

LEGAL SYSTEMS OF THE POST-SOVIET NON-RECOGNIZED STATES: STRUCTURAL PROBLEMS

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There are currently six non-recognized states (NRSs) in the post-Soviet space: the Pridnestrovian Moldovan Republic (PMR, 1990), the Republic of South Ossetia (RSO, 1990), the Nagorno-Karabakh Republic (NKR, 1991), the Republic of Abkhazia (RA, 1994), the Lugansk People's Republic (LPR, 2014) and the Donetsk People's Republic (DNR, 2014). All of them have been formed as a result of armed conflicts between a state vigorously pursuing the policy of national unification and a minority residing compactly. On the one hand, the legal systems of these states ensure that both the state and the civil society function effectively. In particular, each legal system forms a basis for the state's political system, sets out human rights and their guarantees and provides necessary regulation of commercial activities. On the other hand, these legal systems reflect certain "statehood deficiency" and are subject to a number of serious problems, including being dependent on political agenda as well as on certain foreign legal systems, providing no personal jurisdiction or property guarantees and having significantly underdeveloped commercial law and judicial system. This "statehood deficiency" has two main causes: the community being not ready for state building (weak statehood traditions; lack of qualified personnel, economic resources and industrial base; high level of corruption, etc.) and the state being non-recognized (including the consequences of this status such as inability to participate in international cooperation, dependence on major geopolitical players, existence of an external threat, etc.).

* *Editor's note:* Formally, the territory of the NKR belongs to Azerbaijan.



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Table of Contents

Introduction

1. Dependence on the Political Agenda
 2. Dependence on Foreign Legal Systems
 3. Lack of Personal Jurisdiction
 4. Lack of Property Rights Guarantees
 5. Undeveloped Commercial Law
 6. Undeveloped Judicial System
- Conclusion

Introduction

There are six non-recognized states (NRSs) in the post-Soviet space: the Pridnestrovian Moldovan Republic (PMR, 1990), the Republic of South Ossetia (RSO, 1990), the Nagorno-Karabakh Republic (NKR, 1991), the Republic of Abkhazia (RA, 1994), the Lugansk People's Republic (LPR, 2014) and the Donetsk People's Republic (DNR, 2014). All of them were formed as a result of armed conflicts between a minority residing compactly and a state striving for national unification. Currently, priority areas for the scientific research in the field are self-determination, recognition, State-building and peace resolution.¹ This article addresses a relatively unexplored aspect regarding the development of legal systems of NRSs.

On the one hand, the legal systems of these states ensure that both the state and the civil society function effectively. In particular, each legal system forms a basis for

¹ See Susanna Bagdasaryan & Svetlana Petrova, *The Republic of Abkhazia as an Unrecognized State*, 5(1) Russian Law Journal 98 (2017); Giorgio Comai, *What Is the Effect of Non-Recognition? The External Relations of De Facto States in the Post-Soviet Space* (Dublin: Dublin City University, 2018); Benedikt Harzl, *The Law and Politics of Engaging De Facto States: Injecting New Ideas for an Enhanced EU Role* (Washington: Brookings Institution Press, 2018); Raul Toomla, *De Facto States in the International System: Conditions for (In-)Formal Engagement* (Tartu: University of Tartu Press, 2014) Sergio Turmanidze, *Status of the De Facto State in Public International Law: A Legal Appraisal of the Principle of Effectiveness* (Hamburg: University of Hamburg, 2010); *Unrecognized States and Secession in the 21st Century* (M. Riegl & B. Doboš (eds.), Cham: Springer, 2017); *Unrecognized States: The Struggle for Sovereignty in the Modern International System* (N. Caspersen (ed.), Cambridge: Polity Press, 2012); Thomas de Waal, *Uncertain Ground: Engaging with Europe's De Facto States and Breakaway Territories* (Washington: Carnegie Endowment for International Peace, 2018).



the state's political system, sets out human rights and their guarantees and provides necessary regulation of commercial activities. On the other hand, these legal systems reflect certain "statehood deficiency" and are subject to a number of serious problems, including being dependent on political agenda as well as on certain foreign legal systems, providing no personal jurisdiction or property guarantees and having significantly underdeveloped commercial law and judicial system.

1. Dependence on the Political Agenda

The NRSs of the first generation (PMR, RSO, NKR and RA) were created when a supranational state (namely, the USSR) collapsed. They officially define themselves as full-fledged states, referring to the Montevideo test, recognition by certain other states² and participation in international relations. Their stated goal is to reunite with an ethnos that is close to them: Armenian (NKR), Ossetian (RSO) or Russian (others) – with the support of Armenia or Russia respectively. The RA seeks independence and is therefore an exception: it is largely due to its advantageous geographic location on the Black Sea coast, and to the fact that it was a union republic in 1921–1931 and received the status of autonomy within Georgia only in 1931. The NRSs of the second generation (LPR and DPR) were created during the disintegration of a national state (Ukraine). They see their NRS status as temporary, preceding their forced reunification with Ukraine (under the Minsk agreements of 2014 and 2015). The de facto situation differs from the declared one and is unique for each of the NRSs.

Apparently, the PMR is interested in preserving the NRS status, which allows it to receive political and financial support from Russia and at the same time to trade with the EU countries. In addition, this status allows to preserve its monopolist economy built around the holding company Sheriff. The PMR legal system is a hybrid combining certain elements of Russian law, Moldovan law and local law.

The RA also would like to preserve the NRS status, as it opens an access to the Russian subsidies that form a major source of income for the state and unprofitable state enterprises and provide broad opportunities for corruption. This status also serves as an umbrella for discriminatory practices in various areas (citizenship, real estate transaction, investments, etc.). The RA legal system includes Russian and local elements.

The majority of the RSO political elite is interested in joining Russia. The RSO's independent existence would be difficult since this country does not have its own resources such as a developed industry (the PMR) or a resort infrastructure (the RA). Moreover, the Ossetian people is divided; its considerable part lives in North Ossetia which is a part of Russia. The RSO legal system is closely tied to the Russian legal system, de facto forming its satellite.

² The RA and the RSO are recognized by Russia, Nicaragua, Venezuela, Nauru and Syria and the other NRS; the NKR and the PMR are recognized by the other NRS; and the LPR and the DPR are recognized only by the RSO.



The NKR's status is uncertain: the Armenian elite unanimously rejects the idea of returning Karabakh to Azerbaijan but does not have a general opinion regarding the reunification prospects.³ The reunification is also hampered by the international climate (Azerbaijan being supported by Turkey) and drastic political and economic differences between Armenia and the NKR. The NKR legal system is closely tied to the Armenian one but also contains a number of its own distinctive elements.

The situation regarding the LPR and the DPR is rather complicated. The Minsk agreements envisaged their reintegration with Ukraine, which, however, is not supported by the local population seeking to unite with Russia. Due to this kind of disloyalty, Ukraine does not seek to accelerate the pace of reintegration. The legal systems of these NRSs combine Russian, Ukrainian and local elements.

2. Dependence on Foreign Legal Systems

The legal systems of all the NRSs are attuned to be harmonized with the systems of their kindred states (Russia or Armenia). The harmonization programme is set out by internal instruments and international treaties. For example, the PMR Presidential Decree of 7 September 2016 "On Implementation of the Republican Referendum Outcome" states that

the PMR internal policy is fundamentally aimed at bringing the Transdnistria legal system in line with the federal legislation of the Russian Federation.

The Treaty on Friendship, Cooperation and Mutual Assistance between Russia and the RSO of 2008 states (Art. 23):

The Contracting Parties shall take measures for unification of the legislation that regulates economic activities, including commercial and tax legislation, as well as legislation regarding the population's social welfare and pensions.

In practice, the NRSs tend to borrow main Russian codes and laws adapting them to their local circumstances. For example, the PMR grants a legal entity status not only to organizations (as Russia does), but to administrative-territorial entities as well (Art. 49(4) of the PMR Civil Code). Some NRSs borrowed Russian laws adopted

³ See *Маркедонов С. Готова ли Армения признать Нагорный Карабах // Московский центр Карнеги. 16 мая 2016 г. [Sergey Markedonov, Is Armenia Ready to Recognize Nagorno-Karabakh, Carnegie Moscow Center, 16 May 2016] (Apr. 20, 2019), available at <https://carnegie.ru/commentary/63589>; Присоединение Карабаха к Армении или независимость? – мнения из Еревана // REGNUM. 31 октября 2016 г. [Karabakh's Accession to Armenia or Independence? – Opinions from Yerevan, REGNUM, 31 October 2016] (Apr. 20, 2019), available at <https://regnum.ru/news/2199818.html>.*



in the 1990s (the PMR), the other regularly monitor Russian legislation trends and copy certain amendments (the RSO).

The RSO is the only NRS that allows direct application (incorporation) of the Russian law on its territory. According to the RSO Supreme Council Decree of 29 January 1992 “On Application of Russian Law on the RSO Territory by Analogy,” when necessary legal instruments have not been set out by the RSO, Russian law can be applied in the RSO by analogy, except legislation that determines the amount of funding and procedures for its provision. The direct application in this way is also adjusted to the local circumstances. For example, the Russian Labor Code is applied in the RSO in its entirety with the exception of Article 112 (non-working holidays). A draft of an equivalent law was submitted to the PMR Parliament in December 2013 but was not adopted eventually.⁴ Also, the NKR allows direct application of certain Armenian laws (special incorporation). For example, the Labor Code and Criminal Executive Code of Armenia are applied on the basis of the NKR Laws “On Enactment of the Labor Code of the Republic of Armenia in the NKR” (2005) and “On Enactment of the Criminal Executive Code...” (2007).

The RA and the PMR have retained some elements of Soviet law. The RA Law “On the Effect of Laws and Other Legislative Acts on the Territory of Abkhazia in Relation to Dissolution of the USSR” (1992) allows application of the Soviet and Georgian laws “prior to adoption of the relevant legislative acts of Abkhazia” and “insofar as they do not violate the sovereign rights and interests of Abkhazia.” The PMR Supreme Court and Arbitration Court Decree of 20 April 2001 No. 3 “On Some Issues Related to Enactment of the First Part of the PMR Civil Code” allows courts to apply those provisions of Soviet commercial law that do not contradict the PMR laws (para. 3).

Usually, the NRSs of the first generation do not apply the laws of the state from which they have separated (the mother state). The reasons are both political and rational: in the early 90s, efficient legal systems had not yet been formed in Georgia and Azerbaijan. The PMR copying some elements of Moldovan law represents an exception from this general rule. This is due to their close economic contacts, as well as to the fact that the laws of Moldova which aspires to join the EU are often much better developed than the Russian ones. In particular, the PMR copied the following concepts: the institute of tax administration, the cadastral system, legislation against domestic violence, the juvenile justice system, the idea behind the Law “On Legal Acts of the PMR,” etc. The LPR and the DPR allow direct application of Ukrainian laws when their provisions do not contradict the LPR and the DPR Constitutions (Arts. 86(2) of the Constitutions). These Ukrainian laws have been even interpreted by their highest courts.⁵

⁴ Федякина А. Приднестровье заживет по российским законам // Российская газета. 26 декабря 2013 г. [Anna Fedyakina, *Transnistria Will Start Living by Russian Laws*, Rossiyskaya gazeta, 26 December 2013] (Apr. 20, 2019), available at <https://rg.ru/2013/12/25/pridnestrovie-site.html>.

⁵ See Information letters of the DPR Supreme Court “On Issues Related to Application of the Provisions of Articles 76 and 77 of the Code of Civil Procedure of Ukraine by Courts of General Jurisdiction of the DPR” and “On Issues Related to Application of the Provisions of Article 220 of the Civil Code of Ukraine by Courts of General Jurisdiction of the DPR.”



3. Lack of Personal Jurisdiction

The NRSs of the first generation (with the exception of the NKR) have adopted their own laws on citizenship and do issue passports of their own. The LPR and the DPR also issue passports but have not adopted any legislation regarding citizenship. This would contradict the Minsk agreements that define the LPR and the DPR as areas of Ukraine which have a special status.⁶ The NKR also does not have legislation on citizenship, since its Law “On Fundamentals of the NKR Citizenship” (1995) is merely a declaration. Russia recognizes passports issued by the RA and the RSO on the basis of 2008 bilateral agreements and passports issued by the LPR and the DPR on the basis of the Presidential decree of 2017.⁷ Most other states do not recognize NRSs’ passports, which results in restrictions of freedom of movement and entrepreneurship for NRS citizens and inability of the NRSs to provide them diplomatic protection.

The problem can partly be solved by acquiring dual citizenship. Almost all NKR residents have Armenian citizenship. 200,000 out of 475,000 PMR residents are Russian citizens and 300,000 of them are Moldavian citizens; besides, many of them are also citizens of Ukraine, Bulgaria or Romania. About 90 per cent of the RA and the RSO residents have Russian citizenship. Russia and the NRSs encourage acquisition of Russian citizenship by NRSs’ residents; for a rather long period of time, Russian passports were issued by the Russian Foreign Ministry. Article 6 of the RA Law on Citizenship (2006) directly stipulates:

A citizen of the RA... has a right to acquire Russian citizenship without renunciation of the RA citizenship.

Article 13 of the Treaty on Alliance and Strategic Partnership between the Russian Federation and the RA (2014) states:

The Russian Federation shall take additional measures aimed at simplifying the procedure for acquiring Russian citizenship by the RA citizens.

Sometimes mother states facilitate “repatriation” of NRS residents: for instance, Moldovan citizens with Soviet passports can have civil status certificates and identity cards issued free of charge.⁸

⁶ The Declaration on the LPR Citizenship was adopted in May 2014 and the draft law on the LPR citizenship was submitted to the LPR Parliament in 2015.

⁷ See Art. 9 of the Treaties on friendship, cooperation and mutual assistance between Russia and the RSO and between Russia and the RA of 2008; Decree of the President of the Russian Federation of 18 February 2017 “On Recognition of Documents Issued to Citizens of Ukraine and Stateless Persons Living in the Territories of Certain Districts of Donetsk and Lugansk Oblasts of Ukraine.”

⁸ Decree of the Government of Moldova on granting privileges when issuing identity documents of 24 March 2014; Decree of the Government of Moldova on granting certain exemptions from payment for services of issuing civil status acts of 16 April 2014.



Laws on NRSs citizenship usually meet international standards. The only exception is the RA Law on Citizenship of 2005, which replaced the Law of 1993. Article 5 of this law requires continuous five-year residency on the RA territory from 1994 to 1999 as a condition for issuing a new form of passport (this new passport version was introduced in 2016 and the deadline by which all passports should have been reissued was 31 December 2018). The five-year residency requirement has retroactive effect and applies only to non-Abkhaz nationals.⁹ If this condition is not met, state officials can refuse to reissue a passport, which automatically leads to termination of the citizenship. Individuals who studied abroad and elderly citizens who changed their place of residence are the two categories of nationals that suffered the most from this practice. Several individuals filed complaints with the Parliament and the Prosecutor's office. These authorities issued recommendations to the passport departments prescribing them to replace passports. However, no official comprehensive decision was made on this issue. Besides, according to the Order No. 700 issued by the RA Ministry of Internal Affairs on 27 September 2016, the fact of residence in 1994–1999 shall be established by district police officers. This requirement presents another problem, as the police officers often interview neighbors whose testimonies largely depend on their personal attitude.¹⁰

Legal entities established under NRS law experience difficulties with conducting business activities and participating in legal proceedings abroad. However, some states consider their legal standing to be undisputable and recognize these entities. For example, the Moscow Arbitration Court Order of 23 September 2002 states that the first-instance court was wrong when it declared that the plaintiff (a company from the PMR) had no legal entity status. In particular, the court did not assess the Protocol on mutual recognition of acts on the territory of Transnistria and Moldova (2001) and, in addition, was not aware of valid judicial acts that confirmed this status. Similarly, the Federal Arbitration Court of the Moscow district, in its Order of 8 July 2005, took the certificate of registration issued by PMR authorities into consideration and recognized the plaintiff's legal entity status. This irregular leniency, however, does not provide an effective remedy. Therefore, many companies from NRSs are seeking to be registered in another state. NKR companies are often registered in Armenia and it is not uncommon for PMR entities to be registered twice: both in Moldova and the PMR.

⁹ "Citizens of the RA are: a) persons of Abkhaz nationality (abaza), regardless of their place of residence and the citizenship of a foreign state...; b) persons who were permanently residing in the territory of the RA for not less than five years at the time of adoption of the Act on State Independence of the RA of 12 October 1999...; c) persons who have acquired the RA citizenship in accordance with this Law."

¹⁰ Необходимо внести поправки в закон о гражданстве в отношении лиц, получивших высшее образование за пределами Абхазии // ApsnyLIFE. 3 ноября 2017 г. [It Is Necessary to Amend the Law on Citizenship Provisions Regarding Persons Who Have Completed Higher Education Outside Abkhazia, ApsnyLIFE, 3 November 2017] (Apr. 20, 2019), available at <http://apsnylife.ru/syuzhety/99-syuzhety/2137-neobkhodimo-vnesti-popravki-v-zakon-o-grazhdanstve-v-otnoshenii-lits-poluchavshikh-vysshee-obrazovanie-za-predelami-abkhazii>.



4. Lack of Property Rights Guarantees

Most of the NRSs impose prohibitions or restrictions on real estate transactions. These measures are officially explained by the need to preserve national heritage and prevent abuse in emergency circumstances, while they de facto ensure that economic resources are fully controlled by the local elite. In the PMR, land belongs exclusively to the state and can be granted to individuals only for use and possession (Arts. 18 and 19 of the Land Code). Sale of land is altogether banned in the LPR (Art. 5(4) of the Constitution); however, plots of land can be privately owned, inherited, donated or exchanged by individuals. Moreover, in practice, the authorities do not prevent citizens from selling small household plots. The LPR Law "On the Prohibition of Privatization" (2014) bans privatization of enterprises, real estate, shares, etc. In the NKR, it is prohibited to sell real estate to foreigners (Art. 60(6) of the Constitution). A similar provision is in force in the RA (that is situated on the seacoast). The widely used workaround to bypass this requirement is using a company (set up jointly with a foreigner) as a buyer. A false nominee scheme is also used rather often: a local signs a loan equal to the value of the real estate and provides a notarized power of attorney authorizing a foreigner to have control over the property. Needless to say, this is a breeding ground for various fraudulent schemes.

Another common problem is an incomplete privatization. In the RA and the RSO the most common legal entity form is a state unitary enterprise. Most of these enterprises are unprofitable and do not produce anything. Their directors are not interested in privatization which would stop the constant inflow of subsidies from the budget, while external investors are absent. Large-scale privatization is far from being supported by the political elite, which keeps talking about its negative economic effect and a risk of seizing the state property by the Georgians. The RA and RSO Laws on Privatization adopted in 1997 and 2000 have not been widely applied; several transactions made using the direct sale procedure (without a tender or an auction) provoked corruption scandals. The situation has recently begun to change due to decrease in the amount of Russian aid. In 2016, the RA adopted a new law on privatization, drafted along the lines of the Russian Law of 2001. This law consolidated several common privatization procedures, banned direct sale and provided for the seller's right to monitor performance of the contract. Its application, however, has proven to be difficult due to absence of a state property register and competent appraisers. The direct sale problem still remains unresolved: some politicians insist on conservation of this procedure. In 2015, the RSO amended Article 12 of the Law of 2000. The new arrangements provide that state property can be handed over to a legal entity by decision of the Government, on the basis of an investment contract that could produce a significant social effect for the RSO. Achievement of this effect is considered as payment. These amendments have made



it possible to transfer the buildings of the former Tskhinvali garment factory to the Russian company BTK Group.¹¹

A particular problem is presented by the schemes of housing deprivation used some time ago in the RA. Their victims were often Russian-speaking citizens of the RA or Russian citizens. First, the Instruction on the housing inventory (2006)¹² provided for recognition of a house as unowned if no one has lived there for a long time; in some cases, a few days of absence were enough. Second, the RA legislation authorized apartment privatization after 15 years of residence; a unified register of owners, however, was absent, and the courts accepted any related documents (including witness statements) as evidence. Third, the National Assembly Resolution of 2006 recommended the courts not to examine claims filed by non-citizens against citizens regarding return of property because this “leads to endless legal proceedings [and] violation of the RA citizens’ right to housing” (the Resolution was abrogated in 2010).¹³ Under these schemes thousands of apartments and houses were taken away from the owners.¹⁴ The RA argues that the problem is artificially exaggerated. It claims

¹¹ *Базилевский К.* Приватизационные споры. Принят новый закон о приватизации госсобственности в Абхазии // Партнерство «Абхазские проекты». 21 июля 2016 г. [Kirill Bazilevsky, *Privatization Disputes. A New Law on Privatization of State Property Has Been Adopted in Abkhazia*, Partnership “Abkhaz Projects,” 21 July 2016] (Apr. 20, 2019), available at <https://abkhaz-project.ru/privatizacionnie-spori-prinyat-noviy-zakon-o-privatizacii-gossobstvennosti-v-abkhazii>; *Базилевский К.* Приватизация в Абхазии. Нюансы и перспективы // Партнерство «Абхазские проекты». 24 октября 2016 г. [Kirill Bazilevsky, *Privatization in Abkhazia. Nuances and Prospects*, Partnership “Abkhaz Projects,” 24 October 2016] (Apr. 20, 2019), available at <https://abkhaz-project.ru/privatizaciya-v-abkhazii-nuyansi-i-perspektivi>; *Папаскири О.* Комментарии к новому Закону РА «О приватизации» // Александров и Папаскири [Oleg Papaskiri, *Comments on the New Law of the Republic of Abkhazia “On Privatization,”* Alexandrov and Papaskiri] (Apr. 20, 2019), available at <https://aplav.biz/kommentarii-k-novomu-zakonu-respubliki-abkhaziya-o-privatizacii-gosudarstvennoj-i-municipalnoj-sobstvennosti/>; *Тибилова А.* Идеологические аспекты восстановления и развития экономики РЮО // Uasdan.com: Осетия. 31 октября 2012 г. [Aza Tibilova, *Ideological Aspects of Recovery and Development of the RSO Economy*, Uasdan.com: Ossetia, 31 October 2012] (Apr. 20, 2019), available at <https://uasdan.com/1462-ideologicheskie-aspekty-vostanovleniya-i-razvitiya-ekonomiki-respubliki-yuzhnaia-osetiya.html>; *Джюев Л.* Приватизация приватизации рознь // АЛАНИЯинформ. 10 апреля 2015 г. [L. Dzhioev, *Privatizations Differ*, ALANIYAinform, 10 April 2015] (Apr. 20, 2019), available at <http://osinform.org/49855-privatizaciya-privatizacii-rozn.html>; *Гукемухов М.* Какова участь ГУПов в Южной Осетии? // Эхо Кавказа. 30 августа 2017 г. [Murat Gukemukhov, *What Is the Destiny of the GUP in South Ossetia?*, Ekho Kavkaza, 30 August 2017] (Apr. 20, 2019), available at <https://www.ekhokavkaza.com/a/28705957.html>.

¹² See Instructive letter of 6 February 2006 “On Application of the Presidential Decree of 23 March 2005 ‘On Inventory of the RA Housing Stock.’”

¹³ See Resolution of the National Assembly of the RA of 15 May 2006 “On Regulation of Housing Relations in Order to Guarantee the RA Citizens’ Rights to Housing.”

¹⁴ *Переозкина М.* Абхазия обрела независимость от... РФ // МК.ru. 3 февраля 2010 г. [Marina Perevozkina, *Abkhazia Gained Independence from... the RF*, МК.ru, 3 February 2010] (Apr. 20, 2019), available at <https://www.mk.ru/politics/article/2010/02/03/423511-abkhaziya-obrela-nezavisimost-ot-rf.html>; *Ларин О.* Зачем нам враги, если у нас такие друзья // Русское Агентство Новостей. 18 сентября 2010 г. [Oleg Larin, *Why Do We Need Enemies If We Have Such Friends*, Russian News Agency, 18 September 2010] (Apr. 20, 2019), available at <http://ru-an.info>; *Суразев Т.* Что делать россиянам, купившим домик в Абхазии или решившим вернуть то, что потеряно в войнах? // Первый



that the former owners fled the country for political reasons and the only thing they want today is reselling their property, while the authorities are gradually solving this problem.¹⁵ This caused a wide public outrage: a number of Russian citizens applied to the Russian Foreign Ministry for protection; the Ministry reacted by issuing several notes addressed to the RA, whose response to them was inadequate; Russia proposed to create a joint commission for assessment of individual cases; and the RA rejected this proposal using the threat of Georgian refugees' return as a pretext – however, shortly after established a commission of its own.¹⁶ The commission received about 200 applications, 50 of which resulted in a positive decision. The problem was partly solved by Russia investing in housing, both in the RA and Russia.

The political situation implies property rights being unstable. Transactions registered by the NRSs' notaries and authorities are not recognized by mother states, and vice versa. The solution could be a double registration which is expensive and not always available. Even after the hostilities began, the transactions with real estate in the LPR were still registered by Ukrainian notaries. The parties had to go to Severodonetsk, a town in Lugansk region controlled by Ukraine. In January 2016, local notaries started operating in Lugansk and issuing certificates of ownership. At the same time it was made possible to legalize transactions made between May 2014 and August 2016, by technical inventory. Most of the locals, however, prefer not to risk and, if possible, register their transactions twice: under Ukrainian law in Severodonetsk and under the LPR law in Lugansk. In 2017, the LPR authorities prohibited housing sales by power of attorney (without personal presence of the owner): this measure, designed to prevent fraud, hampered property sales by persons who left the region because of hostilities.¹⁷ The LPR and DPR courts currently consider quite many cases related to extension of the inheritance acceptance period and declaration of property rights.

канал. 15 сентября 2013 г. [Timur Siraziev, *Russians Who Bought a House in Abkhazia or Decided to Retrieve What Was Lost at Wars: What Should They Do?*, Pervyy kanal, 15 September 2013] (Apr. 20, 2019), available at https://www.1tv.ru/news/2013-09-15/57995-chto_delat_rossiyanam_kupivshim_domik_v_abhazii_ili_reshivshim_vernuto_chto_poteryano_v_voynah; Ворсобин В. Абхазия не спешит возвращать русским их квартиры // Комсомольская правда. 2 апреля 2014 г. [Vladimir Vorsobin, *Abkhazia Is in No Hurry to Return Russians Their Apartments*, Komsomolskaya Pravda, 2 April 2014] (Apr. 20, 2019), available at <https://www.nsk.kp.ru/daily/26214/3098255/>; Жилье в Абхазии: опасно, но очень дешево // Рамблер. 4 мая 2018 г. [Housing in Abkhazia: Dangerous but Very Cheap, Rambler, 4 May 2018] (Apr. 20, 2019), available at <https://finance.rambler.ru/realty/39773363-zhile-v-abhazii-opasno-no-ochen-deshevo>.

¹⁵ Крылов А. О квартирном вопросе в Абхазии // Научное общество кавказоведов. 8 марта 2015 г. [Alexander Krylov, *On the Housing Issue in Abkhazia*, Scientific Society of Caucasus Studies, 8 March 2015] (Apr. 20, 2019), available at <http://www.kavkazoved.info/news/2015/03/08/o-kvartirnom-voprose-v-abhazii.html>.

¹⁶ See Decree on the Commission for ensuring legality in determination of Russian citizens' property rights in the RA of 13 September 2010.

¹⁷ Resolution of the Council of Ministers of the LPR of 7 April 2017 "On Some Issues of State Registration of Rights to Real Estate.." (Apr. 20, 2019), available at <https://dnews.dn.ua>.



5. Undeveloped Commercial Law

The main source of the RA and the RSO state budgets is Russian financial aid. Its recent reduction forced these NRSs to attempt modernization of their economy and relevant legislation. Between 2014 and 2017, new laws were adopted in the areas of investment, banking activity, licensing, etc. These newly introduced legislative provisions have not yet produced any considerable effect: partly because of corruption, partly due to some flaws in drafting or failure of the public to comply with them. For instance, within five months of adoption of the RA Law “On Licensing,” the authorities neither provided new blank forms, nor adopted necessary regulations.¹⁸ Also, the RA Law “On Investment Activity” did not specify any criteria for assessment of investment projects’ effectiveness and provided no mechanism for investment protection.¹⁹

The PMR economy is based on the factories built under the Soviet regime; many of them belong to the holding company Sheriff. The PMR mainly trades with Western Europe countries (sales to Russia comprise only about 10 per cent of its export activities). Many companies have dual registration and mark their goods as “made in Moldova.” In 2018, the PMR adopted the Law “On State Support of Investment Activities” that provides a detailed regulation of tax exemptions (Art. 17) and investment subsidies (Art. 18).

Unlike the other NRSs, the NKR demonstrates high economic growth rates (10 per cent per year), which can be explained, inter alia, by its attractive investment climate. Its investment law was adopted in 1995. In recent years, the government has liquidated a number of controlling agencies (including the antimonopoly service), simplified procedures for company registration and license issue (in the absence of an authorities’ response, the license is considered granted), established a uniform tax for sole proprietors (\$15 per month) and introduced a number of business support measures including concessional lending and agricultural stabilization funds.²⁰

The LPR and the DPR economies are based on mining and heavy industry. As a result of war, commercial and industrial ties with Ukraine were broken, the production was significantly reduced, the financial system stopped functioning, many qualified workers left the country or started working in Russia as fly-in/fly-out

¹⁸ Папаскири О. Проблема лицензирования в Абхазии // LiveJournal. 26 апреля 2016 г. [Oleg Papaskiri, *The Problem of Licensing in Abkhazia*, LiveJournal, 26 April 2016] (Apr. 20, 2019), available at <https://papaskir.livejournal.com/109293.html>.

¹⁹ Папаскири О. Анализ проекта закона Республики Абхазия об инвестиционной деятельности // Александров & Партнеры. 11 апреля 2018 г. [Oleg Papaskiri, *Analysis of the Republic of Abkhazia Draft Law on Investment Activity*, Alexandrow & Partners, 11 April 2018] (Apr. 20, 2019), available at https://www.alexandrow.biz/articles_ru/abkhazia/abkhazian-law-draft-investment-activities-analyses.

²⁰ Фещенко В. Made in Artsakh: Как бизнесмены подняли с колен непризнанную республику // Секрет фирмы. 14 октября 2015 г. [Victor Feshchenko, *Made in Artsakh: How Businessmen Lifted an Unrecognized Republic from Its Knees*, Sekret firmy, 14 October 2015] (Apr. 20, 2019), available at <https://secretmag.ru/cases/stories/artsakh-epic.htm>.



employees, and the unemployment has risen dramatically. In these circumstances, the authorities had to introduce the following extraordinary measures: first, external management of enterprises, under which the taxes previously paid to the Ukrainian budget were redirected to the NRSs budgets (2017);²¹ second, ban on import of excisable goods (vodka and cigarettes), both from the DPR to the LPR and from the LPR to the DPR (2017);²² third, ban on privatization and sale of land (LPR, 2014); fourth, ban on issuing securities, gambling and production of excisable goods from customer-supplied raw materials (DPR, 2014); and finally, partial nationalization of shops and enterprises owned by Ukrainian oligarchs in response to the trade blockade introduced by Ukraine (DNR).²³ The goal of attracting foreign investments was declared in early 2017 and the necessary laws have not yet been adopted.

As a general rule, trade between NRSs and their mother countries is conducted either illegally, or through offshore facilities.²⁴ The only exception is active legal trade between the PMR and Moldova.²⁵ Some mother countries have gradually eased their strict requirements and currently allow cross-border trade with the NRSs or transit of

²¹ *Воздвиженская А. и др. Поставили во главу угля // Российская газета. 1 марта 2017 г. [Alexandra Vozdvizhenskaya et al., Put in the Head of Coal, Rossiyskaya gazeta, 1 March 2017] (Apr. 20, 2019), available at <https://rg.ru/2017/03/01/k-chemu-privedet-vneshnee-upravlenie-na-ukrainskih-predpriatiiah-v-donbasse.html>.*

²² *На границе ЛНР и ДНР вводят полноценный таможенный контроль // Новороссия. 17 января 2017 г. [A Full Customs Control Is Being Imposed at the Border Between the LPR and the DPR, Novorossiia, 17 January 2017] (Apr. 20, 2019), available at <https://novorosinform.org/365545>; ДНР ввела санкции против ЛНР // Новороссия. 4 января 2018 г. [The DPR Imposed Sanctions on the LPR, Novorossiia, 4 January 2018] (Jan. 4, 2018), available at <https://novorosinform.org/379453>.*

²³ *Национализация на Донбассе: политический шантаж или прыжок в «окно возможностей»? // Таймер. 28 февраля 2017 г. [Nationalization in the Donbass: Political Blackmail or a Leap into the Window of Opportunities, Timer, 28 February 2017] (Apr. 20, 2019), available at http://timer-odessa.net/statji/natsionalizatsiya_na_donbasse_politicheskij_shantaj_ili_prijok_v_okno_vozmojnostey_112.html; Шилов И. Что ждет Украину после потери предприятий Донбасса // Полит Информ. 1 марта 2017 г. [Ivan Shilov, What Awaits Ukraine After the Loss of the Donbass Enterprises, Polit Inform, 1 March 2017] (Apr. 20, 2019), available at <http://politinform.su/ekonomika-i-finansy/ekonomika-novost-dnya/70177-chto-zhdet-ukrainu-posle-poteri-predpriyatij-donbassa.html>.*

²⁴ *On 15 March 2017, the National Security Council of Ukraine banned movement of goods across the line of demarcation with the NRSs (with the exception of humanitarian goods). However, this prohibition is being circumvented. See Савицкий А. Украинские товары по-прежнему нелегально идут в Донбасс // DW. 28 ноября 2017 г. [Alexander Savitsky, Ukrainian Goods Still Go to the Donbass Illegally, DW, 28 November 2017] (Apr. 20, 2019), available at <https://www.dw.com>.*

²⁵ *Ганин Ю. Внешнеторговые связи Молдовы и Приднестровья в условиях конкурирующих интеграций // Мир перемен. 2016. № 2. С. 82–98 [Yuri Ganin, Foreign Trade Relations of Moldova and Transdnistria in the Context of Competing Integrations, 2 World of Change 82 (2016)]. The author notes: “Despite existence of trade between the two republics, they still lack formal agreements on mutual trade and apply tariff and non-tariff barriers and the double taxation... Chişinău considers trade with Transnistria to be an integral part of the internal trade of Moldova, but at the same time imposes import VAT on Transnistrian goods in the same way as on goods produced in third countries and applies whole range of non-tariff barriers. Tiraspol considers trade relations with the right bank of the river to be foreign trade relations.”*



goods through the NRSs. For instance, in 2012, the Georgian Minister for Reintegration P. Zakareishvili proposed allowance of trade in conflict zones, in particular, allowing Georgian peasants from Gali to sell nuts in Zugdidi (RA).²⁶ The agreement on customs administration principles made between Russia and Georgia in 2011 provided for trade routes from Russia to Georgia and Armenia through the RA and the RSO.²⁷ Russia trades with the RA and the RSO without levying custom duties, on the basis of the bilateral agreements regarding the trade regime (2012). However, Russia's trade with the other NRSs is subject to payment of these duties. In 2018, the LPR and the DPR agreed to create a common customs area.

6. Undeveloped Judicial System

The judicial systems of the first generation NRSs often copy the Russian one by introducing three types of courts: courts of general jurisdiction, commercial ("arbitration") courts and a constitutional court. In addition to that, the RA has the Military Court, which deals with crimes committed by members of the military and espionage. The NKR judicial system underwent a series of reforms and now consists of the Supreme Court, the Court of Appeal and the General Jurisdiction Court of First Instance. The Supreme Court is the court of highest resort and the only source of constitutional justice.²⁸ The LPR and the DPR have both general jurisdiction courts and commercial ("arbitration") courts.

Almost all NRSs experience a worrying lack of judicial independence guarantees. First, the judges are exclusively appointed by the executive authorities. In the PMR, most of the judges are appointed by the President (while magistrate judges are elected by the public and the judges of the Constitutional Court are appointed by the President, parliament and the congress of judges – each body appoints two judges). In the LPR and the DPR, the judges are appointed by the Heads of State (Glavy); in the LPR, before the representative bodies of the judicial community are formed, the Head also sets up the examination commission and qualification commission (Art. 28(7) of the Law on the Status of Judges of 2015). Second, in the RA, judges are elected for a certain period of time: they were irremovable under the Constitution of 1994 but in 1999 it was decided by referendum that they would be elected for a five-year period;

²⁶ Лекков Р. Абхазия и Южная Осетия: проблемы становления государственности // *Международная жизнь*. 2013. № 10. С. 103–112 [Ruslan Lekov, *Abkhazia and South Ossetia: Problems of Statehood Formation*, 10 *International Life* 103 (2013)].

²⁷ Пойдет ли грузино-российский транзит грузов через Абхазию и Южную Осетию? // *ApsnyLIFE*. 21 мая 2018 г. [Will Georgian-Russian Cargo Transit Go Through Abkhazia and South Ossetia?, *ApsnyLIFE*, 21 May 2018] (Apr. 20, 2019), available at [http://www.apsnylife.ru/syuzhety/99-syuzhety/2807-pojdet-li-gruzino-rossijskij-tranzit-gruzov-через-abkhaziyu-i-yuzhnyuyu-osetiyu](http://www.apsnylife.ru/syuzhety/99-syuzhety/2807-pojdet-li-gruzino-rossijskij-tranzit-gruzov-cherез-abkhaziyu-i-yuzhnyuyu-osetiyu).

²⁸ Овсепян В. Судебно-правовые реформы в Арцахе // *artsakhtert*. 21 мая 2018 г. [Vladimir Ovsepyan, *Judicial Reforms in Artsakh*, *artsakhtert*, 21 May 2018] (Apr. 20, 2019), available at <http://artsakhtert.com>.



at present, according to the Law on the Judiciary of 1996, they are elected for 10 years (while the Constitutional Court judges are elected for 15 years).²⁹ Third, in some NRSs, judges are exposed to being prosecuted by mother countries: for example, Ukrainian authorities initiated criminal proceedings against the DPR judges under Article 258-3(1) of the Criminal Code of Ukraine (“assisting to a terrorist organization”) and put them on the wanted list.

In the LPR and the DPR, the hostilities have caused suspension of the judicial activity; the Council of Judges of Ukraine adopted a relevant recommendation in July 2014. The judicial functions of prescribing preventive measures and imposing punishment for administrative misconduct were partially carried out by the prosecutor’s office.³⁰ In some cases, sentences were even awarded by non-state entities. For example, in October 2014, military leaders organized a people’s court in Alchevsk: 340 locals decided the fate of two rapists by voting (one was sent to the front, the other was sentenced to death). Currently, the DPR courts are deciding all categories of cases; while the LPR courts are exclusively dealing with criminal and administrative cases (the civil and family proceedings is non-existent).

Some NRSs courts, especially the courts of the RA and the RSO, experience severe lack of resources. They are often located in unsuitable premises: for example, the Gudauta court (RA) was located at private premises; the court of the Leningor district (RSO) was placed in two offices let in the bank building; the court of the Dzau district (RSO) was sitting in a railway carriage.³¹ The court officials often lack the necessary office equipment and financial resources; the judges’ salaries are extremely low. Similar problems are faced by prosecutors and ombudsmen. In 2016, Mr. D. Mashan was appointed the RA Ombudsman, but the authorities did not procure the funds and premises for his office and in July 2017 he announced the termination of his work “because of a declarative attitude of the state authorities towards the development of the Ombudsman Institute.”³²

²⁹ It should be noted that according to the NKR Constitution (Art. 139) judges are appointed by the National Assembly on the proposal of the Supreme Judicial Council and are irremovable.

³⁰ See The Decree of the LPR’s Glava of 15 January 2015 “On Regulating the Functions of Restraint Measures’ Selection” (Apr. 20, 2019), available at <http://lug-info.com>.

³¹ *Козаева Д.В.* В Южной Осетии сбалансированная судебная система, она просто должна работать – председатель Верховного суда // АЛАНИЯинформ. 11 декабря 2013 г. [Diana Kozhaeva, *South Ossetia Has a Balanced Judicial System, It Just Needs to Work – the Chairman of the Supreme Court*, ALANIYAinform, 11 December 2013] (Apr. 20, 2019), available at <http://osinform.org/42968-v-yuzhnoy-osetii-sbalansirovannaya-sudebnaya-sistema-ona-prosto-dolzha-rabotat-predsedatel-verhovnogosuda.html>.

³² Уполномоченный по правам человека в Абхазии Дмитрий Маршан написал заявление о сложении полномочий // Абхазия-Информ. 28 июля 2017 г. [The Ombudsman in Abkhazia, Dmitry Marshan, Signed a Statement of Resignation, Abkhazia-Inform, 28 July 2017] (Apr. 20, 2019), available at <http://abkhazinform.com/item/6266-upolnomochennyj-po-pravam-cheloveka-v-abkhazii-dmitrij-marshan-napisal-zayavlenie-o-slozhenij-polnomochij>.



Another serious problem is corruption manifested in decision-making being exercised under pressure from state officials and influential families or groups, as well as making certain decisions in return for monetary compensation. There is an anecdotal example described by the media of an Abkhaz court providing the parties with completely different versions of the same decision.³³ The victims of corruption, who realize that complaining to the NRSs' authorities is completely pointless, address the Russian Ministry of Foreign Affairs, mother country's courts or the European Court of Human Rights (ECHR).³⁴ The situation in the NKR however looks relatively reassuring: in recent years, courts' staff has been renewed, judges wages have been increased to \$800 (using traffic fines as a source) and a requirement to record all sessions has been introduced. An important factor is the "besieged fortress" syndrome, which means that corruption is perceived by the society as assistance to the enemy.³⁵ Several years ago, a Gallup poll showed that 72 per cent of the population trusted the judicial system of the NKR (2014).

The NRSs judiciary is generally not of a high quality. The judges often have no proper education, do not undergo professional training, make mistakes and fail meeting procedural deadlines. They are not consolidated as members of the same profession and do not defend their corporative interests. The higher courts do not issue necessary explanations on application of law. The judiciary lacks transparency: information reference systems are absent or undeveloped; judges avoid communication with media and public attention.³⁶ There is a number of reasons for that, both personal

³³ Арлан Н. Судебная реформа в Абхазии: да будет правый суд! // Sputnik Абхазия. 17 февраля 2015 г. [Natalia Arlan, *Judicial Reform in Abkhazia: Let There Be a Fair Court!*, Sputnik Abkhazia, 17 February 2015] (Apr. 20, 2019), available at <https://sputnik-abkhazia.ru/analytics/20150217/1013919423.html>.

³⁴ Семь российских граждан, имевших собственность в Абхазии, подали исковое заявление в суд против МИД России // Наша Абхазия. 23 июня 2010 г. [Seven Russian Citizens Who Owned Property in Abkhazia Filed a Claim Against the Russian Foreign Ministry, Our Abkhazia, 23 June 2010] (Apr. 20, 2019), available at <http://abkhazeti.info/news/1277358610.php>.

³⁵ Кихтенко О. Как выглядит непризнанная «свобода»: «Кавказская Швейцария» – Нагорный Карабах // Новости в «Час Пик». 22 февраля 2017 г. [Olga Kikhtenko, *What Unrecognized "Freedom" Looks Like: "Caucasian Switzerland" – Nagorno-Karabakh*, Novosti v "Chas Pik," 22 February 2017] (Apr. 20, 2019), available at <http://vchaspik.ua/stati/bolshoy-format/418546-kak-vyglyadit-nepriznannaya-svoboda-kavkazskaya-shveysariya-nagornyy-kar>. N. Shakhnazaryan writes: "Anticipating a new war and the unrecognized status create additional incentives for general democratization and presenting Nagorno-Karabakh as a viable and politically expedient state to Western countries." See Шахназарян Н. Полицейская реформа и коррупция в Грузии, Армении и Нагорном Карабахе. Аналитическая записка № 232 // PONARS Eurasia. Ноябрь 2012 г. [Nona Shakhnazaryan, *Police Reform and Corruption in Georgia, Armenia and Nagorno-Karabakh. Executive Summary No. 232*, PONARS Eurasia, November 2012] (Apr. 20, 2019), available at <http://www.ponarseurasia.org/node/6081>.

³⁶ Гезердава С. Проблемы использования международных стандартов прав человека в Абхазии и роль гражданского общества // Гражданские свободы и неправительственные организации в Абхазии: аналитический доклад Центра Гуманитарных Программ [Said Gezerdava, *Problems of Applying International Human Rights Standards in Abkhazia and the Role of Civil Society in Civil Liberties and Non-Governmental Organizations in Abkhazia: Analytical Report by the Center for Humanitarian Programs*] 13 (S. Gezerdava (ed.), Moscow: Chelovek Slova, 2018).



and general. In particular, because of non-recognition, judges are not obliged to meet international standards and deprived of the opportunity to actively participate in academic life, while their decisions cannot be effectively challenged.

The ECHR imputes any violations of *due process* committed by NRSs' courts to the controlling state (Russia) and/or mother state (violations of positive obligations).³⁷ Until recently, this practice has been directed only to the PMR.³⁸ In the decisions *Chiragov v. Armenia* (16 June 2015) and *Muradyan v. Armenia* (24 November 2016), the ECHR adopted a similar approach to the complaints made by individuals who suffered in the Karabakh conflict and in the decision *Tcezar v. Ukraine* (13 February 2018), it adopted this approach to the complaints of the LPR and the DPR residents.³⁹ Judgments of the NRSs' courts (in particular, the PMR courts) are sometimes challenged in courts of their mother country. This is a difficult situation for a mother country court: if it cancels the judgment in question, this means it imposes the duty of compensation on its own state; if it doesn't repeal the judgment, it is in breach of positive obligations. Also, such decisions for reversal of NRSs' judgments usually are not executed in the NRSs.

All NRSs courts face the problem of non-recognition and non-enforcement of their letters rogatory and judgments abroad. However, there are some exceptions to the general rule. First, NRSs judgments are recognized in Russia and other NRSs pursuant to international treaties. Russia signed treaties on rendering legal assistance in criminal matters, with the RSO in 2014 and with the RA in 2015 (it is worth noting that Russia has always been unwilling to execute commercial law judgments of these NRSs). The PMR, the RA and the RSO recognize each other's judgments and provide each other assistance under the Legal Assistance Agreement of 2007.⁴⁰ The judgments

³⁷ The situation in the NKR is different. Having no relations with the NKR, Azerbaijan, when ratifying the European Convention in 2002, indicated that it cannot guarantee its application on the territories occupied by Armenia. Armenia, when ratifying the Convention the same year, did not make any statements regarding the status of the NKR. In practice, the ECHR refuses to consider complaints against the actions of the NKR authorities (see *Оганесян В. Некоторые проблемы защиты прав человека в непризнанных государствах // Конституционное правосудие в новом тысячелетии [Vladimir Oganessian, Some Problems of Protecting Human Rights in Unrecognized States in Constitutional Justice in the New Millennium]* 214 (Yerevan: Nzhar, 2005).

³⁸ See *Ilaşcu and Others v. Moldova and Russia*, ECHR, Judgment, 8 July 2004; *Catan and Others v. Moldova and Russia*, ECHR, Judgment, 19 October 2012; *Mozer v. the Republic of Moldova and Russia*, ECHR, Judgment, 23 February 2016.

³⁹ It was regarding the pension payments to the citizens residing in the LPR and the DPR. The ECHR refused to examine the merits of the case because of non-exhaustion of national remedies (i.e. Ukrainian courts). See *Скандалное решение Европейского Суда о пенсиях жителей Донбасса, – разъяснение ВС ДНР // Русская весна. 12 июня 2018 г. [The Scandalous Judgment of the European Court Regarding the Pensions for Residents of the Donbass – an Explanation of the Supreme Court of the DPR, Russkaya vesna, 12 June 2018] (Apr. 20, 2019), available at <http://rusvesna.su/news/1528389212>.*

⁴⁰ Art. 2 of the Agreement stipulates: "...the Parties will be guided by the provisions of the Convention on Legal Assistance... of the CIS signed in Chisinau on 7 October 2002"; Art. 3 stipulates: "Judgments, orders, letters rogatory... of third countries issued with regard to citizens and/or legal entities of other



of the NKR courts are executed in Armenia on the basis of memorandums concluded between the ministries of justice and between the judicial bailiff's services; the legal assistance in criminal cases is provided on the basis of the memorandum concluded between the prosecutor's offices.⁴¹ Second, the judgments and other acts of the NRSs (for example, death certificates) can be used by foreign courts as evidence.⁴² Third, legal assistance to some NRSs could be provided on the basis of the treaties that their mother states entered into. Fourth, in theory, there are certain legal grounds for providing legal assistance to the PMR, the LPR and the DPR by their mother countries in order to support the peace-making process; whether there is any relevant practice, however, is unknown. The Protocol on mutual recognition of documents issued by the competent authorities on the territory of Transnistria and Moldova (2001) provided for a possibility of discussing enforcement of judgments in the parliaments of both states (para. 6); however, no progress on this matter has been achieved. Fifth, Russian courts, while justifying execution of NRSs' judgments, sometimes refer to treaties of a general nature (for example, the Treaty on Friendship between South Ossetia and Russia of 2008) and the principles of courtesy and reciprocity; they also declare absence of any contradictions to the Russian public policy.⁴³ This practice, however, is not common and hardly is supported by the Russian legislation.

Finally, another issue is the parallel jurisdiction problem, which means that the same case can fall within the jurisdiction of NRS courts and mother country courts. For example, under the Informational Letter of the DPR Supreme Court "On Application of Articles 15 and 16 of the Economic Procedure Code of Ukraine," the DPR Arbitration Court has jurisdiction to consider any cases where a defendant or his property is located on the DPR territory which is temporarily occupied by Ukraine; the same cases are simultaneously subject to the jurisdiction of the Ukrainian courts. Several Moldovan courts and the Moldovan Prosecutor's Office are located in Bendery (the PMR); local residents often have a choice between a Moldovan court and a PMR

Contracting Parties shall not be enforceable in the territory of any Contracting Party, except when it is prescribed by international treaties of the Contracting Parties or the national legislation of the Requested Contracting Party or when the person against whom the judgment is given applies for such enforcement..."

⁴¹ ՀՀ և ԼՂՀ ԴԱՀԿ ծառայությունների միջև կնքվել է փոխընդունման հուշագիր // PanARMENIAN.Net, 29 մարտի 2010 [A Memorandum of Understanding Has Been Signed Between the Compulsory Enforcement Services of the RA and the NKR, PanARMENIAN.Net, 29 March 2010] (Apr. 20, 2019), available at <http://www.panarmenian.net/arm/economy/news/46186>.

⁴² Украинские суды начали принимать документы ДНР и ЛНР // Федеральное агентство новостей. 18 декабря 2017 г. [Ukrainian Courts Have Started to Accept Documents Issued by the DPR and the LPR, Federal News Agency, 18 December 2017] (Apr. 20, 2019), available at <https://riafan.ru/1008295-ukrainskie-sudy-nachali-priznavat-dokumenty-dnr-i-lnr-zhurnalist>.

⁴³ See Orders of the Arbitration Court of Stavropol Oblast of 21 April 2016 in the cases No. A63-14910/2015 and No. A63-14911/2015; Order of the same court of 6 June 2016 in the case No. A63-1055/2016; Order of the Arbitration Court of Krasnodar Oblast of 25 October 2016 in the case No. A32-32811/2016; and Order of the Arbitration Court of Moscow of 31 August 2017 in the case No. A40-42647/17-83-392.



court. Sometimes they file complaints against actions of the PMR local police, as well as customs and border guards, to the Moldovan prosecutor's office, which reacts to them by issuing objections. This problem is aggravated by prevalence of dual citizenship: a citizen of the NRS, who also has a mother state passport, often applies to mother state courts, taking advantage of ex-parte proceedings and hiring a lawyer in order to be represented.

Conclusion

The "statehood deficiency" of the post-soviet NRSs has two main reasons. The first reason is that their communities are simply not ready for state building: NRSs have weak traditions of statehood and experience lack of qualified personnel, economic resources and industrial base, as well as high level of corruption, etc. The second reason is the mere fact that the state is non-recognized: the consequences of this status include inability to participate in international cooperation, dependence on the major geopolitical players, existence of an external threat, etc. That is why overcoming the "statehood deficiency" requires both efforts on the part of the NRSs and the international community changing its attitude.

With regard to the latter factor, the international community (and individual states) must promote large-scale reforms in the NRSs. For example, this can be done by providing humanitarian assistance and even by recognizing (at least, in part) these states in order to advance the reforms. International organizations can also play an important role: their missions monitoring cease-fire or contributing to political settlement⁴⁴ can simultaneously be engaged in peace-building by making recommendations, supervising (with the consent of the NRSs authorities) of how certain governmental functions are exercised or simply carrying out these functions.

Since general international law does not contain clear rules governing the NRSs' status, it is necessary to create a legal regime that would protect the people living in the NRSs from the negative effects of non-recognition. Its theoretical basis could be the concept of "responsibility to protect"; it could be expressed in an Advisory Opinion of the International Court of Justice, Articles prepared by the International Law Commission or any other soft legal instrument which would influence, over time, formation of customary rules.

This regime could fix state obligations to recognize passports, birth certificates and other documents issued by the NRSs authorities; to apply NRSs laws when making decisions affecting personal status of the NRSs residents; to recognize NRSs jurisdiction regarding diplomatic protection, distribution of humanitarian aid and

⁴⁴ The Organization for Security and Co-operation in Europe (OSCE) Special Monitoring Mission to Ukraine, Commission on Security and Cooperation in Europe (CSCE) Mission to the Republic of Moldova, OSCE Minsk Group, etc.



legal assistance; and to consider visa applications filed by the NRSs residents. In other words, the “normal” states should consider all issues that affect NRSs status on the basis of the international law principles, paying special attention to human rights and self-determination.

Moreover, this regime could oblige the mother states and the NRSs themselves to abandon practices of mutual economic, informational and political blockade; to fully apply international humanitarian law during armed conflicts; to establish direct contacts to deal with humanitarian, security and legal assistance issues; to consider the possibility of fulfilling social obligations which were undertaken under the previous order, etc.

Finally, it could prescribe international organizations to develop programmes for providing financial, material and technical assistance to the NRSs population; to create special bodies responsible for performing this function or empower existing bodies (for example, the United Nations High Commissioner for Refugees); to use conciliatory, judicial and other mechanisms at their disposal to solve the problem of non-recognition and to protect NRSs residents; to consider granting the NRSs an observer status; and, finally, to give consideration to opening NRSs representational offices in international organizations, as well as establishing missions of these organizations in the NRSs.

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