sup> See Title X of the Constitution of Ukraine.

<sup>53</sup> Art. 1 states that "The Autonomous Republic of Crimea shall be an integral part of Ukraine and it shall solve, within the powers conferred upon it by the Constitution of Ukraine, any and all matters coming within its terms of reference."

<sup>54</sup> Путин признал связь российской армии и "самообороны Крыма" (Putin acknowledged the connection of the Russian army and the "self-defence of the Crimea"), available at <http://sandbox.rustoria.ru/post/putin-priznal-svyaz-rossijskoj-armii-i-samooborony-kryma-1/>; see also A. Wilk, *Russian military intervention in Crimea*, Analyses of OSW, 5 March 2014, available at: <http://www.osw.waw.pl/en/publikacje/analyses/2014-03-05/russian-military-intervention-crimea> (both accessed 30 March 2015).

<sup>55</sup> Taking into account, for example, the plebiscites held after World War I, the decolonisation referendums of the 1950s and 1960s, and referendums following the dissolution of the Soviet Union and

with basic democratic standards for the holding of referendums. Certain international standards, rules and principles on how a territorial referendum must be conducted have emerged, especially after 1989. They can be found in such documents as the Council of Europe Parliamentary Assembly Recommendation 1704 (2005) of 28 April 2005,<sup>56</sup> and the Venice Commission, “Code of Good Practice on Referendums” of 20 January 2009.<sup>57</sup> The most important legal standards are: peacefulness; universal, equal, free and secret suffrage; the framework conditions of freedom of media and neutrality of the authorities; and last, but not least, the presence of international referendum observers.

The referendum in Crimea, having been arranged in an exceptionally short time, did not satisfy the above-mentioned international standards. It was held in the presence of undefined troops, which later proved to be Russian forces. Beyond that, the referendum was characterised by a lack of transparency of the composition of voters as well as electoral commissions. Neither freedom of expression nor freedom of the press were guaranteed, and there was also an absence of internationally accepted observers (e.g. OSCE). The Venice Commission declared that “a number of circumstances make it questionable whether the referendum of 16 March 2014 could be held in compliance with international standards.”<sup>58</sup> Having the above circumstances in mind, it is clear that the referendum could not justify the Crimean secession and the territory’s integration into Russia. Hence the unilateral declaration of independence by Crimea was contrary to the international law and the international community should not (and in fact does not) recognize it. In the light of international law, the territory of Crimea remains an integral part of the territory of Ukraine.

It must be admitted, however, that the secession of the Crimea peninsula is an accomplished fact, and regardless of the lack of support for it by the international community, there is no indication that this situation will change in the near future. This situation raises many practical problems on the international plane, some of which are discussed below.

## 2.2. International consequences of the accession of Crimea to the Russian Federation

Generally, in accordance with the position of most international organisations, the Crimean peninsula belongs to Ukraine and its annexation to Russia is illegal. For instance, the UN General Assembly adopted resolution 68/262 on 27 March 2014, entitled “Territorial integrity of Ukraine”.<sup>59</sup> The resolution affirmed the UN commitment to

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Yugoslavia after 1991. For more on referendums in international law, *see broadly*, I. G. Sen, *Sovereignty Referendums in International and Constitutional Law*, Springer International Publishing, Dordrecht: 2015.

<sup>56</sup> Parliamentary Assembly Recommendation 1704 (2005), “Referendums: towards good practices in Europe”, CM/AS(2005)Rec1704prov.

<sup>57</sup> Study No. 371/2006, CDL-AD(2007)008.

<sup>58</sup> Venice Commission, *supra* note 21, para. 22.

<sup>59</sup> Territorial Integrity of Ukraine: resolution adopted by the General Assembly, UN Doc A/RES/68/262 (1 April 2014).

recognize Crimea within Ukraine's international borders and underscored the invalidity of the 2014 Crimean referendum.

On 2 July 2014, the Parliamentary Assembly of the OSCE adopted a resolution condemning the actions of the Russian Federation in relation to Ukraine.<sup>60</sup> According to the resolution, the OSCE considers the referendum held in Crimea 16 March 2014 illegal and calls upon all State parties to refuse to recognize the "forcible annexation" of the Crimea by the Russian Federation. On 10 April 2014, the Parliamentary Assembly of the Council of Europe (PACE) adopted a resolution condemning Russia's actions as the "annexation" of Crimea.<sup>61</sup> In this resolution the PACE declared that the military occupation of Ukrainian territory, threat of military force, recognition of the illegal so-called referendum, and annexation of Crimea "constitute, beyond any doubt, a grave violation of international law".

However, despite the fact that in the opinion of many international organizations and states Crimea remains an integral part of Ukraine, in practice we have to deal with many problems that cannot be solved explicitly, at least not for the time being.

For example, the International Civil Aviation Organisation (ICAO), a specialised agency of the UN,<sup>62</sup> in a letter of 2 April 2014 to states and international organisations about the safety of civil aircraft operating in the Simferopol Flight Information Region (FIR) has confirmed that the Simferopol FIR is under the responsibility of Ukraine.<sup>63</sup> While the ICAO has not issued an unequivocal statement concerning the overall situation in Crimea, the official position of the ICAO as an agency of the UN has to reflect the position of the UN. Due to the unsafe situation with respect to aviation, where more than one air traffic services provider may be controlling flights within the same airspace, the organisation suggested avoiding the airspace and circumnavigating the Simferopol FIR using alternative routings.

It is worth adding that this organisation has been participating, from the beginning of the conflict, in negotiations between Ukraine and the Russian Federation on the issue of safety in the airspace over the Crimea and the open sea, which is under the jurisdiction of Ukraine. The first round of negotiations took place on 8 April 2014 in the European and North Atlantic Office of the ICAO in Paris.<sup>64</sup> Despite having conducted several meetings, the parties have not reached an agreement yet and the ICAO still

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<sup>60</sup> *Resolution on Clear, Gross and Uncorrected Violations of Helsinki Principles by the Russian Federation*, OSCE PA, Baku Declaration and resolutions adopted by the OSCE Parliamentary Assembly at the twenty-third annual session, Baku, 28 June to 2 July 2014, pp. 17-19.

<sup>61</sup> Resolution 1990 (2014), *Reconsideration on substantive grounds of the previously ratified credentials of the Russian delegation*, Assembly debate on 10 April 2014 (16th Sitting).

<sup>62</sup> The ICAO concluded a cooperation agreement with the United Nations on 13 May 1947. The text may be found in the Yearbook of the United Nations, 1946-47, part 2, pp. 741-45. The official webpage is: <http://www.icao.int/Pages/default.aspx>.

<sup>63</sup> Safety of civil aircraft operating in the Simferopol Flight Information Region (FIR), Safety Bulletin, IFALPA The Global Voice of Pilots, 15SAB001, 3 April 2014.

<sup>64</sup> A. Turner, *ICAO backs Ukraine's rights over Black Sea*, available at: <http://www.airtrafficmanagement.net/2014/04/icao-backs-ukraines-rights-over-black-sea> (accessed 30 March 2015).



continues to carry on informal talks with both sides of the process to facilitate dialogue in order to ensure the safety of air navigation in the area.

From March 2014 onwards, all international flights to the Simferopol Airport, with the exception of flights originating from Russia, were cancelled. Actually the Crimean airport, which is under Russian control, operates flights with destinations to Russia (which qualify as domestic flights), Yerevan (Armenia), Istanbul and Antalya (Turkey). All flights are conducted by Russian airlines. Since April 2014 the Russian company “Krymaeronavigatsiya” *de facto* took over air traffic control in the region. Airlines of other states suspended routes to Crimea due to the position of ICAO and Eurocontrol.<sup>65</sup>

The current state of affairs indicates that the air traffic situation in Crimea will be administered semi-officially for a long time. In the long term Ukraine is likely appeal to the ICAO to resolve disagreements. This is possible through the provisions of Art. 84 of the Chicago Convention, to which both Ukraine and the Russian Federation are parties.<sup>66</sup> The question arises, however, whether the ICAO will be able to definitively solve the problem. One may be sceptical about this and it seems that only the complete elimination of disagreements between parties to the dispute concerning jurisdiction over Crimea can solve the problem.

A complicated situation has also now arisen with respect to international shipping to the Crimean peninsula. In May 2014 Ukraine informed the International Maritime Organisation (IMO),<sup>67</sup> a specialised agency of the UN, that in connection with Russia’s annexation of Crimea Ukraine could no longer provide an adequate level of navigational safety and compliance with international obligations arising from the need to preserve human life at seaports in Evpatoria, Kerch, Sevastopol, Theodosia, and Yalta.<sup>68</sup> The waters and ports of the Crimea, according to the IMO documents, are the responsibility of Ukraine. On 16 June 2014 a decree of the Ministry of Infrastructure was issued closing the above-mentioned ports,<sup>69</sup> and asking the IMO to recommend to the vessels of all member countries that they avoid going into the waters of Crimea and Crimean ports because of a lack of certainty about who is in control. Contrary to the ICAO, the IMO has yet to make such an official recommendation. Despite that, this organisation,

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<sup>65</sup> EUROCONTROL, *Network Manager strongly recommends airspace users to avoid the airspace and circumnavigate the Simferopol FIR using available alternative routings*, EASA SIB No: 2014-10.

<sup>66</sup> Convention on International Civil Aviation, 7 December 1944, 15 UNTS 295.

<sup>67</sup> Agreement between the UN and IMCO (now IMO), *The Yearbook of the United Nations* 1948-49, pp. 1115-18. The official web page is: <http://www.imo.org/Pages/home.aspx>.

<sup>68</sup> *Ukraine informs IMO member-states of inability to assure required level of maritime security at the Crimean sea ports*, Press Center of Embassy of Ukraine to the United Kingdom of Great Britain and Northern Ireland, available at: <http://uk.mfa.gov.ua/en/press-center/news/23515-ukraine-informs-imo-member-states-on-inability-to-assure-required-level-of-maritime-security-at-the-crimean-sea-ports> (accessed 30 March 2015).

<sup>69</sup> Наказ Міністерства України “Про закриття морських портів” від 16 червень 2014, № 255 (Decree of the Ministry of Infrastructure of Ukraine of 16 June 2014, No. 255 “On the closure of sea ports”), 54 Official Journal of Ukraine 2014, item 1461.

as a specialised agency of UN, has to reflect the position of the UN. For ship owners this means that in the current legal limbo they bear all the risks themselves. Despite the Ukrainian ban, vessels of some foreign countries continue to conduct shipping in the ports of Crimea. From the point of view of Ukraine and the IMO, international shipping in Crimean ports is illegal. If foreign vessels continue to conduct shipping at the “closed” Crimean ports, they might be subjected to arrest and legal proceedings against the crew and owner for their breach of Ukrainian law. Thus, in fact, Crimea becomes an area of short sea shipping.

Another specialized agency of the UN which has to resolve a problem connected with Crimea is the International Atomic Energy Agency (IAEA).<sup>70</sup> There are two nuclear facilities – a 200-kilowatt research reactor and a critical assembly – under IAEA safeguards at the Sevastopol National University of Nuclear Energy and Industry, located in Crimea. They are covered under Ukraine’s safeguards agreement with the IAEA. The Agency must take a decision whether it can still validate that these facilities are under its formal safeguards, given Ukraine’s inability to provide access to these sites. Up until the present time, the IAEA has not yet adopted a formal position on the status of Crimea, emphasizing that it will continue to implement safeguards according to IAEA statute and international law. Considering the complexity of the situation, the IAEA seems to want to avoid addressing this problem as long as possible. As a result, the international legal and regulatory status of these reactors remains undefined. Although the IAEA database of research reactors continues so far to list both of the Crimean facilities as located in Ukraine,<sup>71</sup> the IAEA’s putting off its decision in the matter could have consequences for nuclear safety in the region.

Another problem has risen in the area of protection of cultural property. Following the accession of Crimea to the Russian Federation, the Allard Pierson museum in Amsterdam faces the dilemma of where it should return its artefacts from Crimea: to Ukraine or to Russia. Before the outbreak of the Crimean crisis the museum signed a loan agreement with the Ministry of Culture of Ukraine regarding exhibits stored in five Ukrainian museums, including four located in Crimea. The exhibits will be part of an exhibition until mid-May 2015.<sup>72</sup> The authorities of the museum have asked the Dutch Ministry of Foreign Affairs for advice whether to return the artefacts to Ukraine or to Russia. From the legal point of view the answer seems to be simple: the only possible solution is to return these artefacts to Ukraine, due to the fact that the loan agreement was signed with the Ukraine and the artefacts are owned by this state. It is obvious that the museum does not want to be held responsible for its decision, which

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<sup>70</sup> The IAEA concluded a cooperation agreement with the United Nations on 14 November 1957, text available in *The Yearbook of the United Nations*, 1957, part 1, pp. 29-32. The official webpage is: <https://www.iaea.org>.

<sup>71</sup> This list of research reactors is available at: <http://nucleus.iaea.org/RRDB/RR/Utilization.aspx?RId=689>; <http://nucleus.iaea.org/RRDB/RR/HeaderInfo.aspx?RId=690> (accessed 30 March 2015).

<sup>72</sup> Press release of 29 January 2014 of Allard Pierson Museum, *The Crimea: Gold and Secrets of the Black Sea*, available at <http://www.allardpiersonmuseum.nl/en/press> (accessed 30 March 2015).

is rather a political issue. As of this moment the official position of the Dutch ministry is not yet known.<sup>73</sup>

The examples given above obviously do not reflect all the problems that international organizations and the international community will have to deal with as a result of Russia's *de facto* annexation of Ukraine. They are presented only to indicate the fact that, regardless of the consensus in the international community in assessing the status of Crimea, in practice a quite complicated and controversial legal situation has arisen, creating a very tense and ambiguous legal environment whereby two legal systems of two states operate simultaneously in the same space.

### 3. THE LEGAL SITUATION OF CRIMEAN RESIDENTS

1 January 2015 marked the end of the “transition period” for the integration of Crimea's economic, financial, credit and legal system into Russia's. During that period (i.e. starting at the end of the March 2014) the inhabitants of Crimea lived in a legal limbo, or chaos. That chaos reigned in all spheres of life: judiciary, taxation, banking, civil affairs, etc., touching upon all important issues in people's lives such as problems of citizenship, business, taxation, healthcare etc. But in my opinion the fundamental questions are those arising in sphere of the judiciary and human rights.

According to Art. 9 of the FCL, during the transition period in the Republic of Crimea and Sevastopol the courts of the Russian Federation (the federal courts) were to be created in the Republic of Crimea and Sevastopol in accordance with the legislation of the Russian Federation on the judicial system. Immediately following the entry into force of this law, the Crimean courts temporarily ceased to adjudicate, although claims that were based on the norms of Russian law were accepted. However, in practice, the judicial system in Crimea has remained almost wholly inactive. The reason for this collapse was the collision of legal systems of two different states on the peninsula. Such dualism in the legal regulation of various aspects of social relations has created severe difficulties in resolving a number of issues. Despite the genetic relatedness of the procedural legislation of the Russian Federation and Ukraine, there are nevertheless a number of differences, starting with the procedure for determining the amount of the state's court costs, the procedure for notifying participants in the process and collecting evidence, and ending with the issuance of the writ of execution.<sup>74</sup> Furthermore, according to Art. 9.5 of the FCL “persons holding positions of judge in courts (in Crimea on the day of its accession to the Russian Federation), shall continue to administer justice until the creation and launching of the courts of the Russian Federation in these territories,

<sup>73</sup> Press release of 20 August 2014 of Allard Pierson Museum, *The Crimea Exhibition*, available at: <http://www.allardpiersonmuseum.nl/en/press> (accessed 30 March 2015).

<sup>74</sup> Регулирование международного гражданского процесса в странах СНГ [в:] *Международное частное право*, под ред. Н. Марышева (Regulation of international civil procedure in the CIS, [in:] N. Maryshev (ed.), *International Private Law*), Wolters Kluwer, Moscow: 2011, pp. 836-844.

if they have Russian citizenship.” During the first months after Crimea’s accession to the Russian Federation not so many people obtained Russian citizenship. Hence, there were situations whereby citizens of Ukraine had to make judicial decisions on behalf of Russia. The judges working in the Crimean courts generally do not have an appropriate knowledge of Russian law. Thus the peculiar situation arose whereby a person who was a citizen of one country and had not lost or given up such citizenship and was appointed by the previous governing state to a specific position and given the required oath, suddenly – without being released from these positions either at his own request or for other reasons – began to serve the interests of another State that had not even nominated him or her to that position. Realizing the inconsistency of this situation, which was not governed by relevant legislation, and given the absence of their own knowledge and skills, the judges tried not to make any decisions and simply delayed trials.

In order to resolve this situation, on 23 June 2014 the President of the Russian Federation signed a number of federal laws aimed at the formation of the judicial system of the Republic of Crimea and Sevastopol. Among them there are: (i) the Federal Law “On the Creation of Courts of the Russian Federation in the Republic of Crimea and the City of Federal Importance Sevastopol and on Amending Some Legislative Acts of the Russian Federation”;<sup>75</sup> and (ii) the Federal Law “On the procedure of selection of candidates for the initial composition of the federal courts, established in the territory of the Republic of Crimea and the City of Federal Importance Sevastopol.”<sup>76</sup>

The latter act establishes the procedure for selecting judges. The selection is made on a competitive basis, taking into consideration the legal education, professional experience and the results of the admittance examination. This law established a pre-emptive right for individuals holding the position of judge in courts operating in the territory of the Republic of Crimea and Sevastopol on 18 March 2014 to fill the positions of judge of the federal courts of general jurisdiction and arbitration courts, if they acquire Russian citizenship and comply with the requirements for candidates for the post of judge in accordance with Russian federal law. For such individuals the law establishes an exception from the requirement that they cannot hold foreign citizenship if the refusal of citizenship of a foreign state is impossible owing to reasons beyond their control. In such a case the basic document confirming the existence of a foreign nationality (passport), together with a disclaimer of it, must be transferred to the Judicial Department of the Supreme Court of the Russian Federation. In accordance with the legislation of Ukraine

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<sup>75</sup> Федеральный закон от 23 июня 2014 № 154-ФЗ “О создании судов Российской Федерации на территориях Республики Крым и города федерального значения Севастополя и о внесении изменений в отдельные законодательные акты Российской Федерации”, The Collection of Legislation of the Russian Federation, 30 June 2014, No. 26 (part 1), item 3360.

<sup>76</sup> Федеральный закон от 23 июня 2014 № 156-ФЗ “О порядке отбора кандидатов в первоначальные составы федеральных судов, создаваемых на территориях Республики Крым и города федерального значения Севастополя”, The Collection of Legislation of the Russian Federation, 30 June 2014, No. 26 (part 1), item 3362.

the date of renunciation of citizenship is the date of publication of a relevant decree of the President of Ukraine. Thus in practice it is possible that active judges of the Russian Federation will officially be citizens of Ukraine as well. Accordingly, the transfer of their Ukrainian passport together with a letter of resignation of their Ukrainian citizenship is supposed to serve, according to the Russian legislators, as a certain guarantee of the intention of such persons to resolve the situation with their citizenship in the future.

Despite the adopted laws, the situation with the judiciary in Crimea remained unclear until 23 December 2014. On that day the Plenum of the Supreme Court of the Russian Federation, in accordance with the specified federal constitutional law, adopted a resolution regarding the day when the activities of the courts were to start in Crimea.<sup>77</sup> Thus the courts of the Russian Federation officially started their activities only on 26 December 2014 in accordance with the above-mentioned resolution. Prior to this date judicial decisions were imprinted with Ukrainian court stamps.<sup>78</sup> In practice, there were situations when a court's decision was clearly contrary to the laws of the Russian Federation. In addition there was a judicial "grey area" as the Ukrainian laws did not apply to many situations either. In such cases the law was not on the side of people, but on the side of the authorities, who could treat it in any manner favourable for themselves. One of the consequences of this situation was the "blurring" of the law. People felt insecure before the law, and the absence of a right to a fair trial deprived them of the opportunity to defend themselves legally.

A similar situation existed in the Police and Prosecutors' offices. Officially, the Russian Interior Ministry issued an order establishing the territorial bodies of the Ministry of Interior of the Republic of Crimea on 25 March 2014.<sup>79</sup> But initially the police only accepted notifications of an offense, conducted interrogations and inspected crime scenes in accordance with the legislation of the Russian Federation. Interestingly, none of the employees of law enforcement agencies before this time took exams testing their knowledge of the laws of the Russian Federation. Probably due to that fact, criminal proceedings were not initiated during this period. Notwithstanding the provisions of Russian law, it can be argued that in the early stages of the "transition" the Ukrainian legislation continued to act within a certain scope in Crimea. For example,

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<sup>77</sup> Постановление Пленума Верховного Суда РФ "О дне начала деятельности федеральных судов на территориях Республики Крым и города федерального значения Севастополя" (Resolution of the Plenum of the Supreme Court of the Russian Federation "On the date for beginning the activity of the federal courts in the Republic of Crimea and the federal city of Sevastopol"), *Российская газета* (Rossijskaja Gazeta), No. 6566, 25 December 2014, p. 2.

<sup>78</sup> В. Фридман, По работе судов в Крыму на данный момент (V. Fridman, The courts in the Crimea at the moment), available at: <http://www.prison.org/content/po-rabote-sudov-v-krymu-na-dannyj-moment> (accessed 30 March 2015).

<sup>79</sup> Приказ МВД России от 25 марта 2014 № 175 "О внесении изменений в нормативные правовые акты МВД России" (Order of the Ministry of Interior of Russia from 25 March 2014, No 175 "On Amendments to normative legal acts of the Ministry of Interior of Russia"). The text of the order has not been published officially. It is available on the website of legal information of the Russian Federation: <http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=591974> (accessed 30 March 2015).

the police used Ukrainian printed forms of protocols and other documents required for the registration of offences. The first examinations for the police on Russian law commenced only at the end of April 2014. Prior to that date, Crimean policemen had to ask their Russian colleagues about the procedures and documents in Russia through the All-Russian forum for police employees.<sup>80</sup> According to the information obtainable from this forum, the formal employment of Crimean policemen as members of the new authorities started in mid-May 2014. Up until that moment the situation was unclear to say the least: in the Republic of Crimea a Police and Prosecutor's Office of the Russian Federation were organised; policemen and prosecutors were citizens of Ukraine and they executed their job according to the Russian legislation, but without knowledge of this law. This was a vivid case of legal impasse. For example, from a legal point of view evidence collected in a criminal proceeding could be deemed inadmissible as it had been collected by Ukrainian officials who did not have authority in Russia, and according to Ukrainian legislation, and who were no longer authorized to act in Crimea, or collected by persons who were not competent in the prescribed manner.

The work of notary offices (it should be noted, primarily for Anglo-Saxon readers, that notaries are lawyers under Russian law) was suspended in some areas. It is true that Art. 20 of the above-discussed law allowed Crimean notaries to implement notarial acts in Crimea under the laws of Ukraine prior to the creation of the Notary Chamber of the Republic of Crimea. But Crimean notaries were disconnected from the State Register of Ukraine, so they were not able to prepare notarial deeds of inheritance rights and property transfers.<sup>81</sup> The Notary Chamber of the Republic of Crimea was created on 7 July 2014.<sup>82</sup> From that date on, the law of the Russian Federation is applied for the execution of notarial acts by Crimean notaries. Unfortunately, Crimean notaries are unable to either prepare notarial deeds related to transfer of the ownership of real estate, nor to issue a certificate of inheritance, as up until the present time there are no valid state registers of real estate and of civil status in Crimea. Notaries in Crimea are – on their own initiative and in order to protect the interests of citizens and legal entities – manually restoring the database concerning arrests and bans on disposal of property, based on previously documented data.<sup>83</sup> The implementation of many social

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<sup>80</sup> Internet forum available at: <http://www.police-russia.ru/showthread.php?t=86704&page=16> (accessed 30 March 2015).

<sup>81</sup> Нотариус для крымчанина – сложная задача (Notary for Crimean residents – a complicated task), available at: <http://krymsos.com/2014/09/22/notarius-dlia-krimchanina-slozhnaiia-zadacha/> (accessed 30 March 2015).

<sup>82</sup> Информационное сообщение Федеральной нотариальной палаты от 7 июля 2014 г. “О создании Нотариальной палаты Республики Крым (Information Report of the Federal Notary Chamber of 7 July 2014 “On the establishment of the Chamber of Notaries of the Republic of Crimea”), available at the website of legal information of the Russian Federation at: <http://www.garant.ru/products/ipo/prime/doc/70589358/> (accessed 30 March 2015).

<sup>83</sup> Чистая сделка. Нотариусы готовы обезопасить крымчан от мошенничества. Интервью с президентом Нотариальной палаты Республики Крым Любовь Елисеева-Бора (A clear matter. Notaries are ready to protect the Crimean from fraud. Interview with the President of the Chamber of

and economic rights, for example inheritance of property,<sup>84</sup> contract of real estate as collateral,<sup>85</sup> or an annuity contract,<sup>86</sup> are inextricably linked with the services of notaries. During the “transition period” Crimeans were practically devoid of notary services.

The foregoing descriptions point to the fact that the residents of Crimea found themselves in a situation whereby the laws of two states – Ukraine and the Russian Federation – were applicable at one and the same time on the same territory. In addition, the citizens were not sufficiently aware of and prepared for the fact that the Russian and the Ukrainian laws are quite different. Furthermore, the professionals whose task is to apply the law – judges, employees of judicial authorities and notaries – faced the same problem. In such a situation the rights to a fair trial and an effective remedy were, for Crimean residents, severely limited if not absent.

Following the accession of Crimea to the Russian Federation human rights protections in Crimea have been severely curtailed.<sup>87</sup> There have been cases of deaths and disappearances under suspicious circumstances which occurred after February 2014. The Human Rights Watch documented fifteen cases in which people (Crimean Tatars and pro-Ukrainian activists) have disappeared or gone missing.<sup>88</sup> A person’s enforced disappearance is considered as a grave violation of human rights, as was emphasized by the Commissioner of Human Rights of the Council of Europe.<sup>89</sup> Admittedly, the authorities of Crimea have stated that criminal proceedings into these cases have been initiated, but they still remain ineffective. Accordingly, this raises serious concerns over the violation of the right to protection of human rights and to an effective remedy.

Crimean authorities have also restricted the right to freedom of expression, peaceful assembly, freedom of association and freedom of religion or belief. Violations of the right to freedom of expression are numerous. The amendments to the Russian criminal

Notaries of the Republic of Crimea, Lubov Eliseeva-Bora), available at the official website of Chamber of Notaries of the Republic of Crimea: <http://nprcrimea.ru/news/chistaya-sdelka-notariusyi-gotovy-i-obezopasit-kryimchan-ot-moshennichestva> (accessed 30 March 2015).

<sup>84</sup> In the Russian Federation inheritance has to be done as a notary act (Art. 1125 of the Civil Code of the Russian Federation), the same in Ukraine (Art. 1247 of the Civil Code of Ukraine).

<sup>85</sup> In the Russian Federation such contracts have to be done as notary acts (Art. 339 of the Civil Code of the Russian Federation), the same in Ukraine (Art. 577 of the Civil Code of Ukraine).

<sup>86</sup> In the Russian Federation such contracts have to be done as notary acts (art. 584 of the Civil Code of the Russian Federation), in Ukraine only contracts with real estate has to be done as notary acts (Art. 732 of the Civil Code of Ukraine).

<sup>87</sup> See generally Report by N. Muiznieks Commissioner of the Human Rights of the Council of Europe following his mission in Kyiv, Moscow and Crimea from 7 to 12 September, 2014, Council of Europe, CommDH(2014)19; OSCE/HCNM and OSCE/ODIHR, Ukraine, Human Rights Assessment Mission, *Report on the Human Rights and Minority Rights Situation*, March-April 2014, pp. 49-76, 109-119; A. Klymenko, *Human Rights Abuses in Russian-Occupied Crimea*, Atlantic Council, Freedom House, March 2015; *Report of the UN High Commissioner for Human Rights on the situation of human rights in Ukraine*, GA A/HRC/27/75, pp. 8-9.

<sup>88</sup> See generally *Rights in retreats*, at official website of the Human Rights Watch, available at <http://www.hrw.org/ru/node/130593/section/5> (accessed 30 March 2015).

<sup>89</sup> Report by Muiznieks, *supra* note 87, p. 7.

code that took effect on 9 May 2014 made illegal public calls for actions aimed at violating the territorial integrity of the Russian Federation.<sup>90</sup> So, for example, statements against the annexation, including in the media, in social networks, or in a public place are recognised as a crime, which carries with it the threat of punishment – including imprisonment – for people who express their disagreement over the annexation of the Crimea, both in Russia as well in Crimea. Local authorities have cut all broadcasts of Ukrainian TV networks.<sup>91</sup> Only a few Ukrainian channels are still left on cable systems, mostly entertainment.<sup>92</sup> Internet traffic from Ukraine was also cut. The Russian company Rostelecom started providing service to Crimea in July 2014. It should be mentioned that under Ukrainian law, Crimea was host to a relatively pluralistic media environment. Now Crimea's Internet service providers must operate under the more strict media laws of the Russian Federation.<sup>93</sup> For example, in accordance with Russian law they must disable access to any site if so ordered by Russia's Federal Security Service.

Freedoms of assembly and association are also restricted, as well as freedom of religion. On the pretext of ensuring security, authorities have limited the locations where mass gatherings can be held. For example, authorities blocked plans by the Crimean Tatars to organise a rally in Simferopol on 18 May 2014 to mark the anniversary of their 1944 deportation. A small-scale commemoration event was allowed to take place on 17 May, although not in the centre of Simferopol.<sup>94</sup> Local authorities often target Ukrainian religious institutions. Numerous cases of intimidation and harassment, by the authorities or unknown attackers, of members and leaders of Ukraine's indigenous religious groups who have spoken out against Russia's annexation of Crimea are well-documented in Klymenko's report.<sup>95</sup>

Particular attention should be paid to the situation of the Crimean Tatar community and ethnic Ukrainians residing in the Crimea. The new Crimean authorities have exerted severe pressure on the Crimean Tatars. A number of searches have been carried out in Muslim religious institutions as well as in private homes and companies belonging to members of the Crimean Tatar community.<sup>96</sup> The Mejlis, a self-governing body, is the highest

<sup>90</sup> Федеральный закон от 28 декабря 2013 № 433-ФЗ “О внесении изменения в Уголовный кодекс Российской Федерации” (The Federal Law of 28 December 2013 No 433-FL “On Amendments to the Criminal Code of the Russian Federation”), The Collection of Legislation of the Russian Federation, 30 December 2013, No. 52, item 6998.

<sup>91</sup> *Media freedom under siege in Crimea, Ukraine, says OSCE representative*, OSCE news release, 8 March 2014, available at: <http://www.osce.org/fom/116240> (accessed 30 March 2015).

<sup>92</sup> Klymenko, *supra* note 87, p. 9.

<sup>93</sup> For more on internet regulations in Russia, see e.g. M. Kramer, *The Clampdown on Internet Activities in Russia and the Implications for Western Policy*, PONARS Eurasia Policy Memo No. 350, September 2014, available at: [http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/Pepr350\\_Kramer\\_Sept2014.pdf](http://www.ponarseurasia.org/sites/default/files/policy-memos-pdf/Pepr350_Kramer_Sept2014.pdf) (accessed 30 March 2015).

<sup>94</sup> В. Никифоров, *Крымские татары собрались в Симферополе в годовщину депортации* (V. Nikiforov, The Crimean Tatars gathered in Simferopol on the anniversary of the deportation), available at: <http://www.kommersant.ru/doc/2474178> (accessed 30 March 2015).

<sup>95</sup> Klymenko, *supra* note 87, pp. 11-12.

<sup>96</sup> See generally Muiznieks, *supra* note 87, pp. 7-8; Klymenko, *supra* note 87, pp. 12-14.



executive body of the Crimean Tatar people and represents them in their dealings with the authorities and international bodies.<sup>97</sup> The Mejlis criticized Russia's occupation of Crimea and called on Crimean Tatars to boycott the March referendum on Crimea's status and the September local elections. The prosecutor issued several statements warning the Mejlis against "extremist" activities.<sup>98</sup> Even Russian legal experts underlined that those statements were announced wrongfully,<sup>99</sup> since neither meetings, nor calls for the reconstruction of autonomy are signs of extremist activity, as defined in the Federal Law "On Countering Extremist Activity".<sup>100</sup> The situation of ethnic Ukrainians in Crimea is also worrisome. There are violations of their linguistic and cultural rights. The Crimean department of education announced that the Ukrainian language and literature would be studied only as electives.<sup>101</sup> The possibility to receive an education in any language other than Russian, and particularly in Ukrainian, has been diminished. The only newspaper in the Ukrainian language operating in Crimea *Krymskaya Svetlitsa* is under threat of closure. The distribution network refuses to distribute the newspaper in its newsstands and it has not been included in the subscription catalogue. There are also cases of public harassment of individuals on the grounds speaking Ukrainian in public places.<sup>102</sup> The ongoing situation has pointed out the fact that, at one hand, the local authorities are not able to guarantee the safety of national minorities, and on the other hand they flagrantly violate their rights by their own actions.

The situation of residents of Crimea after the accession of Crimea to the Russian Federation leaves no illusion that we will soon have to deal with numerous individual applications to the European Court of Human Rights (ECtHR). As of today there are more than 20 individual applications related to the events in Crimea. They involve complaints about the deprivation of liberty of persons; violation of the right to have one's private life respected; to peaceful enjoyment of one's possessions; restrictions on the freedom of movement; and various aspects of criminal proceedings which were commenced by the authorities of the Russian Federation in Crimea.<sup>103</sup> Applications have been lodged against Ukraine, or Russia, or both. Obviously, that does not mean that all these cases will be processed. If the Court decides that the application is manifestly inadmissible, it will reject it right away.

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<sup>97</sup> The official website of Mejlis of the Crimean Tatar People, available at: <http://qtmm.org/en>, (accessed 30 March 2015).

<sup>98</sup> В. Никифоров, М. Иванов, *Крымским татарам вменяют экстремизм* (V. Nikiforov, M. Ivanov, The Crimean Tatars are imputed the extremism), available at: <http://www.kommersant.ru/doc/2521129> (accessed 30 March 2015).

<sup>99</sup> Broadly on this issue, *Ibidem*.

<sup>100</sup> Федеральный закон от 25.07.2002 № 114-ФЗ "О противодействии экстремистской деятельности" (The Federal Law of 25.07.2002 No. 114-FL "On Countering Extremist Activity"), The Collection of Legislation of the Russian Federation, 29 July 2002, No. 30, item 3031.

<sup>101</sup> D. Kolesnyk, *Russia bans Ukrainian language from schools in Crimea*, available at: <http://info-news.eu/russia-bans-ukrainian-language-from-schools-in-crimea/> (accessed 30 March 2015).

<sup>102</sup> See OSCE Report, *supra* note 87, pp. 67-68.

<sup>103</sup> *European Court of Human Rights deals with cases concerning Crimea and Eastern Ukraine*, Press Release issued by Registrar of the Court, ECHR 345(2014), 26 November 2014, p. 2.

In admissible cases the issue of the territorial jurisdiction of the Contracting Parties under Art. 1 of the European Convention of Human Rights and Fundamental Freedoms (Convention) will be reviewed in the first instance.<sup>104</sup> In accordance with the governing principles, jurisdiction is presumed to be exercised normally throughout a state's territory. However, the presumption of jurisdiction may be limited in exceptional circumstances, notably where a state is actually prevented from exercising its authority in part of its territory, and another state, which exercises effective control in that territory, is responsible for human rights violations. Such a situation was found by the ECtHR in the case *Ilascu and others v. Moldova and Russia*.<sup>105</sup> There it was declared that “the Moldovan Republic of Transdnistria, set up in 1991-92 with the support of Russia, vested with organs of power and its own administration, remains under the effective authority, or at the very least under the decisive influence, of the Russian Federation.”<sup>106</sup> Moreover, in the case *Loizidou v. Turkey*, the ECtHR held that the responsibility of a member state might be a consequence of military action – whether lawful or unlawful – when it exercises effective control over an area outside its national territory.<sup>107</sup> Besides these cases, the ECtHR has dealt with several cases which presented issues of jurisdiction over a territory beyond the geographical borders of the respondent state.<sup>108</sup>

Hence in applications which concern cases after 18 March 2014, when Russia legally acknowledged its control over Crimea, the situation is clear. The Russian Federation could be held responsible under the Convention for violation of human rights in Crimea. But in applications concerning cases which took place before the official Russian declaration and recognition of the annexation took place, the ECtHR will have to establish whether Russia is responsible for said alleged violations of human rights.

## CONCLUSIONS

The accession of Crimea to the Russian Federation is inconsistent with international law. Regardless of this fact, we are faced with a *fait accompli*. The situation is very complicated and difficult to comprehend – there are actually still legal systems of the two states – Ukraine and the Russian Federation – in operation on the same territory. This causes a lot of confusion and misunderstanding in both the internal and international law arenas. One of the most aggrieved parties to the secession are the residents of this territory themselves, because the negative effects of the collision of two legal systems are reflected

<sup>104</sup> *European Convention on Human Rights and Fundamental Freedoms*, available at official website of ECHR [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (accessed 30 March 2015).

<sup>105</sup> *Ilascu and others v. Moldova and Russia* (App. no. 48787/99), Judgment of 8 July 2004, ECHR Reports 2004-VII, p. 179.

<sup>106</sup> *Ibidem*, para. 392.

<sup>107</sup> *Loizidou v. Turkey* (App. no. 15318/89), Judgment of 18 December 1996, ECHR Reports 1996-VI, p. 207, para. 52.

<sup>108</sup> E.g. *Bancovic and Others v. Belgium and Others* (App. no. 52207/99); *Cyprus v. Turkey* No. 25781/94; *Georgia v. Russia (II)* (App. no. 38263/08) (still pending).

primarily on them and in their lives. Only problems in certain areas of international law as well as internal law have been presented in this article. However, the residents of Crimea have faced problems in all spheres of their life: in fact their civil and political rights are limited. They are forced to initiate cases or continue previously-initiated cases in the Crimean courts and operate in accordance with the Federal Constitutional Law of the Russian Federation of 21 March 2014. The Russian and Ukrainian legal systems exhibit many differences in all fields, and the residents of Crimea were not and are not familiar with the Russian legislation. Furthermore, professionals whose task is to apply the law – judges, lawyers, and employees of judicial authorities – have faced the same problem. The situation of national minorities in the Crimea has deteriorated sharply following the accession of Crimea into the Russian Federation. Obviously aggrieved persons have the right to bring their complaints against authorities to the ECtHR, but only after they have exhausted local remedies, and very often such litigation takes years. Furthermore, there is a big risk that correspondence from the court would not reach the addressee. The Order of the Federal Communications Agency on 31 March 2014 No. 61 “On assignment of postcodes to the post offices” in the territory of the Republic of Crimea introduced Russian postal codes.<sup>109</sup> The implementation of that order in fact began in May 2014. In turn, the Ukrainian State Postal Enterprise (Ukrposhta) has informed all designated operators of Universal Postal Union’s member countries to suspend the dispatching to Ukraine of any international postal items addressed to Crimea (postal codes in the range 95000–99999).<sup>110</sup> All official institutions, organizations and international bodies, in connection with their official non-recognition of the incorporation of Crimea into the Russian Federation, cannot use the “new” codes of Crimea in their correspondence or use addresses like “The Republic of Crimea” or “The Russian Federation”. And correspondences with the Ukrainian post indexes indicating “Crimea, Ukraine” does not reach the addressee on the peninsula, and is returned as “sent to the wrong address”.

One should ask: what are the chances that the situation of the residents of the Crimea will improve? In the nearest term this seems rather impossible. The solution to the above problems lies finding a way to completely eliminate disagreements between parties to the dispute over the ownership of Crimea. Today both Ukraine and the international community consider Crimea as part of Ukraine, while Russia on the other hand recognises it as part of the Russian Federation. It is hard to avoid the opinion that the problems of the residents of Crimea will continue along the same path as the problems between all involved parties.

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<sup>109</sup> The text of the order has not been published officially. It is available at the website of legal information of the Russian Federation: <http://base.garant.ru/70625652/> (accessed 30 March 2015).

<sup>110</sup> See *Ukraine cites temporary difficulties in delivering mail to Crimea*, available at the official website of the UPU: [http://news.upu.int/no\\_cache/nd/ukraine-cites-temporary-difficulties-in-delivering-mail-to-crimea/](http://news.upu.int/no_cache/nd/ukraine-cites-temporary-difficulties-in-delivering-mail-to-crimea/) (accessed 30 March 2015).