

# europa ethnica

Schwerpunkt  
„Katalonien“

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# Some Thoughts on the De-Centralization of Power or Federalization of the Ukraine

Michael Geistlinger

## 1. Introductory Remarks

The observer of the current developments in the Ukraine is more and more reminded on the period 17 March 1917 – 26 December 1917 when on the first date the Ukrainian progressives under the impression of the fall of the Tsarist regime in Russia proclaimed the Central Rada (“*Central’na Rada*”) in Kiev. At that time, the Central Rada was an informal conglomerate of leaders of political parties and other representatives of the civil society, which in a period of occupation by German and Austro-Hungarian troops<sup>1)</sup> aimed at furthering a national Ukrainian autonomy without deciding the final status of the territory.<sup>2)</sup> The Central Rada convoked a Ukrainian national congress for the period 19 – 21 April 1917 which elected 150 delegates who continued – now legitimized by the Congress – to act as Central Rada. The Central Rada issued four fundamental documents (so-called “*Univerzaly*”). In the first of them, which was published on 10 June 1917, the Central Rada declared that the Ukraine shall be free, but not separated from Russia and the Russian state. However, the Ukrainian people shall have the right of determining all its issues by its own bodies with the All-Ukrainian People’s Assembly (“*Vsenarodni Ukraïnski Zbori (Soym)*”) at their top. All laws that shall be in effect for the whole of the Russian state shall be adopted by the All-Russian parliament.<sup>3)</sup> During its fifth session, on 25 June 1917, the Central Rada approved the minutes of a commission which it had established from among its members in order to discuss the ideas, procedure and measures how to achieve a national-territorial or territorial autonomy for the Ukrainian peoples and their regions, which wanted to achieve such goal, in a state that shall be organized as a federal state.<sup>4)</sup> Thus, the Central Rada joined a general discussion in Russia on federalization of the Russian state and various kinds of autonomy in this state, it did, however, not consider a federalist structure of the Ukraine itself. As a consequence of this debate, on 7 (20) November 1917, the Central Rada by the third fundamental document (“*III Univerzal*”) proclaimed the Ukrainian People’s Republic (“*Ukraïns’ka Narodnya Respublika – UNR*”) as part of the Russian Republic and supporting the whole of Russia, so that the Russian Republic will become a federation of equal and free nations.<sup>5)</sup> The project of a Constitution of the UNR of 10 December 1917 by its part I.1 accordingly confirmed the

immediate entry of the Ukraine as People’s Republic into the Federal Russian Republic.<sup>6)</sup> The UNR was to embrace the Volyn Governorate (gubernium), Kiev Governorate, Podolie Governorate, Chernigov Governorate, Poltava Governorate, Kharkov Governorate, Yekaterinoslav Governorate, Kherson Governorate, Taurida Governorate (not including Crimea). It also stated that the people of the Voronezh Governorate, Kholm Governorate, and Kursk Governorate were welcome to join the republic through a referendum. The UNR did, however, not intend to extend to provinces, which belonged to the Austro-Hungarian monarchy.<sup>7)</sup>

Instead of having been able to further substantially contribute to the overall debate on the federalization of the Russian Republic including the UNR, the Central

1) The Austro-Hungarian declaration of war against Russia on 6 August 1914 led to particularly grave fighting at the Galician front-line which separated the Austro-Hungarian and the Russian Empire’s parts of today’s Ukraine. The Austro-Hungarian armies included about 300.000 Ukrainians. The Russian Empire mobilized about 4.000.000 Ukrainians and managed to invade the Austro-Hungarian province “Kingdom of Galicia and Lodomeria, Grand Duchy Krakow, Duchy Auschwitz and Zator” (short “Galicia”) and its capital Lv’iv (Lemberg) shortly after the beginning of warfare on 3 September 1914. See eg F. Steblii, Ya. Gritsak (eds), *Istoriya Ukraïny (History of the Ukraine)*. L’viv 1996, 214 and M. Rauchensteiner, *Der Erste Weltkrieg und das Ende der Habsburgermonarchie*. Wien, Köln, Weimar 2013, 248–253. For the terminology see for others eg W. Bihl, *Aufgegangen in Großreichen: Die Ukraine als österreichische und russische Provinz*. In: F. Golczewski (ed), *Geschichte der Ukraine*. Göttingen 1993, 126–157 (126). Starting from 1916, Austro-Hungary with the support of Germany, which took the supreme command, could regain the lost territories until December 1917, when the negotiations on the Peace Treaty of Brest-Litovsk started, and could conquer even the whole Ukraine after Leo Trotzki had ended the negotiations on 10 February 1918 until their resumption and conclusion on 3 March 1918. For more details see eg Rauchensteiner, 719–734 and 914–918.

2) See eg R. A. Mark, *Die gescheiterten Staatsversuche*. In: Golczewski (fn 1), 172–201 (173 f).

3) The Ukrainian text of this document can be found in: P. P. Tolochko (main ed), *Ukraïns’ka Central’na Rada. Dokumenty I materialy v dvokh tomakh (The Ukrainian Central Rada. Documents and materials in two volumes)*. Kyïv 1996, 1 (4 March–9 December 1917), n° 47 (101–105).

4) See the Ukrainian text of these minutes in Tolochko (fn 3), n° 54 (125–128) (126 f).

5) See the Ukrainian text in Tolochko (fn 3), n° 187 (398–401). The fact that this Ukrainian People’s Republic was clearly to be understood as part of Russia is neglected by Ukrainian authors, see eg Steblii, Gritsak (fn 1), 224.

6) See the Ukrainian text in V. A. Smolij (main ed), *Ukraïns’ka Central’na Rada. Dokumenty I materialy v dvokh tomakh (The Ukrainian Central Rada. Documents and materials in two volumes)*. Kyïv 1997, 2 (10 December 1917–29 April 1918), n° 1 (5–11).

7) See eg K. S. Jobst, *Geschichte der Ukraine*. Stuttgart 2010, 153.

Rada became exposed to the struggle for power between men'shevists and bol'shevists in Russia in the aftermath of the Socialist October Revolution 1917. Whereas outside of Kiev Russian socialist revolutionary and bol'shevist forces took the lead, in the All-Ukrainian Soviet Congress, which was organized on 17 December 1917, the Central Rada succeeded in having the minority group of bol'shevists expelled.<sup>8)</sup> On 27 December 1917, this group, which had not shown up at the Congress, formed a Soviet counter-government in Khar'kiv, called the "People's Secretariat of the Ukrainian Workers' and Farmers' Republic". This government declared the Central Rada to be the people's enemy, took part at the peace negotiations with the Soviet-Russian delegation headed by Trotzki in Brest-Litovsk side by side with the Central Rada, but proclaimed a Ukrainian Socialist Soviet Republic (USSR) only on 5 February 1918 after the Central Rada had declared the independence of the UNR from Soviet Russia on 12 January 1918 by the *IV Univerza*<sup>9)</sup> and had offered the Central Powers to cooperate with them against Soviet Russia. Few months later the Central Rada was over-thrown<sup>10)</sup> and replaced by the regime of hetman Pavlo Skoropads'kyy, which should, however, also fail soon.<sup>11)</sup> The USSR, thus, with a short intermezzo caused by the occupation by the Central Powers Austro-Hungary and Germany and the Peace Treaty of Brest-Litovsk<sup>12)</sup> ended a period of struggle for power which correctly has been called an epoch of failed efforts of internal and external actors to create a Ukrainian state.<sup>13)</sup> The USSR was the only Ukrainian state that, at least for a small period until creation of the Soviet Union by the Union Treaty 1922, and strongly influenced by the Russian bol'shevists could develop an own Ukrainian identity and statehood. The "Ukrainization" of the state took, however, place only after formation of the Soviet Union in the years 1924 – 1928 and was abruptly stopped starting with the Ukrainian famine in 1933 by Stalin's purges of the Ukrainian communists in the years 1936 – 1939 and implementation of Stalin's centralism.<sup>14)</sup>

## 2. The Minsk Package

The major difference with regard to the current situation in the Ukraine results from the facts that after the breakdown of the Soviet Union there was a period of an independent Ukraine which lasted for more than 20 years and, irrespective of the warfare of 2014/15, there is obviously a will of all parties involved in this conflict to have the independence of the Ukraine continued. The central government in Kiev still has the chance to settle the conflict with the representatives of the Lugansk People's Republic ("LRP") and of the Donetsk People's Republic ("DRP") by means of negotiations executing the so-called Complex (Package) of Measures for the Implementation of the Minsk Agreement of 12 February 2015 (hereinafter called "Minsk Package"). This document has been adopted in the framework of the so-called Normandie Four by the Trilateral Contact Group on Ukraine in order to achieve a cease-fire in the Eastern Ukraine.<sup>15)</sup> The Trilateral Contact Group consists

8) See eg Stebly, Gritsak (fn 1), 224 f, Mark (fn 2), 177 f. In general as to the course of this power struggle on Ukrainian territory see eg H. Leidinger, "Rot" gegen "Weiß". Die Ukraine und der "Russische Bürgerkrieg". In: W. Dornik, St. Karner (ed), Die Besatzung der Ukraine 1918. Graz, Wien, Klagenfurt 2008, 73–93.

9) See the Ukrainian text eg in: Yu. S. Shemshuchenko (main ed), Konstytucij i konstytucijni akty Ukraïny (Constitutions and Constitutional Acts of the Ukraine). Kyïv 2001, 43–48.

10) This happened on 29 April 2018.

11) 14 December 1918. See for further details eg Stebly (fn 5), 233 and Mark (fn 2), 188.

12) See W. A. Serczyk, Die sowjetische und die 'polnische' Ukraine zwischen den Weltkriegen. In: Golczewski (fn 1), 202–223 (202). For the German and Austro-Hungarian interests in economic exploitation of the Ukraine see eg O. S. Fedyshyn, Germany's Drive to the East and the Ukrainian Revolution, 1917–1918. New Brunswick, New Jersey 1971, 184–194.

13) For the period of the hetman-state, of the West Ukrainian People's Republic and of Symon Petlura see eg Mark (fn 2), 181–201 and the documents regarding this period in Th. Horykiewicz, Events in the Ukraine 1914–1922. Their importance and historical background. Volume IV. Philadelphia and Horn 1969. For a summary of the contents of the Peace Treaty of Brest-Litovsk of 9 February 1918 with the Ukraine as recognized by Germany and Austro-Hungary see eg W. Dornik, Die Besatzung der Ukraine 1918 durch österreichisch-ungarische Truppen. In: Dornik, Karner (fn 8), 141–180 (146–148). The treaty has been ratified by Bulgaria, Germany and Turkey, but not by Austro-Hungary. See W. Bihl, Beiträge zur Ukraine-Politik Österreich-Ungarns 1918. In: Jahrbücher für Geschichte Osteuropas NF 1966 vol 14/1, 51–62 (53 fn 23).

14) For more details see eg Serczyk (fn 12), 207–213 and G. Kostyuk, Stalinizm v Ukraïni (The Stalinism in the Ukraine). Kyïv 1995, 113–229.

15) The full text in English language (translation of the Russian document, which, however, is not in full compliance with the Russian text; thus, as far as reference is being made to the document, in particular its number 11 and note 1 in the main text of this article the Russian original has been used as basis) reads as follows (<http://vineyardaker.blogspot.co.at/2015/02/full-text-of-minsk-2-agreement.htm> (visited on 05/03/2015):

"Complex of measures for the implementation of the Minsk agreement:

1. Immediate and comprehensive ceasefire in certain areas in the Donetsk and Lugansk regions of Ukraine and strict implementation of it starting at 00.00, Kiev time, February 15th, 2015.

Withdrawal of all heavy weapons by both parties at equal distances to create a security zone of at least 50 km from each other for artillery systems of 100 mm calibre or more, a security zone 70 km wide for multiplelaunch rocket systems and a security zone 140 km wide for multiplelaunch rocket systems Tornado, Uragan, Smerch and tactical missile systems Tochka.

For the Ukrainian troops these distances apply from the actual line of contact. For the armed forces of certain areas of the Donetsk and Lugansk regions of Ukraine they apply from the contact line in accordance with the Minsk memorandum of September 19th, 2014.

2. Withdrawal of heavy weapons above shall begin no later than the second day after the start of the ceasefire and be completed within 14 days. The OSCE, with the support of the Three Party Contact Group, will contribute to this process.

3. The effective monitoring and verification of the ceasefire and the withdrawal of heavy weapons will be ensured from the side of the OSCE from the first day of the withdrawal, with the help of all necessary means including satellites, drones, radar systems etc.

4. On the first day after the withdrawal a dialogue is to begin on the modalities of local elections in accordance with Ukrainian law and [in particular] Ukrainian Law 'On the temporary regime of local government in some areas of Donetsk and Lugansk regions', as well as on how these areas are to be run in the future on the basis of that law.

Immediately and not later than 30 days from the date of signing of this document, a resolution is to be adopted in the Verkhovna Rada of Ukraine indicating the territories covered by the special regime in accordance with the Ukrainian Law 'On the temporary regime of local government in some areas of Donetsk and Lugansk regions', based on the line set in the Minsk memorandum of September 19th, 2014.

5. Pardons and amnesties will be granted through the enactment of a law prohibiting the prosecution and punishment of persons in connection with the events that took place in some areas of the Donetsk and Lugansk regions of Ukraine.

6. Hostages and illegally detained persons will be released and exchanged based on the principle 'all for all'. This process must be completed no later than the fifth day after the withdrawal.

of representatives from the Ukraine (both conflict parties), Russia and the OSCE. The Normandie Four leaders (President of Russia Vladimir Putin, President of the Ukraine Piotr Poroshenko, President of France François Hollande and Chancellor of Germany Angela Merkel) approved this document in a joint declaration signed in Minsk on the same day.<sup>16)</sup> The Minsk Package bases on the Minsk Protocol signed by the members of the Trilateral Contact Group on 1 September 2014 and a follow-up Memorandum of Minsk of 19 September 2014.<sup>17)</sup> Whereas the Memorandum of 19 September 2014 only includes military provisions, number 3 of the Minsk Protocol of 1 September 2014 provided for the "decentralisation of power, including through adoption of a Law of the Ukraine "On the Temporary Order of the Local Self-administration in Particular Districts of the Regions ("Oblastei") of Donetsk and Lugansk (Law on Special Status)".<sup>18)</sup> Number 11 of the Minsk Package goes well beyond the Minsk Protocol and asks for a constitutional reform in the Ukraine, sets a deadline for the entry into force of a new constitution by the end of 2015, considers such new constitution as a key element of decentralisation, asks for taking into account the special characteristics of certain districts of the Donetsk and Lugansk regions as agreed with the representatives of these districts and for the adoption of a permanent law on the special status of certain districts of the Donetsk and Lugansk regions by the same date. In addition a note to the respective provision specifies that in accordance with the Law "On the temporary regime of local government in certain districts of the Donetsk and Lugansk regions" exemption from punishment, harassment and discrimination of individuals associated with the events that took place in some districts of the Donetsk and Lugansk regions, the right to self-determination of language, participation of local governments in the appointment of heads of prosecutors and courts in certain districts of the Donetsk and Lugansk regions, the possibility for the central executive authorities to conclude with the relevant local authorities an agreement on economic, social and cultural development of certain districts of the Donetsk and Lugansk regions must be included. Further to that the note requires that the Ukrainian state shall support the socioeconomic development of certain districts of the Donetsk and Lugansk regions and the central government shall assist for cross-border cooperation in selected districts of the Donetsk and Lugansk regions and areas of the Russian Federation. Last but not least people's militia units shall be created by decision of the local councils in order to maintain public order in certain districts of the Donetsk and Lugansk regions. Finally the note provides that the

7. Provide secure access, delivery, storage and distribution of humanitarian assistance to the needy on the basis of an international mechanism.  
8. Determination of the modalities of the full restoration of socioeconomic relations, including social transfers such as pensions and other payments (receipts and income, timely payment of all utility bills, renewal of taxation within the legal framework of Ukraine).  
To this end, Ukraine will regain control of the parts of its banking system in conflict affected areas, and there will possibly be an international mechanism to facilitate such transfers.

9. Restoration of full control over the state border of Ukraine by the government throughout the conflict zone, which should begin on the first day after the local elections and be completed after a comprehensive political settlement (local elections in some areas of Donetsk and Lugansk regions on the basis of the Law of Ukraine and constitutional reform) at the end of 2015, subject to paragraph 11 – in consultation and agreement with the representatives of individual areas of Donetsk and Lugansk regions in the framework of the Three Party Contact Group.  
10. Withdrawal of all foreign armed forces, military equipment, as well as mercenaries from the territory of Ukraine under the supervision of the OSCE. Disarmament of all illegal groups.

11. Constitutional reform will be conducted in Ukraine, and a new constitution will enter into force by the end of 2015 which is intended as a key element of decentralisation (taking into account the special characteristics of certain districts of the Donetsk and Lugansk regions as agreed with representatives of these areas). Also a permanent law is to be adopted by the end of 2015 on the special status of certain districts of the Donetsk and Lugansk regions in accordance with the measures specified in Note [1].

12. On the basis of the Law of Ukraine "On the temporary regime of local government in some districts of Donetsk and Lugansk regions" questions regarding local elections will be discussed and agreed with certain areas of Donetsk and Lugansk regions in the framework of the Three Party Contact Group. Elections will be held in compliance with the relevant standards of the OSCE in monitoring by the OSCE Office for Democratic Institutions and Human Rights.

13. To intensify the activities of the Three Party Contact Group, including through the establishment of working groups to implement the relevant aspects of the Minsk Agreement. They will reflect the composition of the Three Party Contact Group.

Note 1:

Such measures, in accordance with the Law "On the temporary regime of local government in certain areas of Donetsk and Lugansk regions" include the following:

Exemption from punishment, harassment and discrimination of individuals associated with the events that took place in some areas of Donetsk and Lugansk regions;

The right to self-determination of language;

Participation of local governments in the appointment of heads of prosecutors and courts in certain areas of Donetsk and Lugansk regions;

The possibility for the central executive authorities to conclude with the relevant local authorities an agreement on economic, social and cultural development of certain areas of Donetsk and Lugansk regions;

The State shall support socioeconomic development of certain areas of Donetsk and Lugansk regions;

Assistance from the central government for crossborder cooperation in selected areas of the Donetsk and Lugansk regions and the regions of the Russian Federation;

The creation of people's militia units to address local councils in order to maintain public order in certain areas of Donetsk and Lugansk regions;

The powers of local council deputies and officers elected in early elections, appointed by the Verkhovna Rada of Ukraine on this law, cannot be terminated.

Signed by the participants of the Three Party Contact Group:

Ambassador Heidi Tagliavini

The second President of Ukraine Leonid Kuchma

Ambassador of the Russian Federation, to Ukraine Mikhail Zurabov

Alexander Zakharchenko

Igor Plotnitsky."

16) The English text of this declaration can be found at [http://eng.belta.by/all\\_news/politics/Normandy-Four-leaders-pledge-to-use-their-influence-to-assist-fulfilment-of-Minsk-agreements\\_1\\_79517.html](http://eng.belta.by/all_news/politics/Normandy-Four-leaders-pledge-to-use-their-influence-to-assist-fulfilment-of-Minsk-agreements_1_79517.html) (visited on 05032015).

17) The Russian original text of the Minsk Protocol the full title of which reads in English translation "Protocol on the results of the consultation of the Trilateral contact group regarding joint steps aiming at implementing the Peace plan of the President of the Ukraine P. Poroshenko and of the initiatives of the President of Russia V. Putin", can be found at <http://www.osce.org/ru/home/123258?download=true> (visited on 12032015). The Russian original text of the "Memorandum on the implementation of the provisions of the Protocol on the results of the consultation of the Trilateral contact group regarding joint steps aiming at implementing the Peace plan of the President of the Ukraine P. Poroshenko and of the initiatives of the President of Russia V. Putin" can be found at <http://www.osce.org/ru/home/123807?download=true> (visited on 12032015).

18) The translation of the terms "oblast" by "region" and "rayon" by "district" follows the official translation of the current Ukrainian Constitution into the English and the Russian language. See Konstytuciya Ukrainy/Constitution of Ukraine. Odesa 1999 (Ukrainian/English), in particular art 133.

powers of local council deputies and officers elected in untimely elections, set by the Verkhovna Rada of the Ukraine through this law, cannot be terminated untimely.

### 3. Lack of a Tradition of Decentralisation/ Federalization in the Ukraine

The biggest challenge as to the implementation of the Minsk Package is certainly to adopt a new Constitution based on decentralisation of power by the end of the current year 2015. The fact that, both, the Minsk Protocol as well as the Minsk Package are using the term "decentralisation" does not make the task easier, given the obvious understanding on Russian and Eastern Ukrainian side, that it is a question of terminology and not of substance whether the terms "decentralisation, autonomisation or federalization" are being used.<sup>19)</sup> Russian President Putin considers as most important to achieve a certain sovereignty ("samostoyatel'nost'") and the note included in the Minsk Package enumerates already detailed elements of what shall be provided by the new constitution and by other laws to this end.

The major difficulty results from the fact that there is no own tradition of decentralisation (federalization) in the Ukraine. The Bol'shevist Declaration of the Rights of the Peoples of Russia of 15 (2) November 1917 had guaranteed to the peoples of Russia the right to self-determination, including separation and creation of a new state.<sup>20)</sup> Its factual and legal relevance remained restricted to those parts of today's Ukraine that had belonged to the Russian Empire. The Constitution of the West Ukrainian People's Republic of 13 November 1918, which according to its article II intended to extend to the former Austrian crown lands Galicia and Lodomeria and Bukovina as well as to the Ukrainian parts of the former Hungarian comitats of Szepes, Sáros, Zemplén, Ung, Bereg, Ugocsa and Máramaros, failed to enter into effective force due to the warfare with Polish troops and due to the unification of the Western Ukrainian People's Republic as Western Region ("Zakhidnya Oblast'") with the UNR on 22 January 1919.<sup>21)</sup> Following to the recommendation of the Jules Cambon Commission, the Allied Powers at the Paris Peace Conference on 21 November 1919 finally assigned East Galicia (today's Western Ukraine) to Poland. The Treaty of Alliance of Warsaw of 21 April 1920 between Pilsudski's Poland and Petlura's Ukraine<sup>22)</sup> against Soviet Russia confirmed East Galicia's integration into Poland. Petlura gave up all respective Ukrainian claims. The alliance did not save Petlura's state and regime. Poland, in the Peace Treaty of Riga of 18 March 1921 recognized the USSR in exchange for the recognition of the Polish Eastern border by the three bol'shevist republics.<sup>23)</sup> Thus, the USSR remained limited to former Russian territories, since as a consequence of the Paris Peace Treaties 1919 also the Northern Bukovina had become part of Romania and Transcarpathia part of Czechoslovakia.<sup>24)</sup>

Already on 26 January 1919, the Provisional Farmers' and Workers Government of the Ukraine by a Declara-

tion made clear that it aimed at the "unification of the Ukrainian Soviet Republic with Soviet Russia on the basis of a socialist federation, whose form shall be set up by the plenipotentiary representatives at the All-Ukrainian Congress of Soviets".<sup>25)</sup> The first Constitution of the USSR was adopted at the III. Congress of the Soviets of the USSR on 14 March 1919.<sup>26)</sup> Art 4 of this Constitution confirmed its firm will to enter a "Solely International Socialist Soviet Republic" ("*voyti v sostav Edinoi Mezhdunarodnoi Socialisticheskoi Sovetskoj Respubliki*"). This Constitution like the Constitution of the RSFSR of 10 July 1918<sup>27)</sup> did not change the constitutional/administrative structure of the state compared to the Russian Empire. Both provided for the organisation of state power on a central and on a local level by soviets of deputies and by their executive committees. On the local level they were elected in towns and rural settlements (villages).<sup>28)</sup> Whereas in Soviet Russia, the local soviets formed Congresses on the Regional ("oblastnye"), Governate ("gubernskie"), District ("uezdnye"), and Small District ("volostnye") level, the USSR did not inherit any regions ("oblasti") from the Russian Empire and, thus, just continued with Governate, District and Small District soviets.<sup>29)</sup> The distribution of competences between the central and the local powers was laid down in the USSR Constitution 1919 as follows (art 6): The centre had jurisdiction as to the adoption, amendment and supplement of the Constitution; the establishment and amendment of the borders of the Republic; the relations with other states, in particular declaration of war and conclusion of peace; determination of the basic principles of the

19) See the interview of K. Latukhina with the Russian president Putin "Ne sgorit li mir v kotle Debal'cevo?" (Does not burn peace in the pocket of Debal'cevo?). In Rossiiskaya Gazeta 19 February 2015, p 1.

20) Russian text in: Sobranie Uzakonenii RSFSR (SU RSFSR) 1917/2/18.

21) For more details see eg Steblii (fn 1), 239-251 and Mark (fn 2), 189-191.

22) See eg F. T. Epstein, Außenpolitik in Revolution und Bürgerkrieg, 1917-1920: In: D. Geyer (ed), Osteuropa-Handbuch. Sowjetunion vol III: Außenpolitik 1917-1955. Köln, Wien 1972, 86-149 (134-137) with further references.

23) The text can be found in: 6 LNTS 51 and in Ministerstvo inostrannykh del SSSR (ed), Dokumenty vneshnei politiki SSSR. Moscow 1957 ff, III, 618.

24) See Part II Art 27 and Part III Art 45 of the Treaty of Trianon of 4 June 1920, 6 LNTS 187 and Part II Art 27 and Part III Arts 53 and 59 of the Treaty of St. Germain of 10 September 1919, Australian Treaty Series 1920 No 3.

25) Russian text in: Istorija Sovetskoj Konstitucii. Sbornik dokumentov (History of the Soviet constitution. Collection of documents). 1917-1957. Moscow 1957, 106-108 (107).

26) Ukrainian text in: Shemshuchenko (fn 9), 69-77; Russian text in: Istorija (fn 25), 113-118.

27) Russian text in SU RSFSR 1918/51/582.

28) Arts 57-60 Const RSFSR; Art 18 Const USSR.

29) Art 18 Const USSR read as follows: "The bodies of the Soviet power on the local level are as follows:

a) Soviets of the Workers', Farmers' (Villagers') and Red Army Deputies (Soviets of towns, soviets of villages) and the Executive Committees elected by them (Excoms);

b) Congresses of the Soviets (Governate, District, Volost') as well as the Executive Committees elected by them (Excoms)."

organisation of the armed forces; general guidance of the domestic policy; civil, criminal, and procedural legislation; determination of the basic principles of a socialist structure in the area of the national economy; management of the monetary system and organisation of the financial economy of the Republic; state control concerning the activity of the Soviet power, in particular, concerning the correctness, lawfulness and effectiveness of expenses made; and finally all questions that are not of an all-State relevance, but are dealt with by bodies of the central Soviet power. Thus, even if the enumeration of matters of jurisdiction by the centre left much room to the local soviets, the power under art 6 II USSR Constitution made all questions of state power potentially fall in the jurisdiction of the Central Soviet power which was organized by the All-Ukrainian Congress of the Soviets of the Workers', Farmers' (Villagers') and Red Army Delegates, by the All-Ukrainian Central Executive Committee of the Soviets, and by the Council of the People's Commissars.<sup>30)</sup>

From the very beginning of Ukrainian statehood, the Leninist principle of democratic centralism<sup>31)</sup> became a constitutive element of the Ukrainian Constitution and undermined any potential of decentralisation or federalization. Even before the USSR formally joined the RSFSR and other constitutive republics, thereby creating the Soviet Union in 1922, on 20 May 1920, the 4<sup>th</sup> All-Ukrainian Congress of Soviets had declared that "*the USSR, whereas upholding its sovereign state Constitution, is a member of the All-Russian Socialist Soviet Federative Republic, of its united community of the political and social structure, of its common fight against the tsar, ... Having been occupied by the German imperialists, ..., the Ukraine became another time free only with the help of the RSFSR.*" The Congress confirmed the agreement of the Central Executive Committees of the USSR and the RSFSR concerning the unification of various commissars.<sup>32)</sup> On 16 July 1920 the 30 members of the Ukrainian Central Executive Committee were included into the All-Russian Central Executive Committee.<sup>33)</sup> On 25 November 1920, the Soviets of the USSR participated at the VIII. All-Russian Congress of Soviets.<sup>34)</sup> On 28 December 1920, the Union Worker-Farmer Treaty between the USSR and the RSFSR, which set up a military and economic union between the USSR and the RSFSR was concluded.<sup>35)</sup> Finally on 13 December 1922, the VII All-Ukrainian Congress of Soviets accepted the Declaration on the Creation of the Soviet Union, the Principles of the Constitution of the Soviet Union,<sup>36)</sup> and on 14 December 1922 provided for participation at the All-Union Congress of the Soviets.<sup>37)</sup> The Union Treaty on the Creation of the Soviet Union was concluded on 30 December 1922.<sup>38)</sup> With the adoption of the first Constitution of the Soviet Union on 31 January 1924, the USSR formally became a union republic according to its chapters 2 and 10. The Constitution of the Soviet Union 1924 did not interfere with the constitutional/administrative structure of their constituent republics, and continued, in particular, the Governate (gubernia) state structure inherited from the

Russian Empire.<sup>39)</sup> However, a reform of the administrative units started by decrees of the Council of the People's Commissars in 1918 and it was ordered that the administrative division should reflect economic regions.<sup>40)</sup> As a consequence, also in the Ukraine starting from 1922 a reform of the administrative-territorial structure started, in particular, by uniting Governates (gubernia), eg Odesa and Mikolaiv to Odesa. Only in 1925 the Governates (gubernia) were abolished and the USSR was divided in 41 Okrugs (Larger Districts, Provinces), 680 "rayony" (Districts) and 10314 rural settlement/village soviets. In addition 12 national districts (rayony) and 549 national rural settlement/village soviets were created. The introduction of a three-level-administrative structure was completed in 1929.<sup>41)</sup> Amendments to the Soviet Constitution of 1924 in 1927 had no impact as to the state structure of the Ukraine.<sup>42)</sup> The same goes for the fundamental provisions on the organization of town soviets in the Soviet Union which were adopted in 1928 and of those of village soviets which were issued in 1930.<sup>43)</sup> In 1930, the "Okrugs", with the exception of National and some Special Okrugs were abolished.<sup>44)</sup> In the same year instead of them "rayony" (Districts) and respective soviets have been introduced as the basic administrative units and bodies.<sup>45)</sup> The rayonisation of the Soviet Union was considered to be essential for a "*socialist reconstruction of the Soviet Union*" and was directed particularly against the existing bureaucracy

30) See eg Shemshuchenko (fn 9), 70 f.

31) See for more details M. Geistlinger, Commentary to Article 4 (Souveränität, Verfassungsvorrang, territoriale Integrität). In: B. Wieser (ed), Handbuch der russischen Verfassung. Wien 2014, 59–71 (60 f numbers 1 f) with further references.

32) Russian text in: Istorija (fn 25), 123–125 (123).

33) See Istorija (fn 25), 125.

34) See Istorija (fn 25), 133.

35) Russian text in SU RSFSR 1921/1/13.

36) See the respective documents in Russian language in: Istorija (fn 25), 203–206.

37) See Istorija (fn 25), 206.

38) See Russian text in: Istorija (fn 25), 215–218.

39) See eg art 10. A scheme of the administrative division of the Russian Empire in 1914–1917 can be found eg at I. Merzliakova, A. Karimov, A History of Russian Administrative Boundaries (XVIII–XX centuries). At <http://geog.port.ac.uk/hist-bound/papers/russia.htm> (visited on 120315).

40) For more details see eg H.J. Uibopuu, Commentary to Article 79. In: M. Fincke (ed), Handbuch der Sowjetverfassung II. Berlin 1983, 785–787 (786 numbers 4–6) and M. A. Shafir, Administrativno-territorial'noe ustroistvo Sovetskogo Gosudarstva (The administrative-territorial structure of the Soviet State). Moscow 1983, 59–97.

41) See for more details P. Muzichenko, Istorija derzhavy I prava Ukraïny (History of state and law of the Ukraine). Kyiv 1999, 435.

42) See for the Russian text Sobranie zakonov (SZ) SSSR 1927/21/242.

43) See for the Russian text as to town soviets: SZ SSSR 1928/10/86 and as to village soviets: SZ SSSR 1930/16/172.

44) See decree of the Central Executive Committee and of the Council of People's Commissars of the SSSR of 23 July 1930, SZ SSSR 1930/37/400.

45) See SZ SSSR 1930/52/544 and SZ SSSR 1930/52/545.

and against kulaks.<sup>46</sup>) The Constitution of the USSR, which had been adopted on 15 May 1929, did not yet anticipate this development and provided on the local level for Congresses of soviets on district ("rayonovi") and sub-district ("okrugovi") level.<sup>47</sup>)

The amendment of the Constitution of the Soviet Union of 17 March 1931 finally brought the introduction of the unity of a "kraï" ("region") and/or "oblast'" ("smaller region") as supreme units of the administrative division of a union republic,<sup>48</sup>) which had been implemented on a case by case basis.<sup>49</sup>) In the USSR only oblasts and no kraï were established: the Vinnitsia oblast' (27 February 1932), Dnipropetrovsk oblast' (27 February 1932), Kyiv oblast' (27 February 1932), Odesa oblast' (27 February 1932), Khar'kiv oblast' (27 February 1932), Donetsk oblast' (17 July 1932), Zhytomyr oblast' (22 September 1937), Mykolaiv oblast' (22 September 1937), Poltava oblast' (22 September 1937), Khmelnytskyï oblast' (22 September 1937; until 4 February 1954 called Kamenets-Podolskyï oblast'), Chernihiv oblast' (7 October 1932), Voroshilovgradskaya oblast' (3 July 1938; from 5 March 1958 – 5 January 1970 and after the breakdown of the Soviet Union called Luganskaya/Luhansk oblast'), Zaporizhia oblast' (10 January 1939), Kirovohrad oblast' (10 January 1939), Sumy oblast' (10 January 1939), Volyn oblast' (4 December 1939), Stanislavskaya oblast' (4 December 1939; since 9 November 1962 called Ivano-Frankivsk oblast'), L'viv oblast' (4 December 1939), Rivne oblast' (4 December 1939), Ternopil oblast' (4 December 1939), Chernivtsi oblast' (7 August 1940), Kherson oblast' (30 March 1944), Zakarpattia oblast' (22 January 1946), Cherkasy oblast' (7 January 1954), city of Kyïv (capital of the USSR since 1934).<sup>50</sup>)

The seven oblast's of the USSR which existed when the Constitution of the Soviet Union of 5 December 1936 was adopted, were directly enumerated in art 23 of that Constitution.<sup>51</sup>) The Constitution of the USSR of 30 January 1937 confirmed in art 13 that the USSR by its own will united with the other founding members in the Soviet Union and repeated in art 18 the enumeration of art 23 of the Constitution of the Soviet Union.<sup>52</sup>) By amendment of 11 February 1957, this enumeration was eliminated from the Constitution of the Soviet Union and replaced by a competence of the union republics to rule on their administrative division.<sup>53</sup>) Already before that date art 18 of the Constitution of the USSR had been adjusted to the enlargement of numbers of regions (oblast's) that took place in the USSR, many of them caused by transfer of East Galicia, Volhynia and Northern Bukovina to the Soviet Union according to the German – Soviet Non-Aggression Pact of 23 August 1939 and the secret additional Protocol thereto, which was implemented by the Soviet Union by occupation of the respective territories starting with 17 September 1939.<sup>54</sup>) Zakarpattia was recognised as part of the Soviet Union/USSR by a Protocol to the Treaty between the Soviet Union and the Czechoslovak Republic of 29 June 1945.<sup>55</sup>) Art 18 of the Constitution of the USSR now enumerated 26 regions

(oblasti). With the exception of the Drogobitsk'a oblast', which existed only for the period 4 December 1939 – 21 May 1959 and was then integrated as district (rayon) into the L'viv oblast', and with the exception of Crimea and Sevastopol', this list fully corresponds to the list of oblast's enumerated in art 133 of the current Ukrainian Constitution. The fact that the former Austro-Hungarian territories immediately after their transfer from Poland and Rumania became subject to Soviet rule hindered any continuity or even influence of their former administration under Austro-Hungarian rule<sup>56</sup>) on the USSR system of administrative-territorial structure.

For a certain period (from 19 February 1954 until close to the end of the Soviet Union) the Crimean oblast', which had been created within the RSFSR on 30 June 1945, and the city of Sevastopol' were part of the USSR. On 12 February 1991, after the soviet of the Crimean oblast' had already organised a plebiscite on the re-establishment of a Crimean Autonomous Socialist Republic as subject of the Soviet Union and member of the union treaty, which meant not as part of the RSFSR or the USSR, but on a negotiating status equal to them, the Supreme Soviet of the USSR declared the Crimean oblast' as Autonomous Socialist Soviet Republic within the USSR. Both acts happened prior to the date of independence of the USSR (11 October or 1 December 1991) and, thus, led to a dispute for more than 20 years, whether Crimea had legally and effectively become part of the independent Ukraine after the end of the Soviet

46) See decree of the VI Congress of the Soviets of the Soviet Union "Po dokladu o Konstitucionnykh voprosakh" ("On the lecture concerning constitutional issues"). Russian text in: Istorija (fn 25), 307-312 (307 f).

47) See arts 49–52 Constitution USSR 1929. Ukrainian text in: Shemshuchenko (fn 9), 83–103 (95 f).

48) See amended version of art 10, SZ SSSR 1932/50/298 and eg A. V. Puzhin, Administrativno-territorial'noe ustroystvo Sovetskogo gosudarstva (The administrative-territorial structure of the Soviet state). Moscow 1969, 52.

49) See eg Shafir (fn 40), 60 f.

50) For further details and the subdivision of these oblast's during the Soviet period see Prezidium Verkhovnogo Soveta SSSR (ed), SSSR–Administrativno-territorial'noe delenie soyuznykh respublik (The Soviet Union–The administrative-territorial division of the union republics). Moscow 1971, 254–335; Moscow 1987, 269–356.

51) Russian text in: Istorija (fn 25), 315–359 (318).

52) See the Ukrainian text in: Shemshuchenko (fn 9), 104–130 (106 f).

53) See the Russian text in: Vedomosti Verkhovnogo Soveta (VVS) SSSR 1957/4/80.

54) For more details see F. Golczewski, Die Ukraine im Zweiten Weltkrieg. In: Golczewski (fn 1), 241–260 (243). The Russian text of treaty and protocol as well as the Ukrainian text of the implementing Soviet laws can be found in: I. Ya. Terlyuk, Istorija derzhavy i prava Ukraïny (History of state and law of the Ukraine). Kyïv 1999, 143–146.

55) For the Ukrainian text see Terlyuk (fn 54), 147.

56) For elements of a very rudimentary autonomy of Galicia and Bukovina in the times of the Austro-Hungarian Monarchy see eg E. Heilbling, Die Landesverwaltung in Cisleithanien. In: A. Wandruszka, P. Urbanitsch (ed), Die Habsburgermonarchie 1848–1918. Vol II Verwaltung und Rechtswesen. Wien 1975, 190–269 (249–251), in particular as to the use of the Polish/Rumanian/Ukrainian languages. See also K. Scharr, Die innere Verwaltungsentwicklung der Bukowina 1775–1918. Beharrlichkeit alter und Heranwachsen neuer politischer Strukturen, In: Jahrbücher für Geschichte Osteuropas NF 2007 vol 55/2, 178–209.

Union. This dispute finally was ended by accession of the Republic of Crimea and the City of Sevastopol' to the Russian Federation on 18/21 March 2014.<sup>57)</sup>

For the period 12 October 1924 – 2 August 1940, a Moldovan Autonomous Socialist Soviet Republic (MASSR) was proclaimed and established as part of the USSR before having been declared a union republic with equal status to the USSR on the latter date.<sup>58)</sup>

#### 4. Failure of Autonomies in the History of the Ukraine

On 9 January 1918 the UNR adopted a Law on the national-personal autonomy, which failed to enter into factual effectivity in the same manner as this state failed itself. The law, which would have recognized such autonomy per the law itself for the Russian, Jewish, and Polish nations and would have offered to apply for such status to the Belorussian, Czech, Moldovan, German, Tatar, Greek, and Bulgarian nations depending on their size (art 2), thus, was of no relevance for the further legal development of the Ukraine. Key element of the autonomy would have been a national union formed by the respective nation which would have included the setting-up of a national register and the right to own Statutes. The organs of the national union would have been considered state bodies with competences to be assigned. Apart from exercising these competences, the national union would have had the right to represent the respective nation before the general state bodies.<sup>59)</sup>

The establishment of the MASSR as part of the USSR took place priorly because of foreign-policy reasons of Stalin's Soviet Union and was addressed towards Rumania underlining the Soviet Union's claims on Bessarabia which territory of the Russian Empire had been lost by the Treaty of Brest-Litovsk 1918. Besides the today's Transnistrian Moldovan Republic the Moldovan Autonomous Socialist Soviet Republic by a total of about 5.000 km<sup>2</sup> included about 3.000 km<sup>2</sup> of former Ukrainian territory which after the cession of Bessarabia to the Soviet Union in June 1940 and creation of the Moldovan Socialist Soviet Republic in August 1940 was returned to the Ukraine. The portion of Moldovans of the total population of the MASSR, therefore, was at a maximum 33%. 50 % of the population of the MASSR were Ukrainians.<sup>60)</sup> The MASSR flourished culturally up to a certain degree in the period of Moldovanization parallel to the period of Ukrainization in the 1920<sup>th</sup>, whereby in the controversy concerning the existence and separate character of the Moldovan language compared to the Rumanian language adherents of such own Moldovan language became predominant.<sup>61)</sup>

As for the legal regime that has been set up, the MASSR from the very beginning suffered from the weakness of the legal status of an autonomous republic under Soviet rule. Art 22 of the Constitution of the USSR 1929 assigned to the All-Ukrainian Congress not only the right to adopt, amend or supplement the USSR Constitution, but also to adopt, amend or supplement the MASSR Constitution and to determine the MASSR's borders.<sup>62)</sup>

The autonomy, thus, was a constitutionally delegated one. A constitutional provision requiring the agreement of an autonomous republic for determining or amending its borders did neither exist in the USSR Constitution nor in the Constitution of the Soviet Union of 1936. According to chapter VII of the latter it was up to a union republic's constitution to rule on the procedure of the adoption of an ASSR constitution.<sup>63)</sup> The status of an ASSR under Soviet rule has been correctly characterized as "territorial corporation with limited legislative powers".<sup>64)</sup> As for the MASSR it needed also to be added that the status had been imposed widely artificially. All major legal norms had been USSR norms. These norms even continued to be temporarily applied when the MASSR was upgraded to the Moldovan SSR (in new borders) in 1940.<sup>65)</sup>

The MASSR's experience together with the status of ASSR's under the Soviet Constitution 1977, as it was in force at the end of the Soviet Union had, however, an influence on chapters IX and X of the Ukrainian Constitution 1996. When the USSR slightly before the end of the Soviet Union declared the former Crimean region (oblast') to have the legal status of an ASSR, this declaration was to be implemented on the constitutional level.<sup>66)</sup> This happened by the Law 1213a-12 of 19 June 1991 "Pro vnesennya zmin i dopovnen' do Konstytucii

<sup>57)</sup> The author holds the opinion that the plebiscite and the unification with Russia were legitimate and legal under public international law based on the Republic of Crimea people's law to self-determination and the universal state practice in comparable cases. Since the moment of its independence from the former Soviet Union, the Ukraine failed to comply with the Republic of Crimea's people's right to self-determination. For further details see M. Geistlinger, *Der Beitritt der Republik Krim zur Russländischen Föderation aus der Warte des Selbstbestimmungsrechts der Völker*. In: *Archiv des Völkerrechts* 2014, vol 52/1, 175-204 (175, 178-180, 198-204). The opposite view is held by eg O. Luchterhandt, *Der Anschluss der Krim an Russland aus völkerrechtlicher Sicht*. *Idem*, 137-174.

<sup>58)</sup> See *Prezidium* (fn 50), 1987, 483.

<sup>59)</sup> See the Ukrainian text of this law in *Terlyuk* (fn 54), 103 f.

<sup>60)</sup> See P. Negură, *Die Moldauische Autonome Sozialistische Sowjetrepublik (1924-1940)*. In: K. Bochmann, V. Dumbra, D. Müller, V. Reinhardt (ed), *Die Republik Moldau. Republica Moldova. Ein Handbuch*. Leipzig 2012, 78-86 (79); Zs. Lengyel, *Moldau*. In: P. Rehder (ed), *Das neue Osteuropa von A-Z*. München 1992, 422-425 (423); B. M. Babii, *Gosudarstvo i pravo USSR v period vosstanovleniya narodnogo khoziaistva (1921-1925 gody)* (State and law of the USSR in the period of creation of the people's economy). In: B. M. Babii, B. E. Brazhnikov, L. L. Potarikina, A. I. Rogozhin, A. P. Taranov, S. L. Fuks (eds), *Istoriya gosudarstva i prava Ukrainkoï SSR (History of state and law of the USSR)*. Kiev 1987, II, 109-175 (139).

<sup>61)</sup> See *Negură* (fn 60), 81-83.

<sup>62)</sup> See the Ukrainian text in: *Shemshuchenko* (fn 9), 88.

<sup>63)</sup> See, in particular, art 92 Constitution of the Soviet Union 1936. Text eg in: *Istoriya* (fn 25), 354.

<sup>64)</sup> See *Uibopuu*, *Commentary to art 82*. In *Fincke* (fn 40), 796-816 (793 number 8).

<sup>65)</sup> See the respective Decree of the *Prezidium Verkhovnogo Soveta SSR* of 14 December 1940 "O vremennom primenenii kodeksov Ukrainkoï SSR na territorii Moldavskoi SSR" (On the temporary application of the codices of the Ukrainian SSR on the territory of the Moldovan SSR). *VVS SSSR* 1940/51.

<sup>66)</sup> The last constitution of the USSR as Soviet union republic which became the first constitution of the independent Ukraine (Constitution of 20 April 1978) had enumerated Crimea as oblast' and Sevastopol' as city of union republican subordination. Ukrainian text in: *Shemshuchenko* (fn 9), 156-202 (chapter 8 art 77: 178).



(Osnovnogo Zakoshchnu) Ukraïns'koï RSR" (On the introduction of amendments and supplements into the Constitution (Basic Act) of the USSR).<sup>67)</sup> The Supreme Soviet of the USSR adopted a Law on the Establishment of the Crimean Autonomous Soviet Republic,<sup>68)</sup> which consisted of two articles. Article 1 determined that the borders of the former oblast' shall be the same for the autonomous republic. Article 2 declared the Supreme Soviet of the Crimean oblast' to be the supreme body of state power of the autonomous republic. The law was linked to an introductory decree which assigned complementary elections so that also the tatars and the city soviet of Sevastopol' were represented in the body. Further to that the decree tasked the Supreme Soviet of the ASSR Crimea to elaborate a constitution and the Supreme Soviet of the USSR to amend the Ukrainian Constitution accordingly.<sup>69)</sup>

The amendments to the Constitution together with the law and introductory decree mentioned above did not settle the conflict situation, but opened up a period of legislative warfare between Crimea and the Ukraine. The Constitution of the USSR was supplemented by chapter 7-1 which consisted of one article (art 75-1). This article read as follows: "*The Autonomous Republic of Crimea is an inseparable constituent part of the Ukraine and decides autonomously on the issues ascribed to its competence*". Some other articles were amended in addition,<sup>70)</sup> in particular, article 97 para 3 number 21-1, which provided for the abolishment of the competences of the Supreme Soviet of the ASSR Crimea and assignment of new elections on Crimea in case of violation of the Constitution and laws of the Ukraine. According to article 97 para 3 number 31, the Supreme Soviet of the USSR was entitled to suspend or after some period even abolish legal acts of the Supreme Soviet of the ASSR Crimea in case of their contradiction to the Constitution or laws of the Ukraine.

On 6 May 1992, the Supreme Soviet of Crimea adopted the Constitution of the "Republic of Crimea", thereby placing the Republic of Crimea on the same level as the Ukraine.<sup>71)</sup> The Constitution of the Republic of Crimea was the constitution of a state which decided to unify with the Ukraine based on a treaty and on agreements (see article 9). The Republic of Crimea considered itself to be a sovereign state and subject under public international law, at least to have the authority to conclude international treaties. Such treaty and agreements were, however, never concluded. The Ukrainian central government decided to adopt a Law on the Status of the Autonomous Republic of Crimea,<sup>72)</sup> which used the name "*autonomy*", but, in fact, undermined the Constitution of the Republic of Crimea and, accompanied by decrees of the Supreme Soviet of the USSR abolishing decrees of the Supreme Soviet of Crimea and interdicting to run the plebiscite on the Crimean Constitution which had been assigned for 2 August 1992, became the expression of incapacity and unwillingness of the Ukrainian central government to peacefully solve the conflict situation with Crimea.<sup>73)</sup>

The Law on the Status of the Autonomous Republic of Crimea 1992 set a legal status for the Crimea which was not enough to counteract the wish of the people of the Crimea to declare its independence and continue this path with a few interruptions until its final choice was accomplished by acceding to the Russian Federation in 2014. The law of 1992 is interesting, however, because it shows a pattern of politics the Ukrainian central government has been continuing to apply on Crimea until final failure, whereby the Ukrainian Constitution of 1996 and all subsequent legal acts even weakened the regime which had been offered to Crimea in 1992. Art 1 of the Law 1992 repeated art 75-1 of the Ukrainian Constitution 1978 as amended in 1991, but called Crimea a republic and specified that the competences for autonomous regulation by the Republic of Crimea are specified by the Constitution and the laws of the Ukraine. As a consequence of this, not only the Ukrainian Constitution, but also the Ukrainian laws were assigned priority over the Constitution of the Republic of Crimea. This deviated partly from the wording of art 3 which ascribed to the supreme state bodies of the legislative and executive powers competences as far as this did not violate the Constitution of the Ukraine. These competences were the adoption, amendment and interpretation of the Constitution of the Republic of Crimea, and of its laws as well as the control of their execution; the participation at the formulation and implementation of activities of domestic or foreign policy character in matters of interest for the Republic of Crimea; the decision of issues as to the territorial structure of the Republic of Crimea in a broad understanding (borders between districts (rayony) and settlements, granting of status of towns, names); determination of the order of the organisation and activities of the republican and local bodies of state power and administration, local self-administration and unions of citizens; assignment of elections of the people's deputies of the Republic of Crimea, confirmation of the composition of the Central Election Commission for these elections, assignment of local elections; carrying-through of referenda of the Republic of Crimea in matters where such referendum is necessary; creation and acceptance of judiciary bodies in correspondence to the system of the judiciary in the Ukraine; exercise of the inalienable right to use of the land, its mineral wealth, of fauna and flora, of recreational, water and other natural resources, which are situated on the territory of the

67) VS USSR 1991/35/467.

68) Zakon "O vosstanovlenii Krymskoï Sovetskoï Respubliki. In: VS USSR 1991/9/216.

69) VS USSR 1991/9/217.

70) For further details see Geistlinger (fn 57), 180 f.

71) The Russian text of this Constitution can be found at: <http://sevkrimru.narod.ru/ZALKON/1992konst.htm> (visited on 31 May 2014).

72) 29 April 1992: Zakon o statuse Avtonomnoï Respubliki Krym. In: VS USSR 1992/30/419.

73) For more details and further references see Geistlinger (fn 57), 183-187 and D. Wydra, *Autonomie auf der Halbinsel Krim. Eine völker- und verfassungsrechtliche Analyse*. Wien 2008, 49 ff.

Republic of Crimea and the attached continental shelf of the Ukraine; legislative regulation of property relations within its competences and guarantee of equality of the various types of property; determination of the structure and priorities with regard to the economic development of the Republic of Crimea, guarantee of scientific and technological progress; creation and operation of free economic zones in accordance with the Ukrainian legislation; licenses and quotes of products of own origin for export; programs of economic, social and national-cultural development as well as protection of the environment of the Republic of Crimea; determination of income to be used for the budget for education of the Republic of Crimea; elaboration and adoption of the budget of the Republic of Crimea and its execution on republican, regional and local level; determination of health resort places and zones as well as of their legal regime; solution of problems of ecological safety, rational use, protection of natural resources; determination of quarantine zones of epidemic diseases; realisation of politics in the spheres of education, culture, protection of health, physical culture and sport, social insurance, historical and cultural monuments; guarantee of rights and freedoms of citizens, of civil and national consensus, protection of legality, public order and security; initiative for declaration of state of emergency on the territory of the Republic of Crimea; regulation of internal migration processes in the Republic of Crimea, elaboration and execution of a demographical policy, of urbanisation and housing economy; guarantee of the functioning and development of national languages and cultures on the territory of the Republic of Crimea; participation in the elaboration and realisation of programs for the repatriation of peoples that had been exiled from the Republic of Crimea; establishment of honours and medals of the Republic of Crimea.

Art 2 guaranteed the inviolability of the territory of the Republic of Crimea. Art 4 allowed the Republic of Crimea to participate within its sphere of competences in the relations of the Ukraine with foreign states and international organisations. Art 5 provided that military bases and objects, the deployment and dislocation of units of the Ukrainian army and national guards had to be consented with the Supreme Soviet of the Republic of Crimea. The Crimean authorities had to be pre-informed on military exercises on the territory of Crimea (art 6). The head of the Ukrainian secret service in the Republic of Crimea was to be appointed by the President of the Ukraine in agreement with the Supreme Soviet of the Republic of Crimea (art 7) and the activity of the secret service of the Ukraine in the Republic of Crimea was subject to Crimean parliamentary control. The procurator of the Republic of Crimea was to be appointed by the General Procurator of the Ukraine in agreement with the Supreme Soviet of the Republic of Crimea (art 8). The Republic of Crimea was granted a right of participation at the solution of questions relating to Crimea, but belonging to the sphere of competence of the Ukraine, in the Verkhovna Rada, the government and other authorities

of the Ukraine. It should have had a right of initiation of legislation in the Verkhovna Rada of the Ukraine (art 9). The competences assigned to the Republic of Crimea suffered substantially from the right of the Verkhovna Rada of the Ukraine according to art 10 of the law 1992 to suspend the legal effect of normative acts issued by the Supreme Soviet of the Republic of Crimea in case of non-compliance with the Constitution or laws of the Ukraine until final decision by the Constitutional Court of the Ukraine. The President of the Ukraine was empowered to provide for the execution of such decision. These rights were tried to be balanced by a right of the Supreme Soviet of the Republic of Crimea to suspend the legal effect of normative acts, however, only of authorities of the Ukrainian executive on Crimea, which are considered to interfere with the competences of the Republic of Crimea until final decision by the Constitutional Court of the Ukraine. As to Ukrainian laws, the Supreme Soviet of the Republic of Crimea was given the right to initiate a constitutional court procedure in case of their interference with its competences, but not to suspend their legal effect.

The distribution of competences laid down by the law 1992 could not be changed without mutual agreement of the supreme legislative bodies of the Ukraine and the Republic of Crimea (art 13).

The history of this law showed, however, that it was soon replaced by a new and even considerably less favourable legal regime without agreement on the Crimean side. This reduced legal regime emanated from chapter X of the Ukrainian Constitution 1996<sup>74</sup>) and codified an octroy of limited rights and powers imposed by the central Ukrainian government on Crimea irrespective of clashes and tensions with the people of Crimea and its representatives which came close to the use of armed force and led to the opening of an OSCE mission for Crimea in the Ukraine. The Ukrainian government succeeded in doing so by negotiating and concluding in parallel a Treaty on Friendship, Cooperation and Partnership with the Russian Federation.<sup>75</sup>)

## 5. Conclusions for the Implementation of the Minsk Package

The Minsk Package in numbers 4, 11, 12 and note 1 refers to the Ukrainian Law "On the temporary regime of local government in some districts of the Donetsk and Lugansk regions" (hereinafter referred to as "Law on

74) Ukrainian and Russian text and English translation in: Konstytucija Ukraïny. Odesa 1999. The reduction of competences on Crimean side can be seen from arts 135–138 Ukrainian Constitution 1996. Just to give one example: Art 135 para 2 reads as follows: "Normative legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea and decisions of the Council of Ministers of the Autonomous Republic of Crimea shall not contradict the Constitution and the laws of the Ukraine and are adopted in accordance with the Constitution of the Ukraine, the laws of the Ukraine, acts of the President of the Ukraine and the Cabinet of Ministers of the Ukraine, and their execution." The second part of the sentence did not exist in the Law 1992.

75) For more details see Geistlinger (fn 57), 184–187 with further references.

Special Status")<sup>76</sup>) It was agreed between the conflict parties, in particular, that immediately and not later than 30 days from the date of signing of the Minsk Package, a resolution shall be adopted in the Verkhovna Rada of the Ukraine indicating the territories covered by the special regime in accordance with this law. Compared to what had been unsuccessfully offered to Crimea in 1992, it is rather surprising that the Eastern Ukrainian side and Russia accepted to keep this law as legal basis for further measures and starting point for a permanent law and a new Ukrainian Constitution.

From the preamble and art 1 of the Law on Special Status it is visible that the law has been intended to be in legal effect for a transitory period which according to the Minsk package shall expire by the end of the current year 2015, according to the law itself three years after its entry into force. The law has been elaborated by the administration of the Ukrainian President and adopted by the Ukrainian Verkhovna Rada without agreement of the representatives of the LRP and DRP, which both are continued to be called regions ("oblasti"). The 1992 Law on Crimea accepted the name chosen by the Crimean people but committed the same procedural mistake of having been passed without negotiations with the concerned side.

Even if such procedure could formally correspond to a system of decentralisation it does not reflect at all the fact that the Ukrainian government has lost control of a number of districts of these regions and is confronted with the results of a plebiscite where a clear majority of the whole territory of these regions, including those districts that are still under control of the Ukrainian government, has voted in favour of creating republics instead of regions. Further to that, the Ukrainian President and government by isolating and particularly addressing the legal regime for the areas hit by a military conflict are missing another chance for Ukrainian nation-building. Issues addressed by the Law on Special Status, in particular, the status and use of the Russian language, are not restricted to the Donetsk and Lugansk regions.<sup>77</sup>) It might be an alternative to a two conflict parties' negotiation scenario to convoke a Constitution conference composed of representatives of all regions and the two republics as well as the city of Kiev enumerated in art 133 Ukrainian Constitution 1996 with the exception of the Republic of Crimea and the city of Sevastopol' which both have been lost due to disregard of the wish of the people concerned. Such conference could act as constituency of a Ukraine federalized bottom-up and open the door for perhaps calling the Ukraine a federation of republics in the future instead of addressing the basic problem by the inadequate means of a Special Status Law which will, if at all, be able just to solve a part of this problem for a rather limited area. The basic problem reaches well beyond this area.

Apart from a general amnesty (art 3) which is connected to the armed conflict, the state until adoption of a law on the state language policy guarantees for some districts of the Donetsk and Lugansk regions the use of the Rus-

sian and other languages in public and private life and obliges the authorities of local self-administration and the local authorities of the state administration to use the Russian and other languages in certain areas of their activities (art 4). If one imagines that this provision shall be the basis for a future permanent rule on how to use the Russian language, it will create more problems than it can solve. The law tends to follow the models of the Baltic states in limiting the use of the Russian language in order to allow for a marginalisation of the native Russian speaking part of the people and strengthening the role of the Ukrainian language throughout the Ukraine. By granting more rights as to the use of their native language to those Russian speaking people that are living in the East Ukrainian areas under LPR and DPR control than to those in other parts of the Ukraine, the law includes the potential for inciting new conflicts and extending the current one. It is without saying that all human rights concerns must be raised against in addition.

Art 5 of the Law on Special Status provides for a rather vague guarantee of local self-administration and participation of the local administration at the nomination of the leaders of bodies of the procuracy and of courts. The provision stays far behind the Crimean Law 1992. It needs for both, considerable enlargement of the respective powers on the federal units' level and further specification in order to assist to conflict resolution.

The instruments for a particular economic development and reconstruction of the areas hit by the armed conflict and described in arts 6 and 7, eg administrative treaties, could be used and developed in general in a federalized Ukraine. The system of specific economic, social and cultural development set up by the Law on Special Status, however, does not compete at all with the respective competences the Ukraine showed ready to shift to the Republic of Crimea authorities in order to entitle them priorly to develop their republic. This deficiency cannot be cured by allowing for regional trans-boundary cooperation with the Russian Federation (see art 8).

Finally, the right to have own militia units on the local level (art 9) can by no means be compared to the competence to have all rights with regard to setting up the structure and ruling on the activities of the bodies of the legislative and executive power as it was granted to the Republic of Crimea in 1992.

76) Zakon Ukraïny "Pro osoblyvyi porядok mistseвого samovryauvannya v okremikh rayonakh Donetsk'koï ta Lugansk'koï oblastey" ("On a special regime of the local self-administration in some districts of the Donetsk and Lugansk regions"), Vidomosti Verkhovnoi Rady (VVR) 2014/45/2043; Ukrainian text available also at <http://zakon1.rada.gov.ua/laws/show/1680-18/print1427788499275036> (visited on 30032015). Art 10 of the Law was amended on 17 March 2015 by law N° 256-VIII. Ukrainian text available at <http://zakon1.rada.gov.ua/laws/show/256-19> (visited on 30032015).

77) For more details and further references see M. Geistlinger, Der Schutz ihrer Landsleute im Ausland durch die Russländische Föderation unter besonderer Berücksichtigung der Ukraine. In: Die Friedens-Warte 2014 (vol 89), 1-2, 181-210 (186-196). See also R. Münz, R. Ohliger, Die Ukraine nach der Unabhängigkeit. Nationsbildung zwischen Ost und West. In: Studien des Bundesinstituts für ostwissenschaftliche und internationale Studien 1999-5, 31-33.

The Ukraine failed to provide a constitutional system attractive enough to have the people of the Republic of Crimea opted in favour of the Ukraine. By the policy and means, the Ukraine has shown so far to the people of the eastern Ukraine, it will even more fail to regain politically territories which it already lost militarily. The fact that art 10, providing for transitory provisions and, in particular, for modalities as to how to run and monitor the elections agreed between the parties, has been recently amended without prior negotiations with the representatives of the DPR and LPR demonstrates ongoing refusal of accepting realities. A considerable move on the Ukrainian President's and government's side, but also for the

Ukrainian constitutional and administrative lawyers,<sup>78)</sup> towards federalization is needed for the survival of one and re-united Ukraine. The Law on Crimea 1992 can teach which minimum was not enough to settle the issue.

78) A federal or decentralised structure of the Ukraine was neither a subject for discussion in the 1999 debate on administrative reform, nor has it been discussed in the context of the territorial organisation of power in the Ukraine. See eg Tacis DG (ed), *Administrativna reforma v Ukraïni. Dolkumenty i materialy (Administrative reform in the Ukraine. Documents and materials)*. Brussels 1999; *Ministerstvo yustycii Ukraïny, Terytorial'na organizatsiya vlady v Ukraïni (The territorial organisation of power in the Ukraine)*. Kyïv 2002.

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