

Editorial

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Ukraine: Hopes for Realizable Law

When the focus is on Ukraine, then the reason is always that it is on the verge of being torn apart at the intersection of global lines of conflict and interest, and it could mean the start of a global war. In Europe, the fact that Ukraine is highly interesting for the sciences, as well, is rarely mentioned. Particularly for legal science, the country is at the forefront of developments. This CritQ special issue is impressive proof of that.

For generations, outstandingly educated lawyers have been coming from Kharkiv, that is, the National Academy of Law and the ‘Yaroslav Mudryi National Law University’ located there. Kharkiv has a national reputation as one of the country’s elite training centers for law. This image rests not least on the work of the legendary rector and president *Vasily Tatsiy*, who has been active for decades.

In his introductory article, he honors his country by calling on the United Nations’ *Universal Declaration of Human Rights* (1948). *Tatsiy* views the struggle to implement this humanist manifest as a permanent one that is also highly relevant for the present, but he believes it has been implemented neither in Russia, which is in a time of upheaval, nor in Ukraine. At the same time, he demands that the social, economic, and individual human rights based on this document are realized and secured – and that this is done with the background of his and his country’s bitter experiences as the object of various foreign, usurping interests. In the historical gallery of the university’s rectors, which he shows to all visitors, many of his predecessors have been victims of catastrophes that have rolled through Ukraine from the West and East.

Academics on the legal front point out serious positivist problems of daily legal life in the conflict between the EU and Ukraine. *Vyacheslaw Komarov*, an expert in civil process, highlights in an extremely knowledgeable fashion the competition between Ukrainian and European human rights jurisdiction – very familiar criticism of transnational competition particularly for the German observers. Who has precedence if there is a conflict of laws? The nation-state or the EU? Solutions are not easy – neither here nor there. What is particularly imposing is his legal knowledge of the details of the European legal order.

From the perspective of international law, *Tetyana Komarova* comments on the advantages and disadvantages that the European Court of Justice holds for opportunities in Ukrainian business. The strengthening of private parties’ rights in legal conflicts with public institutions by the ECJ receives a warm welcome as a necessary and transnational development. But because its legal implementation in Ukraine lies so far in the economic and legal future, it is for the most part still only a vision.

Olesia Tragniuk, also from the area of international law in her teaching and research, describes the history of the economic rapprochement between the EU and Ukraine. She refers to the previously promised partnership and, currently, to the economic cooperation

that was made dependent on fundamental reforms according to the Association Agreement that came into effect in 2016. With the high hurdles for legal harmonization that the EU set for further progress, it is primarily political willingness to take on the challenge of normative reforms that is required of Ukraine. Talk centers only on harmonization with the West; normatively forgetting the economic space of the Russian East.

If one looks at Ukraine's problems from the perspective of public law, *Aleksandr Nowikow* puts up for discussion the recently established anti-corruption agencies and the model of the Polish state tribunal that exists there as a potential or symbolic controlling instance for holders of public authority. The political influence of the Ukrainian executive, which lacks any kind of effective legal controls, is described as overly powerful. In this area, as well, there seem to be only hopes when it comes to the rule of law, and in the near future there will likely not be effective public law free from executive control as a way to ensure that the state under the rule of law is not usurped.

From a legal-theoretical perspective, *Nikolay Karchevskiy* and *Olena Karchevska*, from the University of Lugansk and East Ukrainian University respectively, place their hopes on activating civil society. Political myths and a civil society that is first the subject then the object as a result of globalized violence are from this perspective a failed substitute for real reforms and have only led to social conflicts. Ever-present imitations and myths ignore reality, and the only thing that can help is the rejection of political myths and civil society powers as mediators between the government and society. But currently that is also only a hope.

What remains? Justice for Ukraine's citizens can only be brought about via complicated interactions with a legal, social, and societal consensus and only in an international context. *Peter-Alexis Albrecht* expressed this in his lecture in October 2015 at the 'National Law University' in Kharkiv. Without a legally and economically secured social order at the national level, true freedom – the lifeblood of any society – cannot be achieved. A realpolitik perspective would show that it is highly unrealistic to expect Ukraine to dock on to the EU considering that the EU has other serious problems to overcome both today and in the future. A realpolitik perspective of the things Europe currently seems to be proud of would show that economically, politically, and militarily we cannot simply draw a line behind which Russia must stay or go so far as to push Russia out. Instead, Ukraine, Russia, and the EU need to set up new rules of the game that leaves all neighbors in the region prospects. Then Ukraine could travel its own path, mediate between the blocs, and conduct trade with all sides to everyone's benefit. The parties only need to sit down together and consensually accept human rights as the guiding principle for action and binding law built on these rights as the steering instrument. Then war could be avoided. The translation into Russian at the end of these publications is to make clear that this message must also be sent to Russia in order to create a "productive understanding of the conflict," or at least that is the hope and symbolic intention of this special issue's editors.

Berlin, Luxembourg, Frankfurt/Main in June 2016
Peter-Alexis Albrecht

Stefan Braum