

ASERS

Journal of Advanced Research in Law and Economics

Quarterly

Volume X
Issue 1 (39)
Spring 2019

ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

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<http://journals.aserspublishing.eu>
ISSN 2068-696X
Journal DOI: <https://doi.org/10.14505/jarle>
Journal's Issue DOI:
[https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)

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<http://journals.aserspublishing.eu>
ISSN 2068-696X
Journal DOI: <https://doi.org/10.14505/jarle>
Journal's Issue DOI:
[https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)

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<http://journals.aserspublishing.eu>
ISSN 2068-696X
Journal DOI: <https://doi.org/10.14505/jarle>
Journal's Issue DOI:
[https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)



DOI: [https://doi.org/10.14505/jarle.v10.1\(39\).17](https://doi.org/10.14505/jarle.v10.1(39).17)

The Annexation of the Autonomous Republic of Crimea and the Armed Conflict in Eastern Ukraine as a Crime of Aggression by the Russian Federation against Ukraine

Pavlo L. FRIS

Department of Criminal Law

Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine

fris.p.l@ua.fm

Ihor B. MEDYTSKYI

Department of Criminal Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine

medytskyi.i.b@ua.fm

Yurii I. MYKYTYN

Department of Criminal Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine

mykytyn.y.i@ua.fm

Viktoriiia V. SHPILIAREVYCH

Department of Criminal Law, Vasyl Stefanyk Precarpathian National University, Ivano-Frankivsk, Ukraine

Shpiliarevych.v.v@ua.fm

Suggested Citation:

Fris, Pavlo L. *et al.* 2019. The Annexation of the Autonomous Republic of Crimea and the Armed Conflict in Eastern Ukraine as a Crime of Aggression by the Russian Federation against Ukraine, *Journal of Advanced Research in Law and Economics*, Volume X, Spring, 1(39): 165 – 172. DOI: [10.14505/jarle.v10.1\(39\).17](https://doi.org/10.14505/jarle.v10.1(39).17). Available from: <http://journals.aserspublishing.eu/jarle/index>

Article's History:

Received 10 December, 2018; Received in revised form 8 January, 2019; Accepted 22 February, 2019;

Published 31 March, 2019.

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Abstract:

After the First World War, the international community gradually began to change their attitude to the question of the 'legality' of military conflicts. The article is devoted to the fact that the annexation of the Autonomous Republic of Crimea by the Russian Federation and the ongoing anti-terrorist operation in the Eastern regions of Ukraine testify to the transformation of Ukraine into an object of geopolitical confrontation, the edge of the planned activities of other international actors aimed at achieving its ambitious objectives. The purpose of the research is the study of criminal manifestations in the territory, annexed by the Russian Federation the Autonomous Republic of Crimea (hereinafter-ARC) and in the zone of armed conflict in the East of Ukraine, for the further development of effective mechanisms to counter the phenomena of political crime. the stabilization of the situation in the country. The methodological framework of this study consists of a set of modern scientific methods, the use of which is objectively determined by the relevance and purpose of the objectives of the study. The authors of the study recommend to strengthen the international response to the occupation and annexation by the Russian Federation in Crimea and waging an armed conflict in the East of Ukraine.

Keywords: annexation; armed conflict; anti-terrorist operation; international crime against peace and security of human kind; political crime; the consequences of political crime.

JEL Classification: D74; F51; H83.

Introduction

The situation between Ukraine and the Russian Federation is, to a certain extent, quite complicated for the direct application of the norms of international law. Firstly, the aggressor was a country that, under the 'Memorandum on

Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons' of 5 December 1994, No. 998_158 (the 'Budapest Memorandum') (2007), was the guarantor of Ukraine's sovereignty and security. Secondly, the Russian Federation armed formations entered the territory of Ukraine without officially declaring war. On 27 February 2014, Russian Federation personnel in uniform without markings established control over the Verkhovna Rada (the Parliament) of the ARC. On the same day, the ARC dissolved the Council of Ministers of the ARC, which had recently recognized the new transitional government of Ukraine, before bringing pro-Russian structures to power.

Furthermore, the Russian Federation rejects the presence of its military on the territory of Ukraine and does not recognize the unilateral nature of its actions on the accession of the occupied territories of the ARC, which took place on 18 March 2014 on the basis of the Treaty between the Russian Federation and the Republic of Crimea 'On the Admission of the Republic of Crimea to the Russian Federation and the Formation of New Constituent Entities within the Russian Federation' (2014), under which the Crimean peninsula was forcefully annexed by the Russian Federation. In this regard, Philip Breedlove, General of the U.S. Air Force, Supreme Allied Commander Europe (SACEUR) of NATO Allied Command Operations (2013-2016), said as follows: '...what we see here can be characterized as the militarization of Crimea... Russia deploys modern forces, aviation and naval forces there. Anti-aircraft systems control about half of the Black Sea, and surface-to-surface missiles completely cover it ... That is, we see that the Crimea has already become a bridgehead for further use of force ...' (20 facts on Russian invasion in Ukraine...).

The situation between Ukraine and the Russian Federation became even more acute during the national-patriotic protests in Ukraine, primarily against corruption, the arbitrariness of law enforcement agencies and Special Forces, as well as the support of the European vector of the foreign policy of Ukraine. It was this vulnerable situation that was used by the separatists to seize Donetsk and Luhansk, as a result of which Donetsk came under the control of the terrorist group 'Donetsk People's Republic' ('DPR') and Luhansk – 'Luhansk People's Republic' ('LPR'). Again, the aggressor state itself does not recognize its presence in the east of Ukraine and its involvement in armed confrontations (Putin: There is no Russian army 2017). To date, Ukraine and the international community have a limited range of opportunities to influence the situation. The only mechanism of influence on the Russian Federation remains the system of sanctions by EU countries and the United States, which, on the one hand, exerts pressure on its economy, but, on the other hand, affect the situation in the ARC. All of this demonstrates the need to intensify government efforts and those of various international organizations in the area of combating political crime, which aims to obtain (redistribute), retain and further use of state power, and to take adequate measures to deter violations of international law by the Russian Federation.

1. Methodology

The purpose of the article is to form effective mechanisms to counteract manifestations of political crime, which at the same time means the creation of an effective system of blocking the attempts to drag Ukraine into groundless geopolitical clashes. To achieve this goal, the objective is to study criminal manifestations in the annexed territory of the ARC by the Russian Federation and the territory of armed conflicts in the east of Ukraine to create effective mechanisms to counteract manifestations of political crime and stabilize the situation inside the country. The methodological basis of the scientific research is a set of modern methods of scientific cognition, the application of which is objectively conditioned by the urgency and objectives of the research problem, in particular: the dialectical method is used to study and highlight the consequences of the annexation of the Russian Federation of the ARC and the ongoing armed conflict in the East of our country; comparative legal method allowed us to analyze international legal acts and other international documents aimed at supporting the territorial integrity of Ukraine; the method of generalization of legal theory and practice has been used when formulating the conclusions as a result of studying the problems of annexation of the ARC and the armed conflict in the East of Ukraine as a crime of aggression against our country.

2. Results and Discussion

For almost five years Ukraine has been fighting against Russian aggression on various fronts – military, diplomatic, political, economic, legal and informational. During this time, our state has taken a number of legal measures in response to the separatists' actions. In particular, on March 20, 2014, the Verkhovna Rada of Ukraine adopted the Declaration 'On the Struggle for the Liberation of Ukraine' No. 1139-VII, in which it draws the attention of the world's governments and parliaments, international organizations and the world community to the fact that the Ukrainian people will never recognize the annexation of an integral part of their territory – the ARC, seized by Russia in flagrant violation of fundamental norms of international law and universally recognized principles of coexistence of

states. On behalf of the people of Ukraine, the Verkhovna Rada of Ukraine has stated that Crimea has been, is and will continue to be a part of Ukraine. The Ukrainian people will never and under no circumstances stop the struggle for the liberation of Crimea, no matter how hard and prolonged it may be ('On the Struggle for the Liberation of Ukraine' 2014).

On 13 April 2014, the Acting President of Ukraine, Oleksandr Turchynov, by the decision No. 405/2014 of the National Security and Defense Council of Ukraine dated 13 April 2014 'On Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine' established an anti-terrorist operation regime in the Luhansk and Donetsk regions (Presidential Decree on the Resolution 2014). Also, the Verkhovna Rada of Ukraine in the span of 2014 – 2018 adopted several other essential documents condemning the annexation of the ARC and recognizing certain territories of Donetsk and Luhansk regions as temporarily occupied by the Russian Federation. At the same time, the Russian Federation's temporary occupation of the relevant territories of eastern Ukraine, regardless of its duration, is illegal and does not create any territorial rights for the Russian Federation. In particular, we are referring to:

- (1) the Law of Ukraine 'On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine' of April 15, 2014, No. 1207-VII (2014);
- (2) the Resolution of the Verkhovna Rada of Ukraine 'On the Statement of the Verkhovna Rada of Ukraine: 'On the Initiative of International Negotiations on the De-escalation of the Situation around Ukraine' of April 16, 2014, No. 1217-VII (2014);
- (3) the Resolution of the Verkhovna Rada of Ukraine 'On the Appeal of the Verkhovna Rada of Ukraine to the United Nations, the European Parliament, the Parliamentary Assembly of the Council of Europe, the NATO Parliamentary Assembly, the OSCE Parliamentary Assembly, the GUAM Parliamentary Assembly, the National Parliaments of the Countries of the World on the Recognition of the Russian Federation as an Aggressor State' Dated January 27, 2015, No. 129-VIII (2015);
- (4) the Resolution of the Verkhovna Rada of Ukraine 'On the Statement of the Verkhovna Rada of Ukraine' On the Recognition by Ukraine of the Jurisdiction of the International Criminal Court for the Commission of Crimes Against Humanity and War Crimes by Senior Officials of the Russian Federation and Leaders of Terrorist Organizations 'Donetsk People's Republic' ('DPR') and 'Luhansk People's Republic' ('LPR'), which Led to Especially Grave Consequences and Mass Murder of Ukrainian Citizens' of February 4, 2015, No. 145-VIII (2015);
- (5) the Resolution of the Verkhovna Rada of Ukraine 'On the Statement of the Verkhovna Rada of Ukraine' On the Derogation of Ukraine from Individual Obligations Under the International Covenant on Civil and Political Rights (ICCPR) and the Convention for the Protection of Human Rights and Fundamental Freedoms' of May 21, 2015, No. 462-VIII (2015);
- (6) the Resolution of the Verkhovna Rada of Ukraine 'On the Appeal of the Verkhovna Rada of Ukraine to the Parliaments of the Foreign States and Parliamentary Assemblies of International Organizations to Condemn the Continuation of Aggression of the Russian Federation against Ukraine' of 18 February 2016 No. 1014-VIII (2016);
- (7) the Law of Ukraine 'On the Peculiarities of State Policy of Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Regions' of 18 January 2018 № 2268-VIII (2018);
- (8) the Resolution of the Verkhovna Rada of Ukraine 'On the Appeal of the Verkhovna Rada of Ukraine to the Parliaments of Foreign States and Parliamentary Assemblies of International Organizations on Condemnation of Political Repression of the Russian Federation against the Citizens of Ukraine as a Result of the Armed Aggression of the Russian Federation against Ukraine and the Release of Ukrainian Political Prisoners' of March 1, 2018 No. 2312-VIII (2018).

Special representative of the U.S. State Department for Ukraine Kurt Volker also said during a panel discussion at the Hudson Institute's analytical center that the Russian occupation entities 'Donetsk People's Republic' ('DPR') and 'Luhansk People's Republic' ('LPR') should be liquidated because their existence does not comply with the Constitution of Ukraine (Panel discussion at the Hudson Institute Analytical Center). In particular, he noted, that: 'The so-called 'Luhansk People's Republic' and 'Donetsk People's Republic' are entities that were created by Russia to help disguise the role of the Russian Federation and strengthen the conflict, and they should be eliminated. There is no place for them in the Ukrainian constitutional order. The Minsk agreements aim to restore Ukraine's sovereignty and territorial integrity, and these entities should cease to exist.

Well-established international institutions have also qualified the actions of the Russian Federation on Ukraine as an act of aggression that led to the annexation of the ARC and declared its non-recognition of such an

annexation and unequivocally supported the recognition of Ukraine's territorial integrity. Thus, on 27 March 2014, the United Nations General Assembly (UN) adopted Resolution No. A/RES/68/262 (2014) 'Territorial Integrity of Ukraine', in which it noted that the territory of a state should not be subject to appropriation by another state as a result of the threat or use of force, and that any attempt to partially or totally disrupt the national unity and territorial integrity of a state or country, or their political independence, is incompatible with the purposes and principles of the UN Charter. In addition, the document states that the referendum held in the ARC and the city of Sevastopol on March 16, 2014 'was not sanctioned by Ukraine', and, accordingly, 'has no legal force and cannot be a basis for any change in the status of the ARC or the city of Sevastopol' (Resolution No. A/RES/68/262 2014).

Resolution No. A/RES/71/205 (2016) 'Situation of Human Rights in the Autonomous Republic of Crimea and the City of Sevastopol (Ukraine)', adopted on 19 December 2016 by the UN General Assembly, described the ARC as 'temporarily occupied' by the Russian Federation. In this resolution, the UN General Assembly called on the Russian Federation to adhere to the Geneva Conventions. Furthermore, the General Assembly urged the Russian Federation to ensure adequate and unhindered access of international human rights monitoring missions and human rights non-governmental organizations to the peninsula and requested that ways and means be sought to guarantee safe and unhindered access to the territory of the ARC (Resolution No. A/RES/71/205 2016). On July 2, 2014, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE PA) also recognized the actions of the Russian Federation as military aggression unprovoked and based on entirely unfounded assumptions and allegations.

The Parliamentary Assembly of the Council of Europe (PACE) first similarly assessed the situation in Ukraine. In particular, the Resolution 1988 (2014), adopted on 9 April 2014, 'Recent developments in Ukraine: threats to the functioning of democratic institutions', condemning Russia's actions to annex Crimea, it was noted, that: 'The Assembly reaffirms its strong support for the independence, sovereignty and territorial integrity of Ukraine and condemns the decision of the Parliament of the Russian Federation to permit the use of military force in Ukraine, as well as Russian military aggression and further annexation of Crimea, which is a clear violation of international law, in particular the UN Charter, the Helsinki Accords of the Organization for Security and Cooperation in Europe (hereinafter – OSCE) and Statute of the Council of Europe. The so-called referendum, which was organized in Crimea on 16 March 2014, is deemed as 'unconstitutional', and therefore the result of its conduct and the illegal annexation of Crimea by the Russian Federation have no legal effect and are not recognized by the Council of Europe'. Besides, the Parliamentary Assembly of the Council of Europe expresses concern at reports of human rights violations in Crimea (Resolution 1988 2014).

However, despite the fact that the international response to the annexation of the Ukrainian Crimean peninsula by the Russian Federation and its temporary occupation of certain territories in the east of Ukraine is evidence of a deep crisis in international law, there are doubts as to the proper functioning of a number of international organizations in this field. This is evidenced by the fact that at the time of the military invasion, Ukraine and the Russian Federation were members of the UN, the Council of Europe, the OSCE and the 'Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons' of 5 December 1994 No. 998_158 (the 'Budapest Memorandum') ('Memorandum on Security Assurances 2007'), but in flagrant violation of international law by the Russian Federation, the countries of the European Union have demonstrated a number of inconsistent policies towards the aggressor state. This is evidenced by the constant hesitation regarding the continuation of economic sanctions against Russia, attempts to bargain sanctions for the termination of military activities of Russian-separatist troops in eastern Ukraine, etc.

While examining the issue of the annexation of the ARC and the conduct of the armed conflict in the east of Ukraine by the Russian Federation, the question of the consequences of political crime in the context of the characterization of the Russian Federation's aggression against Ukraine is of particular interest. After all, when the occupation of the respective territories of our State took place, the Ukrainian legislation was substituted by the legislation of the Russian Federation, contrary to obligations under international humanitarian law, according to which the existing legislation of the occupied territory should remain in force (IV Convention on the Laws and Customs 2017; The Geneva Conventions 2013). One of the consequences of the annexation of the ARC was also the imposition by the Russian Federation of its citizenship on Crimean residents, which resulted in the violation of human and civil rights and freedoms, especially for those who had to surrender Ukrainian citizenship to retain their jobs. Restrictions also affected those who opposed the March 2014 merger referendum with the Russian Federation or criticized its control over Crimea. As a result, serious human rights violations were documented, such as arbitrary arrests and detentions, enforced disappearances, ill-treatment, torture, and at least one extrajudicial execution. Moreover, following the annexation of the ARC, all penitentiary institutions in Crimea were incorporated into the penitentiary system of the Russian Federation, which resulted in numerous transfers of detainees from Crimea to

the penitentiary institutions of the Russian Federation in contravention to international humanitarian law (The Geneva Conventions 2013).

It is noteworthy that since the beginning of the armed aggression of the Russian Federation and the terrorist fighters supported by it, during which the ARC was annexed and parts of the Donetsk and Luhansk regions, which are an integral part of the territory of an independent and sovereign state of Ukraine, were temporarily occupied, thousands of Ukrainian citizens have been killed, including children, with thousands of injured, the infrastructure of the entire region shattered, and hundreds of thousands of citizens have been forced to leave their homes. In particular, the most egregious acts of violence by Russian Federation military units and terrorist fighters supported by the Russian Federation have been artillery shelling of civilians. In particular, on 13 January 2015, pro-Donetsk People's Republic (DPR) supporters fired artillery shells at a checkpoint using BM-21 'Hrad' (truck-mounted 122 mm multiple rocket launcher), resulting in some of the shells hitting a Zlatoustivka - Donetsk shuttle bus, which was undergoing passport control at a checkpoint near the city of Volnovakha in the Donetsk region, resulting in the death of twelve people (The Bus of Death 2015).

On 24 January of the same year, a series of 'Hrad' multiple-launch rocket attacks against civilians took place in residential areas of the city of Mariupol in south-eastern Ukraine, killing more than 30 civilians, including 2 children, injuring more than 100 people and destroying more than 200 buildings in their entirety and in part (The shelling of Mariupol 2016). This bombing is considered to be the most severe since the beginning of the anti-terrorist operation in eastern Ukraine. This is by no means the last manifestation of the Russian Federation's aggression against Ukraine, as it continues to supply mercenaries and weapons used by terrorist fighters to kill innocent citizens of our country and commit other acts that infringe on the national interests of Ukraine. Therefore, despite the scale, diversity and complexity in determining the actual consequences of the manifestation of aggression of the Russian Federation against Ukraine, starting from March 17, 2014, starting from when the illegitimate procedure of the 'reunion' of the ARC with the Russian Federation was conducted and to this day, it is reasonable to focus on the social consequences, which in terms of the scope (the nature of manifestation) can be roughly divided into: socio-economic consequences; socio-humanitarian consequences; legal consequences. This is conditioned by the fact that any war or active hostilities radically affect all social processes occurring in a given state. Each of these types of social consequences of the permanently ongoing armed conflict between the Russian Federation and Ukraine is now discussed in more detail.

Socio-economic consequences. Consequentially to the military activity in the Luhansk and Donetsk regions, the destruction of transport and energy infrastructure, many enterprises had to suspend or stop their production. Small and medium enterprises reduced their economic activity by 80-90%, and almost 40 thousand of them went out of business. According to the Ministry of Economic Development and Trade of Ukraine, there has been a 5-fold decrease in economic activity in the temporarily uncontrolled territories of Ukraine (Horbulin *et al.* 2015). According to the data of the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine, as of November 1, 2014, 227 educational facilities, 48 health care facilities, 56 cultural and sports facilities, 91 administrative buildings, 14 trade facilities and 132 industrial facilities worth a total of 5788 million UAH were damaged or destroyed in Donetsk and Luhansk regions. More than 710,000 people have lost their homes. As a result, the total economic losses of Ukraine due to the hostilities in Donbas amounted to more than 30 billion UAH (The price of war 2014).

The budget losses as a result of military aggression are estimated at billions of hryvnias, the liquidation of enterprises has led to a decrease in budget revenues at all levels, an increase in unemployment, and increased social tension in the region. Instability in the socio-political plane and the threat of large-scale armed aggression cause a growing distrust in the banking system, worsen the investment climate in Ukraine, which in the short and medium term will lead to significant indirect losses. The total banking system losses in the two regions during the hostilities as of August 1, 2015, are UAH 47.0 billions of borrowed funds and UAH 27.8 billion of the credit portfolio (Horbulin *et al.* 2015).

Socio-humanitarian consequences. First of all, we are talking about the emergence of the category of internally displaced persons in Ukraine, the number of which, according to official data as of the end of October 2015 reached 973,1 thousand people (Horbulin *et al.* 2015). However, the official statistics do not reveal the actual scale of the relocation, as some citizens leave the combat zone on their own (moving to relatives, acquaintances, etc. without proper registration). According to the Office of the United Nations High Commissioner for Refugees, the number of Ukrainian citizens who have applied for refugee status in seven countries bordering Ukraine (primarily the Russian Federation, Belarus and Poland) is 353,5 thousand, while another 569,2 thousand are staying these countries on other grounds (Horbulin *et al.* 2015).

Legal consequences. The effects of the occupation of the ARC by the Russian Federation and the conduct of anti-terrorist operations in specific territories of Donetsk and Luhansk regions of Ukraine were bound to have an impact on the increase in the crime rate in the respective territories, and at the same time led to the intensification of the criminal liability for certain crimes against the foundations of national security, public safety, white collar crimes, war crimes and the like. Accurately, the particularities of crime in extreme situations (including during the occupation and annexation by the Russian Federation of the ARC and the conduct of anti-terrorist operations in specific territories of the Donetsk and Luhansk regions of Ukraine) are determined by the following factors (Dzhuzha and Harkusha 2014):

- (1) helplessness and vulnerability of people affected by an extreme situation;
- (2) disruption of representatives of state authorities and law enforcement bodies;
- (3) weakening of social control factors, the emergence of adult unemployment and child abandonment;
- (4) aggravation of the need for essential food and necessities (if the emergency is prolonged);
- (5) increase in the anxiety of the population, growth of conflict in interpersonal relations;
- (6) forced migration of the population, which breaks the established social ties and weakens the restraining effect of morality and public opinion.

In 2014, for example, the number of particularly serious crimes increased significantly, from 13776 to 25872 (an increase of +87,8%), compared to 2013, while other, less severe types of crimes showed a decrease. The number of crimes committed with the use of firearms increased from 761 to 2523 (+ 69,8%), as well as such categories of crimes that were committed: against the fundamentals of national security of Ukraine - from 8 to 527 (+ 98,5%); against the freedom, honor and dignity of the individual - from 483 to 2202 (+ 78,1%); against public safety - from 7772 to 119 472 (+ 34,9%); against traffic safety and transport operation - from 19722 to 24700 (+ 20,1%); in the sphere of protection of state secrets, inviolability of state borders, conscription and mobilization - from 370 to 959 (+ 61,4%); against the established military service procedure (war crimes) - from 369 to 4153 (+ 91,1%); against peace, security of mankind and international law and order - up to 9 (+ 100%)(Tytarenko 2014). Although the official statistics on the condition of criminal offenses mainly do not reflect their real situation. First of all, the statistics do not fully include static figures for the Autonomous Republic of Crimea, which remains occupied by the Russian Federation, and parts of the Donetsk and Luhansk regions, where the regime of counter-terrorist operation is in place.

Conclusions

Thus, in the light of all the above, it should be noted that the armed aggression of the Russian Federation against Ukraine has launched a whole range of economic, social and legal challenges affecting the development of the country as a whole and the protection of its national interests, including the protection of human and civil rights and freedoms in the annexed territory of the Autonomous Republic of Crimea and the temporarily occupied parts of Donetsk and Luhansk regions of Ukraine. At the same time, it is necessary to emphasize that the solution of the problems mentioned above and elimination of the real consequences of political crime can be achieved by combining the efforts of the relevant international organizations and Ukraine and by performing a complex of actions.

Authoritative international organizations need to react appropriately to the conduct of the Russian Federation towards Ukraine, namely in the form of economic sanctions, which should be counterbalanced with the humanitarian perspective. In turn, in order to protect its national interests, it is advisable for Ukraine to effectively carry out priority reforms to restore and ensure its further development in the territories annexed and temporarily occupied by the Russian Federation (decriminalization of business, elimination of the shadow economy, demonopolization of the economy, resolution of all issues related to refugees, creation of a mechanism to organize control over the state of preservation of cultural property, etc.).

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ISSN: 2068-696X

Journal's DOI: <https://doi.org/10.14505/jarle>

Journal's Issue DOI: [https://doi.org/10.14505/jarle.v10.1\(39\).00](https://doi.org/10.14505/jarle.v10.1(39).00)