



OSCE Office for Democratic Institutions and Human Rights
Contact Point for Roma and Sinti Issues

**Access to Personal Documents for Roma in Ukraine:
More Efforts Needed**

Warsaw, Poland
June 2018

Disclaimer

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ACRONYMS AND ABBREVIATIONS

CPRSI	Contact Point for Roma and Sinti Issues
DNA	Deoxyribonucleic acid
ID	Identification document
IDP	Internally displaced person
LAC	Legal Aid Centre
NAP	National Action Plan on the Implementation of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020
NGO	Non-governmental organization
ODIHR	OSCE Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
SMM	OSCE Special Monitoring Mission to Ukraine
RoP	Rules of procedure for processing, issuing, exchanging, delivering, seizing, returning to the state, recognizing as inactive or annulling the passport of a citizen of Ukraine
SMS	State Migration Service
UAH	Ukrainian hryvnia
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
USSR	Union of Soviet Socialist Republics

KEY DEFINITIONS AND TERMS

Birth certificate – a paper-based document issued after the state registration of the fact of birth.

Birth registration procedure – an administrative procedure for the registration of a birth, conducted by the offices of state registration of civil status acts.

Civil registration documents – paper-based documents certifying the fact of the official state registration of civil status acts (e.g. birth, marriage, death) issued by the offices for registration of civil status acts after the registration of said civil status acts.

Department of State Registration and Notary of the Ministry of Justice of Ukraine – the authority responsible for state registration, including of civil status acts, operating under the Ministry of Justice of Ukraine.

Duplicate of the birth certificate – a copy of a birth certificate issued by the registration offices and other bodies on the basis of the record of civil status act having the same legal power as the original birth certificate.

Identification documents – documents featuring the holder's specified information (name, date and place of birth, photograph) enabling the holder's official identification.

Passport of a citizen of Ukraine – a book-type document issued by the State Migration Service certifying the identity of the holder and the holder's citizenship of Ukraine. Since the reform of the identification documents started, this document has been issued in the form of a biometric ID card. Hereinafter: internal passport.

Passport of a citizen of Ukraine for international travel – a book-type document issued by the State Migration Service certifying the holder's identity and citizenship of Ukraine, used for international travel of Ukrainian citizens.

Procedure for identification of a person (in the course of passport issuing) – an administrative procedure performed by the State Migration Service when undocumented persons over 18 years of age apply for a first internal passport as a citizen of Ukraine.

Procedure for obtaining an internal passport – an administrative procedure for issuing an internal passport conducted by the State Migration Service.

Procedure for registration of residence – an administrative procedure for the registration of applicants' main places of residence conducted by a territorial jurisdiction authority.

Procedure for the establishment of the fact of birth – a civil procedure for the establishment of the fact of birth, conducted by courts in cases when applicants over 16 years old cannot provide the authorities with their birth certificate.

Registration office – offices of state registration of civil status acts of the Department of State Registration and Notary of the Ministry of Justice of Ukraine.

State Migration Service (SMS) – a central body of executive power whose activities are directed and co-ordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs, and which implements state policy in the field of migration, citizenship, registration of individuals, refugees and other issues specified by law.

EXECUTIVE SUMMARY

The 2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area tasks the OSCE Office for Democratic Institutions and Human Rights (ODIHR) with assuming a proactive role in analysing measures undertaken by participating States (pS) to improve the situation of Roma and Sinti, including in crisis and post-crisis situations.

Following the outbreak of a crisis in and around Ukraine in the beginning of 2014, ODIHR published the “Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis”. In this report ODIHR identified lack of access to personal documents (civil registration and identification documents) as a main challenge facing Roma communities in Ukraine. At the same time, ODIHR noted that there are no comprehensive and accurate data available on the number of Roma in Ukraine and their socio-economic situation. Furthermore, reportedly there is a knowledge gap on the causes and obstacles preventing Roma men and women from obtaining personal documents and establishing their legal identity, which is a precondition for accessing basic rights and services.

This study aims to support the Ukrainian authorities by addressing the knowledge gap and presenting observed patterns of problems that Roma men and women – including Roma displaced from Eastern Ukraine – experience in the Transcarpathia, Odesa and Kharkiv regions in obtaining civil registration and identity documents. The study maps the existing administrative practices, provides an analysis of the current legal and policy framework, and offers recommendations for overcoming the challenges identified.

A key obstacle to overcoming these challenges is the lack of dependable data on the number of Roma in Ukraine and therefore on the number of Roma without personal documents. Moreover, lack of coherent administrative practice and, in some cases, complicated administrative procedures preclude Roma women and men from initiating procedures necessary for birth registration, registration of residence, or procedures for obtaining internal passports. The practice of oral rejections of applications for obtaining passports or birth registration impedes access to legal remedy. Additionally, the fines imposed in administrative procedures on various grounds create an additional barrier for access to personal documents. Overall, negative stereotypes, prejudices and discrimination against Roma exacerbate the situation.

According to the findings of the study, persons with the following characteristics face particular challenges: adult Roma who were never registered in birth registries and who often need to initiate very complicated judicial procedures in order to be provided with subsequent (late) registration in the birth registry books; Roma and their children who arrived in Ukraine before the 1991 independence but who cannot prove that they are Ukrainian citizens due to lack of evidence of their permanent residence in Ukraine before 24 August 1991; Roma and other persons who face internal displacement within Ukraine, due to their lack of personal documents or lack of evidence of their registration in the crisis-affected areas and due to the excessive burden of proof required for obtaining personal documents; and Roma older than 18 years without internal passports who are not able to obtain a duplicate of the birth certificate necessary for applying for a new internal passport.

Furthermore, Roma girls and women might face additional vulnerability with regard to obtaining their personal documents due to phenomena that include the practice of early and child marriages, while home births of the children of undocumented parents might leave their children without birth registration and protection.

As a result, the lack of personal documents precludes a number of Roma women and men from enjoying their basic economic and social rights, such as the right to quality education, the right to health, the right to adequate housing and the right to social assistance.

The study calls for a more proactive and systemic approach to addressing the problem of the lack of personal documents among Roma. The Ukrainian authorities should consider amending the existing laws and regulations, particularly to improve access to free legal aid and to simplify administrative procedures. Efforts to improve access to personal documents for Roma should also include capacity building for the judiciary and civil servants, revocation of fines imposed on persons without personal documents, the abolition of court fees for the procedure for establishment of the fact of the birth, and improved access to justice. Moreover, the study recommends establishing an expert body, supported by relevant international organizations such as the United Nations High Commissioner for Refugees (UNHCR), to co-ordinate these efforts and to develop more specific proposals and guidelines to solve the problems identified. The Ukrainian authorities should also initiate a nationwide awareness-raising and information campaign on the importance of obtaining identification and civil registration documents, especially registration at birth, following the adoption of simplified procedures.

The study also takes positive note that some regional authorities in Ukraine have already demonstrated that there are sufficient examples of practical approaches and initiatives which led to a successful solving of the identified problems, such as the enhanced participation of the Roma community and Roma civil society organizations and a more proactive approach by the authorities. An important element of these examples is that the authorities have adjusted their activities in accordance to the specific situation of Roma without personal documents. These good practices should be broadened and experiences shared with other regions where communities face similar problems in obtaining personal documents.

Regional and local authorities are called to genuinely consult the Roma community, including Roma women, and to include them in their work, as well as to develop joint projects and programmes with local civil society organizations. Successful stories and good practices in this area can also be found in other OSCE participating States. National authorities, with technical support from the OSCE, the UNHCR and other relevant stakeholders, should draw from regional experiences for issuing personal documents to Roma and ensure their access to basic rights and services without discrimination.

RECOMMENDATIONS

A. General recommendations related to Roma access to personal documents

The Ukrainian authorities should reiterate their commitments and the political will at all levels (central, regional and local) to take a more active approach towards the problem of the lack of personal documents among Roma by:

(a) amending the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020 with clear benchmarks, measures and activities necessary for the improvement of Roma access to personal documents in Ukraine;

(b) setting up a strong, effective mechanism for implementation of the Strategy and the co-ordination of the activities aimed at solving the remaining challenges related to Roma access to personal documents;

(c) working more actively with the representatives of civil society and Roma activists to find systemic solutions for effective measures and activities aimed at solving remaining challenges Roma face in accessing their personal documents;

(d) working more actively with international organizations and the international donor community to find systemic solutions for implementing effective measures and activities aimed at solving the remaining challenges Roma face in accessing their personal documents;

(e) allocating sufficient funds for immediate assessment of the needs of Roma without personal documents and the specific challenges they experience in that regard, mapping of the remaining challenges and cross-cutting issues (i.e. discrimination of Roma women, early and child marriages, home births, internal displacement, etc.);

(f) unifying administrative practices among the regions of Ukraine in the issuing of internal passports on the one hand, and sharing good practices related to Roma access to personal documents and birth registration among civil servants and other relevant stakeholders on the other; and

(g) more actively seeking the technical, financial and other support of the international community and other relevant stakeholders for this issue.

B. Changes to legislation and regulations

The Ukrainian authorities should also consider amending the existing laws and regulations that impede Roma access to personal documents, particularly the following:

(a) introduction of amendments to Article 14 of the Law of Ukraine on Free Legal Aid by adding a category of beneficiaries who do not need to prove their monthly wages – based solely on their claim for the establishment of the fact of birth;

- (b) introduction of amendments to the existing Law of Ukraine on Free Legal Aid in order to specifically allow alternative forms of evidence of identity beyond internal passports that would provide Roma with enhanced access to free legal aid in cases where applicants are unable to present a birth certificate, passport or other identification document;
- (c) improvement to the deployment of the capacities of local civil society organizations and activists in providing Roma with the legal aid necessary for access to personal documents;
- (d) introduction of amendments providing that alternative forms of proof of identity besides the internal passport are to be accepted, such as extracts or copies (duplicates) in the absence of original identity documents in civil or administrative procedures for obtaining personal documents or for the establishment of the fact of birth, pursuant to the relevant laws;
- (e) exemption from fees for the administrative and/or court procedures related to establishment of the fact of birth, identification of a person, and obtaining a passport or a duplicate of a passport (if lost or stolen);
- (g) introduction of obligatory written decisions on rejection of applications for birth registration, obtaining internal passports or registration of residence;
- (h) abolition of fines in cases when applicants fail to obtain personal documents in accordance with the law;
- (i) simplification of administrative procedures, particularly those related to the identification of a person before the State Migration Service (SMS);
- (j) simplification of procedures for civil registration and procedures for obtaining personal documents by introducing specific procedures in cases when applicants are illiterate or unfamiliar with specific legal requirements in their cases, including a relative of the applicant or a third person being allowed to write the applicant's explanation instead of requiring involvement of a licensed lawyer for the same purpose;
- (k) introduction of identity witnesses as a minimum evidentiary standard for the establishment of the applicant's identity in the procedures for obtaining internal passports;
- (l) registration of residence for Roma living in *tabors*¹ and informal housing; and
- (m) introduction of local mobile units, consisting of representatives of the Roma community, civil society, the SMS and the office of registration of civil status acts, for providing free legal aid and other assistance for Roma without personal documents.

¹ *Tabor* – an informal Roma settlement or a camp. Tabors are usually located on the outskirts of the town or village and are usually without basic infrastructure, such as access to water and sanitation, electricity, etc.

C. Establishing an expert body for co-ordinating efforts for solving problems Roma face in relation to access to personal documents

Based on the conclusions and recommendations of the expert seminar held in Kyiv in 2015,² the SMS and the Department of State Registration and Notary of the Ministry of Justice of Ukraine should create an expert body consisting of representatives of all the relevant stakeholders at the central and regional level, Roma representatives and civil society, legal experts, the Office of the Ukrainian Parliamentary Commissioner for Human Rights and representatives of the relevant international organizations.

This expert body should be tasked with:

- providing the relevant authorities with guidelines for conducting the assessment of the needs of Roma without personal documents, mapping the scope of the problem, and analysing the international and national legal framework applicable in the area of access to personal documents for Roma in Ukraine;
- developing specific proposals for legislative changes based on the results of the activity described above;
- developing specific guidance to unify existing administrative practices, such as manuals, guidelines and instructions for resolving cases when standard evidence is not available;
- developing and implementing a training curriculum for civil servants (particularly civil servants from the SMS and the Department of State Registration and Notary) and judges dealing with applications for personal identification and civil registration documents;
- raising awareness about the importance of effective procedures for resolving each individual case related to access to personal documents;
- guiding the information, outreach and awareness-raising campaigns for Roma without personal documents in Ukraine;
- facilitating communication, co-ordination and co-operation among different stakeholders coming from the central, regional and local level as well as civil society, the Roma community and international organizations;
- consulting the relevant authorities in cases when standard evidence for obtaining internal passports and birth registration is not available;
- setting up a mechanism for the collection of disaggregated data on Roma without personal documents in Ukraine; and

² “Summary Report – Access to Identification and Civil Registration Documents by Roma in Ukraine” (hereinafter: 2015 Expert Seminar Report), OSCE/ODIHR, 21 December 2015, available in English and Ukrainian, <<http://www.osce.org/odihr/211996>>.

- setting up a reporting and evaluation mechanism for measures and activities aimed at providing Roma with identification documents and birth registration.

D. Outreach, awareness-raising and information campaigns

The Ukrainian authorities should also initiate a nationwide awareness-raising and information campaign on the importance of obtaining identification and civil registration documents, and especially registration at birth.

This campaign should be:

- developed in close co-operation with Roma community representatives and civil society organizations;
- target both the Roma and the non-Roma community, as well as public officials, civil servants and judges;
- particularly target the vulnerable populations among the Roma community (Roma women, displaced Roma, stateless Roma, etc.);
- target patterns of discrimination and prejudice against the Roma community and promote positive examples and success stories about Roma access to identification documents and birth registration.

In addition to the awareness-raising and information campaigns, the Ukrainian authorities should also introduce a nationwide system of trainings and capacity building activities for civil servants and the judiciary.

Ukrainian authorities should also pay particular attention to recent developments that may affect Roma access to personal documents, such as:

- the ongoing reform of the identification management system;
- the specific situation of Roma displaced persons from Eastern Ukraine and Crimea and the challenges they face in obtaining or restoring their documents and accessing basic economic and social rights and services;
- the particular issues Roma women and girls face related to access to identification documents and birth registration, such as early and child marriages, home births and the lack of medical assistance and birth registration in such cases; and
- other relevant cross-cutting issues, such as discrimination and prejudice towards Roma in Ukraine and the social exclusion and deep poverty that Roma without personal documents in Ukraine experience.

E. Co-ordinating efforts for solving problems Roma face in relation to access to personal documents at regional and local level

In their efforts to resolve challenges that Roma without identification documents and birth registration experience in each region, the regional and local authorities should:

(a) provide reports to the central authorities about specific issues and challenges Roma in their region experience in relation to access to personal documents and initiate the creation of technical bodies for the implementation of the measures and activities provided by the future expert body;

(b) map existing stakeholders at regional level and include them in the work of the technical group of experts responsible for the implementation of the measures and activities aimed at resolving remaining problems;

(c) set up a technical co-ordination body with the task of:

- initiating and implementing information, outreach and awareness-raising campaigns among Roma without personal documents;

- co-ordinating efforts at the local and regional level aimed at resolving problems Roma experience in their access to personal documents;

- reporting to central authorities on the implementation of the measures and activities aimed at resolving the problems Roma without personal documents experience in their access to personal documents.

Regional and local authorities should also:

(a) genuinely consult the Roma community, including Roma women, and the representatives of civil society about the best possible approaches towards this issue and include them in the work of the abovementioned technical co-ordination body;

(b) allocate funds for the implementation of measures and activities aimed at resolving remaining challenges;

(c) develop joint projects and programmes with local civil society organizations and activists and proactively seek funds for the implementation of these projects and programmes;

(d) immediately explore the technical and other resources that could be deployed to implement measures aimed at resolving the remaining challenges and, where necessary, introduce local focal points (Roma co-ordinators) in each administrative body responsible for Roma access to personal documents; and

(e) explore innovative approaches for information and awareness-raising campaigns for local Roma communities.

I INTRODUCTION

According to data from the latest census, there are 47,587 Roma in Ukraine.³ On the other hand, the Council of Europe estimates that the number of Roma in Ukraine is between 120,000 and 400,000, with an average estimate of 260,000.⁴ Estimates from local Roma non-governmental organizations (NGOs) assert that Roma mostly populate the Transcarpathia, Donetsk, Lugansk, Odesa, Kyiv, Dnipropetrovsk, Kharkiv, Cherkassy and Poltava regions.⁵ Roma constitute a very heterogeneous community in Ukraine, being divided into several sub-groups according to certain characteristics, such as the region where they live. Some Roma communities have established a considerably integrated life living amongst the mainstream population, while those who live segregated in urban or semi-urban districts or in rural areas particularly face deplorable living conditions and exclusion and marginalization from education, employment and social services. Roma continue to be one of the most discriminated national minorities in Ukraine,⁶ and lack of access to personal documents remains one of the most pressing human rights dilemmas Roma are experiencing there.⁷ Problems with access to personal documents disproportionately affect the most disadvantaged members of the community.

The lack of official data, and consequently the lack of disaggregated data,⁸ as well as the fact that there is no solid assessment about the situation of Roma without personal documents, both present a major hurdle to taking a more systematic approach towards solving this issue. This situation also prevents the authorities from tackling the root causes of the social exclusion of Roma in Ukraine. However, the adoption and implementation of specifically-designed, more flexible solutions to the problem of Roma access to personal documents should not be understood by the Ukrainian authorities as somehow exceeding what is generally required. Rather, such solutions should be perceived as specific measures for implementing their already-existing human rights commitments as envisaged in the relevant public policies⁹.

³ “National composition of population”, State Statistics Committee of Ukraine, 2001, <<http://2001.ukrcensus.gov.ua/eng/results/general/nationality/>>. See also “Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis” (hereinafter: Assessment Report), OSCE/ODIHR, August 2014, p. 11, <<http://www.osce.org/odihr/124494>>.

⁴ As estimated by the World Romani Union and local Roma NGOs. The figures are taken from a document prepared by the Council of Europe Roma and Travellers Division, “Estimates on Roma population in European countries”, <http://www.coe.int/t/dg3/romatravellers/default_en.asp>, cited from: Assessment Report, *op. cit.*, note 3.

⁵ Assessment Report, *op. cit.*, note 3.

⁶ Roma are “believed to be the group which experiences most societal discrimination in Ukraine”, see, e.g. “Country Policy and Information Note, Ukraine, Minority Groups”, United Kingdom, Home Office, ver. 1.0, January 2017, paras. 2.2.6–2.2.7, <<https://www.gov.uk/government/publications/ukraine-country-policy-and-information-notes>>.

⁷ “Written Comments of the European Roma Rights Centre and Chiricli, Concerning Ukraine for Consideration by the Human Rights Committee at its 108th Session (8-26 July 2013)”, June 2013, p. 6-8, <http://www.errc.org/uploads/upload_en/file/ukraine-iccpr-june-2013.pdf>.

⁸ See, e.g. “Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine”, UN Committee on the Elimination of Racial Discrimination, October 2016, para. 6, UN Doc. No. CERD/C/UKR/CO/22-23; “Concluding observations on the sixth periodic report of Ukraine”, UN Committee on Economic, Social and Cultural Rights, June 2014, para. 8, UN Doc. No. E/C.12/UKR/CO/6; “Consideration of reports submitted by States Parties under article 44 of the Convention, Concluding observations: Ukraine”, UN Committee on the Rights of the Child, April 2011, para. 9, UN Doc. No. CRC/C/UKR/CO/3-4.

⁹ See, e.g. Ukrainian national strategies related to Roma access to personal documents, pp. 24-25 of this report.

Roma face problems with access to documents in many parts of the OSCE region. OSCE commitments regarding Roma and Sinti reiterate the importance of access to personal documents for tackling Roma and Sinti social exclusion and deep-rooted discrimination. The 2003 Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area (hereinafter: OSCE Action Plan) prescribes that the participating States “must be proactive in ensuring that Roma and Sinti people, like any other inhabitants, have all necessary documents, including birth certificates.”¹⁰ Furthermore, this document recommends the participating States “[e]nsure that Roma and Sinti populations in a forced displacement situation (refugees and internally displaced persons – IDPs) are duly registered and provided with the relevant documents.”¹¹

Access to documents for Roma has been one of the focus areas of the engagement of the OSCE Office for Democratic Institutions and Human Rights (hereinafter: ODIHR) in Ukraine. In 2014 ODIHR published its “Situation Assessment Report on Roma in Ukraine and the Impact of the Current Crisis” (hereinafter: the Assessment Report). The Assessment Report confirmed that Roma continue to face discrimination in all spheres of life in Ukraine and underlined the multiple forms of discrimination faced by Roma women. A lack of personal documents (the lack of either internal passports and/or birth certificates) was identified as one of the most pressing challenges Roma face in accessing their human rights.¹² The lack of personal documents prevents Roma from accessing basic services – e.g. in the areas of housing, health care, employment, education and humanitarian assistance – and from fully exercising a range of their human rights. While the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020 (hereinafter: the Strategy) and the National Action Plan for its implementation (NAP)¹³ both recognize that a significant number of Roma have no identification documents and the need to address this situation, it appears that there has been only little progress in this area since then.¹⁴

In 2015, with the aim of better comprehending the obstacles Roma face in obtaining personal documents, ODIHR jointly hosted an expert seminar on access to identification and civil registration documents by Roma in Ukraine with the Ukrainian Parliament Commissioner for Human Rights in close co-operation with the United Nations High Commissioner for Human Rights (UNHCR) and Roma civil society, bringing together representatives of the relevant Ukrainian authorities, including the State Migration Service (SMS) and the Department of State Registration from the central and regional administrations, Roma civil society, and a number of international experts from Serbia and Montenegro who shared their experiences and good

¹⁰ OSCE Ministerial Council, Decision No. 3/03, “Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area”, Maastricht, 1–2 December 2003, para. 87, <<http://osce.org/odihr/17554>>.

¹¹ *Ibid.*, para. 108.

¹² Assessment Report, *op. cit.*, note 3, in particular pp. 19–21 and 35.

¹³ “Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020” (the Strategy), approved by Decree of the President of Ukraine No. 201, 8 April 2013, <<http://zakon3.rada.gov.ua/laws/show/201/2013>>, and “National Action Plan for the Implementation of the Strategy for the Protection and Integration of the Roma National Minority by 2020” (NAP), adopted by the Order of the Cabinet of Ministers of Ukraine No. 701-r, 11 September 2013, <<http://zakon2.rada.gov.ua/laws/show/701-2013-%D1%80>>. The text of the NAP available in English at: <http://mincult.kmu.gov.ua/control/publish/article?art_id=245257577>.

¹⁴ “Concluding observations on the twenty-second and twenty-third periodic reports of Ukraine”, UN Committee on the Elimination of Racial Discrimination, October 2016, paras. 19-23, UN Doc. No. CERD/C/UKR/CO/22-23.

practices in addressing this issue in their region. The expert seminar resulted in a comprehensive set of recommendations to remedy the lack of civil registration and identification documents among Roma in Ukraine.¹⁵ In particular, it recommended to “initiate a mapping exercise or baseline study to determine the exact scope and causes of the problem, the type of obstacles Roma encounter across the country and in different regions, and their specific needs for obtaining personal identification and civil registration documents (data collection and analysis)”, and “a comprehensive analysis of the legal framework to identify any systemic issues leading to lack of civil registration and personal identification documents among Roma and develop recommendations for reforms in law and practice (legislative and procedural framework analysis)”, *inter alia* based on best practices from other OSCE participating States.

This study was commissioned by ODIHR in continuation of its efforts to take forward those recommendations and to support the Ukrainian authorities in addressing the existing obstacles to Roma accessing personal documents.¹⁶ The main objective of this study is to understand more about the scope and causes of the existing problem of a lack of civil registration and identification documents, as well as the types of problems Roma (including Roma displaced from Eastern Ukraine and Crimea) experience in the Transcarpathia, Odesa and Kharkiv regions in that regard. Furthermore, this study aims to provide the relevant stakeholders with a mapping of the problem and the existing administrative practices and legal analysis in this area. Finally, this study offers a number of recommendations for overcoming the challenges identified. As there is no official data available on the extent of the problem, this study cannot provide an exhaustive overview of the topic, but can rather serve to initiate further directions for discussion, demonstrate the knowledge gap, and indicate the challenging areas that need to be addressed.

This report is based on information from discussions held with the Ukrainian authorities during the inception meeting in Kyiv on 17 March 2017 and subsequent field visits to the Transcarpathia, Odesa and Kharkiv regions, where a series of meetings with state authorities, civil society organizations and international organizations was carried out.¹⁷ However, it should be noted that one of the main constraints of the present report involves the authors’ very limited access to the internally displaced Roma community in the Kharkiv region, which affected the degree to which the authors were able to understand all the problems such persons experience.

This study is based on both desk research and field visits to the above-mentioned regions. The desk research into the existing legal framework in the area of access to personal documents as well as research into the relevant public policies and international human rights framework applicable in Ukraine was conducted in order to enhance understanding of the existing legal framework and any potential legal gaps so as to propose measures for overcoming the challenges identified. This review was followed by field visits to the Transcarpathia, Odesa and Kharkiv regions and a number of interviews were held with state and local authorities, local civil society organizations and human rights activists, and representatives of international organizations working in the area of access to personal documents in Ukraine. Finally, a number of findings

¹⁵ 2015 Expert Seminar Report, *op. cit.*, note 2.

¹⁶ The reported problems in access to personal documents could also happen to other citizens of Ukraine, but they disproportionately affect Roma population.

¹⁷ Field visits were carried out between 18 and 31 March 2017.

are based on information gathered from discussions with Roma activists and from field visits to Roma communities in the Transcarpathia, Odesa and Kharkiv regions. The preliminary findings for the study were presented and recommendations for addressing the observed challenges were elaborated at a roundtable on “Access to Identity and Civil Registration Documents among Roma in Ukraine” hosted by ODIHR in co-operation with the SMS on 30–31 May 2017 in Odesa.¹⁸

ODIHR is grateful to the Ukrainian authorities for their engagement in the ongoing discussions about the improvement of Roma access to personal documents. ODIHR is also very grateful to the Roma women and men interviewed in the Transcarpathia, Odesa and Kharkiv regions for their time and for the information provided. Without them, this report would not have been possible.

II ACCESS TO PERSONAL DOCUMENTS – INTERNATIONAL AND DOMESTIC LEGAL AND POLICY FRAMEWORK

The importance of birth registration and access to personal documents is twofold. On the one hand this involves the stand-alone human right to recognition before the law. On the other hand, that right is a core prerequisite for the enjoyment of a number of other human rights, ranging from civil and political rights (such as the right to vote, or the right to marry) to different economic and social rights that are essential for Roma inclusion in Ukraine (such as access to healthcare, education, social assistance or the right to adequate housing). Enjoyment of all these rights depends on a person’s birth registration and possession of identification documents. This is also one of the main reasons why access to personal documents must be a priority for the inclusion of Roma in Ukraine.

International legal framework applicable in the area of access to personal documents

Article 6 of the Universal Declaration of Human Rights guarantees that “everyone has the right to recognition everywhere as a person before the law”, and Article 15 prescribes that “everyone has the right to a nationality”.¹⁹ From these provisions, which emerged immediately after World War II, the human rights community has developed a number of legal instruments that guarantee the right to legal personality as one of the central preconditions for the enjoyment of the whole catalogue of human rights. This right is often described as “the right to have rights” and is widely recognized in international and regional systems of human rights protection.

Article 16 of the International Covenant on Civil and Political Rights prescribes that “everyone shall have the right to be recognized as a person before the law”,²⁰ while Article 7 of the

¹⁸ As an outcome of the roundtable (30–31 May 2017, Odesa) the participants developed the “Odesa Declaration, Recommendations to overcome obstacles to civil registration and identity documents by Roma in Ukraine”, see ODIHR press release of 31 May 2017 at: <<http://www.osce.org/odihr/320592>>.

¹⁹ UN General Assembly, Resolution No. 217 A, Universal Declaration of Human Rights, 10 December 1948.

²⁰ UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

Convention on the Rights of the Child prescribes that “every child shall be registered immediately after birth and shall have the right from birth to a name [and] the right to acquire a nationality [...]”²¹ Ukraine has ratified both of those treaties.²² The Convention on the Elimination of All Forms of Discrimination against Women, in Article 9, grants “women equal rights with men to acquire, change or retain their nationality” and prescribes that “State Parties shall grant women equal rights with men with respect to the nationality of their children”.²³ For the issue of access to personal documents it is also important to note that Ukraine has acceded to both statelessness conventions – the Convention relating to the Status of Stateless Persons²⁴ and the Convention on the Reduction of Statelessness.²⁵

Recommendations from the UN treaty bodies

In the past few years a number of United Nations (UN) treaty bodies have recommended that the Ukrainian authorities ensure everyone is recognized as a person before the law.

In 2011, the Committee on the Rights of the Child urged the Ukrainian authorities to “adopt positive incentives so as to ensure that free and compulsory birth registration is effectively made available to all children, regardless of ethnicity and social background”.²⁶ The Committee also called upon the Ukrainian authorities “to intensify [...] awareness-raising campaigns to encourage and ensure the registration of all Roma children”.²⁷

In 2013, during its latest review of Ukraine, the Human Rights Committee welcomed the adoption of the Strategy but remained concerned because of the difficulties Roma still experience in accessing their personal documents. The Committee recommended the state to “remove any obstacles, including administrative, to ensure that all Roma are provided with personal documents, including birth certificates, which are necessary for them to have access to their basic rights”.²⁸

²¹ UN General Assembly, Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3.

²² Ukraine ratified the International Covenant on Civil and Political Rights in 1973 and the Convention on the Rights of the Child in 1991. Data about the status of ratification from: “View the ratification status by the country or by the treaty”, Office of the United Nations High Commissioner on Human Rights, <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx>.

²³ UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13. Ukraine ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1981.

²⁴ UN General Assembly, Convention Relating to the Status of Stateless Persons, 28 September 1954, United Nations, Treaty Series, vol. 360, p. 117, accession on 25 March 2013.

²⁵ UN General Assembly, Convention on the Reduction of Statelessness, 30 August 1961, United Nations, Treaty Series, vol. 989, p. 175, accession on 25 March 2013.

²⁶ Consideration of reports submitted by States Parties under article 44 of the Convention, Concluding observations: Ukraine, UN Committee on the Rights of the Child, 21 April 2011, para. 36, UN Doc. No. CRC/C/UKR/CO/3-4.

²⁷ *Ibid.*

²⁸ Concluding observations on the seventh periodic report of Ukraine, UN Human Rights Committee, 22 August 2013, para. 12, UN Doc. No. CCPR/C/UKR/CO/7.

In 2014 the Committee on Economic, Social and Cultural Rights reiterated the importance of access to personal documents as the “right to have rights” and linked this right to implementation of the adopted Strategy and the subsequent NAP. In their concluding observations, the Committee recommended the Ukrainian authorities “simplify procedures and remove existing obstacles to ensure that all Roma are provided with personal documents, including birth certificates, which are necessary for the enjoyment of their rights under the Covenant”.²⁹

Finally, in 2016, the Committee on the Elimination of Racial Discrimination expressed its concern over the persistence of discrimination, stereotypes and prejudices against Roma, and at reports that Roma are unable to flee the crisis zones and to benefit from assistance, in some cases due to their lack of personal documents. Furthermore, the Committee recommended the state to strengthen its efforts “to firmly combat racial discrimination and prejudices against Roma and address the challenges that Roma continue to face in many areas, [...]” and “to provide all Roma with identity documents free of charge”.³⁰

Ukrainian legal framework applicable in the area of access to personal documents

Laws and regulations governing civil registration

In Ukraine there is an abundance of regulations prescribing the rules and procedures for obtaining personal documents. Civil registration, or the “registration of civil status acts”, involves the mandatory registration of all aspects of civil status for individuals, from birth, marriage, dissolution of marriage and death to the change of a person’s name. Article 49 of the Civil Code of Ukraine³¹ prescribes the legal foundations for the registration of civil status acts. Under the Civil Code of Ukraine, these acts are considered “events and acts inseparably connected with the individual that start, modify, amend or suspend capacity to be an actor with civil rights and obligations”.³²

The issuance of civil registration documents is regulated by the Law of Ukraine on State Registration of Civil Status Acts³³ which prescribes the general legal framework for civil registration. According to Article 13 (3) of this Law, civil registration of birth is to be performed no later than one month after birth. The basis for civil registration of a birth is a document certifying the fact of the birth of a child issued by the healthcare institution where the birth happened (hereinafter: Medical certificate of birth, form 103/o).³⁴ If a child was not born in a

²⁹ Concluding observations on the sixth periodic report of Ukraine, UN Committee on Economic, Social and Cultural Rights, 13 June 2014, para. 8, UN Doc. No. E/C.12/UKR/CO/6.

³⁰ *Op. cit.*, note 14, paras. 19–22.

³¹ Verkhovna Rada of Ukraine, Civil Code of Ukraine, Law No. 435-IV, 16 January 2003, <<http://zakon2.rada.gov.ua/laws/show/435-15/print1475564456082547>>.

³² *Ibid.*

³³ Verkhovna Rada of Ukraine, Law of Ukraine on State Registration of Civil Status Acts, Law No. 2398-VI, 1 July 2010, <<http://zakon2.rada.gov.ua/laws/show/2398-17/print1475564456082547>>.

³⁴ Form 103/o (“Medical certificate of birth”) is the document issued at the maternity ward immediately after the birth in accordance with the Instruction on completing and issuing a medical certificate of birth (form 103/o) approved by the Ministry of Health of Ukraine, Decree No. 545, 8 August 2006, <<http://zakon3.rada.gov.ua/laws/show/ru/z1150-06>>.

healthcare institution (per Article 13 (4) of the Law), the fact of birth is certified by a healthcare institution after examination of a mother and her newborn. If a healthcare institution has not performed such an examination, the birth can still be confirmed by a medical consultative commission, to which a mother can apply no later than one week after the birth of her child. The medical consultative commission is able to confirm the fact of the birth by issuing a conclusion. This conclusion is used by the healthcare authority to issue a medical certificate of healthcare supervision for the child (form 103-1/o³⁵). In this case, both documents (a conclusion and a medical certificate of healthcare supervision for the child) are necessary for registration of the fact of the birth with the registration office. Finally, in cases when there is no medical certificate whatsoever (not one issued by the regular procedure when the delivery is performed in hospital, not one issued after a medical examination, and no conclusion issued by a consultative medical commission), then the basis for the birth registration must be a court judgment establishing the fact of birth.

The legislation differentiates the procedures for registration of the fact of birth based on the child's age. One procedure involves registration of children younger than one year old. Another procedure involves cases of registration for children from one to 16 years old, and yet a third procedure is for children older than 16 years and for adults.

When children are less than one year old, the Ukrainian legal system prescribes a very simple birth registration procedure. In such cases, in order to register their children, parents need to initiate the procedure before a state office for the registration of civil status acts, to present their own identification documents, and to present a medical certificate of birth (form 103/o), which is issued by a medical institution. If the parents are not able to initiate the abovementioned procedure, a third party can also do so.

In cases when children who were born in healthcare institutions are between one and 16 years old at the time of birth registration, two additional documents are necessary. In such cases, the registration office should be provided with four documents total: a parent's identification document (internal passport), form 103/o certifying the fact of birth, a medical certificate of healthcare supervision for the child (form 103-1/o), and the child's residence registration.

Finally, in cases when children are older than 16, or when an adult is registering, they need to initiate a court procedure to determine the fact of their birth. In these cases, the evidence is either form 103/o or form 103-1/o. If neither document can be presented to the court, then oral statements made by witnesses may be taken into account by the presiding judge. It should be noted that when deciding these cases, the presiding judges are not bound by any formal list defining the evidence of the fact of birth.

³⁵ Form 103-1/o ("Medical certificate of healthcare supervision for a child") issued in accordance with Instruction on completing and issuing a medical certificate of healthcare supervision for a child (form 103-1/o) approved by the Ministry of Health of Ukraine, Decree No. 545, 8 August 2006, <<http://zakon2.rada.gov.ua/laws/show/z1151-06>>.

Laws and regulations governing the issuance of personal documents

Another body of legislation governing access to personal documents is related to the procedure for issuing the passport of a citizen of Ukraine. The Law of Ukraine on the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or His/Her Special Status³⁶ prescribes the procedure for issuing passports for citizens of Ukraine. According to this legislation, every person from the age of 14 is obliged to obtain an internal passport. In order to obtain the passport, applicants need to demonstrate that they meet the criteria for obtaining Ukrainian citizenship³⁷ and to be identified by the acting authority.

This means that, in accordance with the legislation and the Rules of Procedure (RoP)³⁸, in order to receive an internal passport, the applicant in the procedure before the SMS needs to submit the following:

- the original birth certificate, either issued by the Ukrainian authorities or by the authorities of some other state, and
- original documents certifying the citizenship and identity of one or both parent(s).

In cases where the applicant cannot provide the SMS with all the necessary documents, an SMS official informs the applicant that the documents have not been accepted and the reasons for such refusal. In situations where an applicant does submit all the required documents, problems can arise with the linking of the personal documents (the claimed identity) to the actual applicant appearing before the administrative officer. The usual practice is to express official rejection verbally, according to the former applicants who were interviewed and to representatives of the SMS. At the applicant's request, the refusal must be provided in writing and for an official to refuse to do so would be illegal.³⁹

Reportedly, in situations when a person older than 18 applies for a first internal passport and cannot provide photographic identification,⁴⁰ different practices exist. In these cases, the SMS conducts a procedure for identification of a person⁴¹ consisting of a number of inquiries being submitted to all the relevant state authorities that could have data in their registries about the applicant – the police, the Ministry of Justice, tax authorities, educational institutions, the military, detention centres and prisons, etc. In exceptional cases, when the applicant cannot

³⁶ Verkhovna Rada of Ukraine, Law of Ukraine on the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or His/Her Special Status, Law No. 5492-VI, 20 November 2012, <<http://zakon3.rada.gov.ua/laws/show/5492-17>>.

³⁷ Verkhovna Rada of Ukraine, Law of Ukraine on Citizenship of Ukraine, Law No. 2235-III, 18 January 2001, <<http://zakon2.rada.gov.ua/laws/show/2235-14>>.

³⁸ Government of Ukraine, Rules of procedure for processing, issuing, exchanging, delivering, seizing, returning to the State, recognizing as inactive or annulling the passport of a citizen of Ukraine (hereinafter: RoP), Regulation No. 302, 25 March 2015 (in the edition of the Regulation of the GOU No. 745, 26 October 2016), <<http://zakon3.rada.gov.ua/laws/show/302-2015-%D0%BF/print1489007495067300>>.

³⁹ *Ibid.*, Article 24.

⁴⁰ For example, in April 2017 in Transcarpathia a certificate with a picture issued by a prison about release of a person after sentence was accepted as a valid document for the identification of a person. The list of documents is not exhaustive but they must be valid and reliable to identify the applicant for passport.

⁴¹ RoP, *op. cit.*, note 38, Article 43.

provide the authorities with photographic identification, or when there is no record of the applicant in state registries, the SMS interviews the applicant's relatives, neighbours, or other persons listed in the written explanation attached to the application. The identification procedure cannot exceed two months. If the authorities cannot identify the applicant, the SMS informs the applicant of its decision to reject the application for issuing the internal passport.⁴² The initial overall procedure for issuing the passport is free of charge.

Laws and regulations governing registration of residence

The main piece of legislation governing the registration of residence is the Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine⁴³ which prescribes that the executive bodies of local councils are in charge of registering an individual's place of residence (Art. 3). Registration of residence plays a very significant role in the process of determining the administrative body in charge of issuing personal documents for citizens residing in a particular territorial jurisdiction.

Article 379 of the Civil Code of Ukraine prescribes that "housing" is defined as "an individual house, apartment, or other dwelling designed for and suitable for permanent or temporary residence". The informal arrangements in which Roma often live are not regarded as meeting the definition of "housing". This prevents a number of Roma living in *tabors*⁴⁴ or other informal housing from registering their residence at the address where they actually live.

Regulation No. 302 of the Cabinet of Ministers of Ukraine On the approval of the template form, technical description and Rules of procedure for processing, issuing, exchanging, forwarding, withdrawing, returning to the state, invalidating and destroying the passport of a citizen of Ukraine (RoP)⁴⁵ prescribes that an application for issuing an internal passport can be made either in one's registered place of residence or in one's *de facto* place of residence. Moreover, homeless centres are established to provide registration places for those without officially recognized places of residence.

Applicants therefore have three address options available when applying for an internal passport: a) the place of their officially registered residence, b) the place of their *de facto* residence, and c) registration of their place of residence at a local homeless centre.

⁴² RoP, *op. cit.*, note 38, Article 83.

⁴³ Verkhovna Rada of Ukraine, Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine, Law No. 1382-IV, 11 December 2003, ⁴⁴ *Op. cit.*, note 1. See also pp. 25–26 of this report.

⁴⁴ *Op. cit.*, note 1. See also pp. 25–26 of this report.

⁴⁵ *Op. cit.*, note 38.

Ukrainian national strategies related to Roma access to personal documents

Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020 and the National Plan of Action for its implementation

It is worth noting that not all Roma in Ukraine experience problems in accessing personal documents. As a rule, this problem is mostly linked to impoverished Roma who are socially excluded, often unemployed, and with little or no formal education. With the adoption of the Strategy for the Protection and Integration of the Roma National Minority into Ukrainian Society by 2020 and the subsequent Plan of Action on Implementation of the Strategy for Protection and Integration into Ukrainian Society of the Roma National Minority for the Period until 2020 (NAP), the Ukrainian authorities recognized the challenges Roma face in accessing personal documents. Under Section 4 of the Strategy, the Government envisaged that one of the main tasks of the Strategy is to provide assistance with obtaining identity documents, citizenship and certificates of state registration of civil status acts for Roma who legally stay in Ukraine.⁴⁶

Notwithstanding the fact that the adoption of these documents is a clear step forward for Roma inclusion in Ukraine, there have been also a number of concerns about the lack of a human rights perspective when it comes to the implementation of these documents.⁴⁷

One of the main concerns is the lack of participation of Roma representatives in the process of the adoption of the Strategy, the lack of an earmarked budget for its implementation, and the absence of efficient mechanisms for the implementation and co-ordination of the Strategy and the NAP.⁴⁸ Some of these challenges have already been noted by the UN treaty bodies and ODIHR, and there has been no progress in this regard. For example, in 2013 the Human Rights Committee recommended the Ukrainian authorities “allocate sufficient resources for the effective implementation of the Strategy on protection and integration of Roma”,⁴⁹ while on the other hand ODIHR Assessment Report clearly suggested that amendments to these documents are necessary for a more effective Government approach to Roma inclusion.⁵⁰ Moreover, ODIHR’s summary report of the 2015 expert seminar on access to identification and civil registration documents by Roma in Ukraine noted that “no concrete steps have been undertaken

⁴⁶ The Strategy, *op. cit.*, note 13.

⁴⁷ According to the Assessment Report, the Strategy and the NAP fail to reflect OSCE commitments with regard to Roma and Sinti, as well as other relevant international human rights standards. In particular, the Strategy and the NAP lack a clear anti-discrimination perspective and do not integrate gender equality as a cross-cutting issue. As such, the Strategy fails to recognize the existing situation of discrimination against Roma in Ukraine, including the multiple forms of discrimination experienced by them in all areas of life, and does not include anti-discrimination as an integral part of State measures for Roma inclusion in Ukraine. Assessment Report, *op. cit.*, note 3, p. 14.

⁴⁸ Assessment Report, *op. cit.*, note 3, pp. 14–15. These problems were acknowledged in the Recommendations of the Ukrainian Parliament Committee on human rights issues, national minorities and inter-ethnic relation adopted after the Committee’s hearings “State of play in the implementation of National Strategy of the Protection and Integration of Roma national minority into the Ukrainian Society by 2020” (5 October 2016), <<http://kompravlud.rada.gov.ua/uploads/documents/32594.pdf>>.

⁴⁹ Concluding observations on the seventh periodic report of Ukraine, UN Human Rights Committee, 22 August 2013, para. 12, UN Doc. No. CCPR/C/UKR/CO/7.

⁵⁰ Assessment Report, *op. cit.*, note 3, pp. 14, 25.

yet by the authorities to map the situation of Roma as regards their access to civil registration documents, nor have concrete steps been taken to overcome the existing challenges in this regard”.⁵¹

National Human Rights Strategy of Ukraine

The National Human Rights Strategy of Ukraine⁵² does not explicitly address the issue of Roma access to personal documents. Rather, this strategy deals with the general human rights framework in Ukraine, with the aim of ensuring the priority of human rights and freedoms in state policy. However, the action plan⁵³ for the implementation of this strategy explicitly mentions awareness-raising to ensure birth registration of children, especially Roma children. Additionally, the action plan reaffirms the importance of Roma integration and of measures for the collection of clear, precise population statistics about Roma in Ukraine.

The National Human Rights Strategy prescribes key areas of concern, strategic goals, and expected outcomes. Even though the document does not explicitly prescribe specific measures and/or activities aimed at improving the position of Roma in regard to their access to personal documents, its importance for the improvement of the existing legal framework governing access to personal documents and related issues is beyond dispute. Also, the strategy prescribes expected outcomes in the area of the right to a fair trial, which is very important to the judicial response to the above-mentioned issues related to lack of birth registration or lack of personal documents. In the section related to the right to a fair trial, the fact that the legal aid system is not inclusive for all categories of population is noted as a key challenge. One expected outcome prescribed in that regard is the provision of access to justice for everyone, with extended possibilities for providing primary and secondary free legal aid⁵⁴ in civil and administrative cases and greater accessibility of free legal aid.⁵⁵

III ACCESS TO PERSONAL DOCUMENTS FOR ROMA – OBSERVED CHALLENGES

Data on numbers of Roma without personal documents

The **lack of dependable data** on the number of Roma in Ukraine⁵⁶ is reflected also in the area of Roma access to personal documents. The scope of the problem that Roma experience in accessing their personal documents (birth certificates, internal passports or residence permits) is

⁵¹ 2015 Expert Seminar Report, *op. cit.*, note 2.

⁵² President of Ukraine, “National Human Rights Strategy of Ukraine”, Decree No. 501/2015, 25 August 2015, <<http://zakon2.rada.gov.ua/laws/show/501/2015>>.

⁵³ Cabinet of Ministers of Ukraine, “Action Plan on Implementation of the National Human Rights Strategy in the Period up to 2020”, Decree No. 1393-p, 23 November 2015, <<http://www.kmu.gov.ua/control/uk/cardnpd?docid=248740679>>.

⁵⁴ Primary legal aid includes oral or written consultations provided by the LAC. Secondary legal aid is provided in more complex cases. It can include legal counselling, representation of applicants before courts and administrative bodies, and the drafting of legal documents.

⁵⁵ National Human Rights Strategy, *op. cit.*, note 52, pp. 5–6.

⁵⁶ See p. 15 of this report.

still undetermined. According to the information collected during the interviews and discussions with different stakeholders, estimates of the number of Roma without personal documents vary from 2 per cent to 30 per cent. The lack of data on the number of Roma without personal documents also affects the state's plans and the implementation of existing public policies in this area. Clearly, without dependable data, the Government is not able to assess accurately the extent of this phenomenon and therefore not able to mobilize properly the kind of resources necessary, at national, regional and local levels, to address and solve the problem.

Local Roma residents, Roma community leaders and Roma mediators claimed there has been no assessment of the scope of this problem and that the state authorities count on local NGOs and international organizations' assistance with it. The 2015 Report on the Implementation of State Policy on Roma, prepared by the Ukrainian Ombudsperson's Office, the International Renaissance Foundation and the European Roma Rights Centre (ERRC) found that 83 per cent of Roma had a passport or other identity document and the rest did not.⁵⁷ The state authorities interviewed during the field visits were not able to provide official, reliable data on the number of Roma experiencing problems in accessing personal documents; the number of Roma that applied late for birth registration, internal passports, or registration of residence; the number of Roma at risk of statelessness; or the number of Roma rejected for such documents.⁵⁸ It could be reasonably claimed that the practice of oral rejections and the lack of statistics in these cases are some of the reasons why the state authorities were not able to provide such data.

The lack of data on this issue serves as a clear reminder that the Ukrainian authorities need to invest more effort into understanding the scope of the problem and to tackle it in a more coherent, systemic way. It is also very difficult for the Ukrainian authorities to assess whether the adopted Strategy has yielded positive results and decreased the number of Roma without personal documents. It is evident that a system for the collection of disaggregated data and a set of clear benchmarks and goals is needed in that regard. However, at least in the Transcarpathia and Odesa regions, such disaggregated data on the number of Roma provided with birth registration (without comparative data, e.g. on the total number of Roma applying for birth registration) or provided with personal documents does exist, which shows there has been some progress compared to previous years.⁵⁹

Inconsistencies in administrative practice in cases related to access to personal documents

Administrative practice with respect to personal documents **is not coherent** and this lack of legal certainty deters Roma from applying for personal documents. Together with the poor

⁵⁷ Joint Submission to the Human Rights Council at the 28th Session of the Universal Periodic Review (Third Cycle, 6–17 November 2017), Desyate Kvitnya, R2P, Institute on Statelessness and Inclusion, European Network on Statelessness, European Roma Rights Centre, Ukraine, 30 March 2017, p. 10, <<https://www.statelessness.eu/resources/joint-submission-human-rights-council-28th-session-universal-periodic-review-ukraine>>.

⁵⁸ Interviews conducted on 20 March 2017, 21 March 2017, 28 March 2017 and 30 March 2017.

⁵⁹ Information received from the District State Registration in Odesa demonstrated a huge increase in numbers of Roma provided with birth registration. For example, in 2015 there were 78 Roma provided with birth registration, in 2016 there were 221, and in the first three months of 2017 there were already 96 Roma registered in the birth registry books.

implementation of the existing legislation, this could also be impeding access to personal documents among Roma. For example, even though the Law of Ukraine on State Support of Families with Children⁶⁰ provides individuals without registered residency the opportunity to register their residence at the address of a local homeless centre, in the Transcarpathia region this practice is still not in place. In some cases in Transcarpathia, Roma women with children are reluctant to register their residence at homeless people's centres, as the administration of one homeless centre allegedly informs them that children cannot stay with a homeless mother and must instead be sent to special education institutions. It has been reported that this deters Roma women with children from registering any place of residence and consequently prevents them from applying for passports for either themselves or their children. Furthermore, it is observed that Roma in the Transcarpathia region cannot register their residences because they live in informal settlements (*tabors*) or other forms of informal housing. Most Roma visited in this region reported that their biggest challenge is to register their residence.⁶¹

Another concerning practice reported by civil society in the Odesa region is that in some cases the SMS applies internal procedural rules, the content of which is not available to the general public.⁶² This practice is clearly not in accordance with well-established standards of interpreting the European Convention on Human Rights and Fundamental Freedoms with respect to the so-called standard of "lawfulness" of national law. This standard requires that all national laws "whether written or unwritten, be sufficiently precise to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail".⁶³

Moreover, in cases where local authorities find a way to ease administrative procedures and to be more flexible in cases when Roma without personal documents apply for internal passports, those practices are not yet being broadly replicated in other regions or districts. For example, in Beregovo in the Transcarpathia region, local Roma from the *tabor* are officially recognised as inhabitants of a "separate settlement", which provides them with the opportunity to register their residence and to apply for social assistance and access other services.

⁶⁰ Verkhovna Rada of Ukraine, Law of Ukraine on State Support of Families with Children, Law No. 2811-XII, 21 November 1992, <<http://zakon3.rada.gov.ua/laws/show/2811-12/print1489007495067300>>.

⁶¹ For example, in Telmana Street in Uzhgorod, a Roma *tabor* with approximately 800 inhabitants, local Roma mediators stated that at least 60 per cent of Roma from this settlement experience problems with the registration of their residence. Interview with local Roma mediator on 18 March 2017.

⁶² Information from the meeting with the NGO 10th of April, Odesa, 28 March 2017.

⁶³ See Case of Baranowski v Poland, Application no 28358/95, Judgment of 28 March 2000, para. 52. See also Case of Steel and Others v the United Kingdom, Judgment of 23 September 1998, Reports 1998-VII, p. 2735, para. 54, Case of S.W. v the United Kingdom Judgment of 22 November 1995, Series A no. 335-B, pp. 41–42, paras. 35–36, and, mutatis mutandis, the Case of the Sunday Times v the United Kingdom (no. 1), Judgment of 26 April 1979, Series A no. 30, p. 31, para. 49, and the Case of Halford v the United Kingdom, Judgment of 25 June 1997, Reports 1997-III, p. 1017, para. 49. Ukraine is party to the Convention as of 11 September 1997.

Consequences of inflexible administrative practice

Take, for example, the case of a Roma woman whom we will call “R.”. She was born in Ukraine in 1987 and her mother died in 2005, but the fact of her mother’s death was not registered with the authorities. R.’s father is a Ukrainian citizen with an internal passport of long standing. When R. applied for her own internal passport, the local authorities asked her to provide them with her mother’s internal passport. Because she was not able to provide the authorities with such a document, her application was rejected orally. R. is the mother of five children, two of whom are registered under her aunt-in-law’s name because she delivered them when she herself was a minor and was afraid of the consequences of delivering them without having her own internal passport or any other personal document. As a result, she cannot prove she is the mother of two of her children and cannot exercise many of her social and economic rights, such as receiving social assistance.

Regional discrepancies were also identified in cases when an applicant fails to apply for a passport in due time. While in Kharkiv it would be sufficient to provide the authorities with a written explanation of the delay, one that an illiterate Roma person would then “mark” as their own explanation with the SMS officer as a witness, in such cases in the Transcarpathia region the relevant authorities only accept explanations written by a licensed lawyer on behalf of Roma who are unable to author or sign their own explanations. Although there is no provision in the legislation for requesting a licensed lawyer in these situations, such practices in Transcarpathia prevent illiterate Roma from applying for internal passports, as it overburdens them with the need to involve a licensed lawyer. A similar practice is observed in cases of illiterate witnesses regarding access to personal documents before the SMS in the Transcarpathia region. It seems that the practice of the SMS in the Kharkiv region provides more opportunities for illiterate Roma when applying for passports and this practice should be replicated in other regions. There are more examples confirming that administrative practice is not unified nationwide. For instance, in the Transcarpathia region birth registration can be initiated by a third party, while in the Dnepropetrovsk region such applications are rejected.⁶⁴

Complicated administrative procedures

In addition to a lack of coherent application of administrative procedures, there is also the problem of often very **complicated administrative procedures** for obtaining internal passports, registering the birth of a child, obtaining the duplicate of the birth certificate after one year, or in some cases, even registering residence.

Simplification of the procedures for obtaining personal documents has been singled out by this study as the main tool for improving Roma access to personal documents.⁶⁵ From the interviews conducted with the NGOs providing legal aid for Roma and interviews with Roma activists, it is

⁶⁴ This information was received from Volodymyr Navrotsky, an attorney-at-law providing *pro bono* legal aid to Roma without personal documents and monitor of the European Roma Rights Centre.

⁶⁵ Seven out of eight representatives of NGOs interviewed saw this as a priority.

evident that these respondents perceive the procedures for birth registration (including obtaining the duplicate of a birth certificate) and the issuing of internal passports as very complicated for most Roma without personal documents. According to the information collected from the regional representatives of the SMS and the Department of State Registration, the application procedure is the same for everybody and need not be made more flexible for those who are in a vulnerable situation due to illiteracy, lack of legal aid or poverty. Representatives of the relevant state authorities said that in order to be provided with personal documents, all Roma “just” need to meet the prescribed criteria. This difference in perception demonstrates that there is a lack of understanding among state authorities of the problems Roma face in accessing their personal documents in Ukraine.

Complex administrative procedures are mostly visible in cases where children are not registered in birth registry books. Under the existing law, identification of a child’s parents is a crucial aspect of the procedure for birth registration. The parents who want to register the fact of birth of their child need to possess internal passports. This reportedly prevents some Roma women from registering their children, as they cannot provide their own internal passports. According to information from local lawyers providing legal aid to Roma without personal documents, registration offices have refused to accept applications initiated by mothers without personal documents, alleging that in such cases the record would lack information about the mother’s citizenship⁶⁶ and would consequently leave their children without the citizenship that should be acquired at birth.⁶⁷

In some cases of late birth registration, registry offices refuse to register the fact of the birth even in a situation when an applicant is able to provide the office with a duplicate of the medical certificate issued by the hospital. In these cases applicants are told the courts must establish the fact of the birth. Court procedures are costly,⁶⁸ particularly for the most impoverished Roma. Also, in practice, court proceedings take more time than the administrative procedure for late birth registration does.

Another challenge observed is related to the procedure for issuing a duplicate birth certificate. If already-registered applicants older than 18 have no personal documents and no contact with their parents, they cannot obtain duplicate birth certificates, because without personal documents the registry office cannot identify applicants and provide them with the document necessary for further administrative procedures. This practice traps applicants in a vicious cycle and leaves them without remedy to acquire their personal documents: Without proof of birth registration,

⁶⁶ Law on Citizenship of Ukraine, *op. cit.*, note 37. According to Article 6 of this Law, the citizenship of Ukraine is acquired: (1) by birth; (2) by territorial origin; (3) as a result of [legal procedures] granting citizenship; (4) as result of renewal of citizenship; (5) as a result of adoption; (6) as result of guardianship or custody, in the case of a minor; (7) as a result of guardianship/custody appointed for a person recognised as incapable by a court of law; (8) due to a minor’s one or both parents being citizens of Ukraine; (9) as a result of filiation; (10) due to other reasons envisaged by international treaties to which Ukraine is a party.

⁶⁷ “Birth Registration”, European Network on Statelessness, <<https://www.statelessness.eu/resources/birth-registration-and-statelessness>>.

⁶⁸ Please see subsection “Financial aspects of administrative and court procedures for obtaining personal documents” of this report.

applicants cannot apply for internal passports, and without internal passports, applicants cannot obtain the duplicate of their birth registration to apply for internal passports.

The fact that registry offices refuse to issue personal documents such as duplicate birth certificates in cases where an applicant cannot present an internal passport impedes access to personal documents and leaves even Roma whose births have been registered without such documents. It is clear that the authorities in such cases are implementing the rules and regulations strictly and that such implementation is without the necessary margin of appreciation for the circumstances of the applicants.

A consequence of lack of personal documents among Roma women

In a number of cases, particularly in the Transcarpathia region,⁶⁹ the practice of Roma women delivering children and using someone else's identification was observed. This happens predominantly in cases when children are born to mothers who are still minors (13–17 years old). In these cases, Roma women are afraid of the consequences of their age being discovered by the authorities and decide not to use their own personal documents at the hospital if they have them. Certainly this practice brings about a whole new set of problems, from the issue of the right to legal custody of a child to what are often very complicated, costly court procedures for the determination of motherhood. Also, information has been received that Roma women with no personal documents use someone else's passport (and consequently someone else's identity) because they have been told that the hospital cannot release a newborn into the custody of a mother who is unable to prove her identity.

The procedure to establish identity, conducted in cases where applicants cannot prove their identity by means of documents when applying to the SMS for an internal passport, illustrates these very complex administrative procedures. In accordance with the RoP,⁷⁰ when the applicant cannot be identified on the basis of information in the registry, the identification procedure is to be carried out before the SMS. In these cases, the identification is performed on the basis of data available from the state and its unified registries, from other information sources at the disposal of the State, or from companies, institutions or organizations. In such cases, the SMS submits inquiries to all the relevant public authorities and checks and compares all the relevant information available about the applicant's identity. In these cases, applicants are also obliged to provide information from three witnesses who are able to vouch for their identity. In the cases presented to the authors during the course of this study, one such act identifying a person involved authentication by means of 30 different documents,⁷¹ while in another case the number was 26 documents.⁷² The procedure could last up to two months.

⁶⁹ According to information from the Odesa and the Kharkiv regions, this situation is very rare in Roma communities there.

⁷⁰ *Op. cit.*, note 38.

⁷¹ As presented during the meeting with the competent authorities in Kharkiv region, 30 March 2017.

⁷² As presented during the meeting with the competent authorities in Odesa region, 28 March 2017.

In some rare cases the authorities recommend applicants apply to the court to establish their identity.⁷³ Applicants are referred to undergo a court procedure when the SMS is unable to establish the identity of an applicant for an internal passport. This could happen in cases where there are no records about an applicant in the relevant registries or at the disposal of any legal entity on the territory of Ukraine and where there are no witnesses able to testify to the applicant's identity. This deters applicants from continuing with the application necessary to access their personal documents.

Some Roma who came to Ukraine before 1991 may be unable to provide the authorities with proof of their identity or their residence registration before independence in 1991. They are *de facto* stateless persons⁷⁴ in Ukraine and not recognized before the law as citizens. In order to be provided with citizenship, they need to initiate what is frequently a very complicated procedure whereby they need to prove they had legal residence in Ukraine before 24 August 1991.⁷⁵ In a number of cases it has been reported that in addition to the fines imposed on such applicants (see below), this situation presents a major obstacle to registering children at birth and leads to the intergenerational problem of Roma lacking identification.

Financial aspects of administrative and court procedures for obtaining personal documents

Given the deep poverty in which many Roma live, it is also very important to note the **financial aspects of administrative procedures** for access to internal passports or birth registration. While the State's policy not to enact fees for a first issuance of an internal passport has improved access to personal documents for Roma, there are a number of other costs that should be borne in mind. First there is the issue of fines imposed on persons without identification, persons registering their children more than one month after their birth, or *de facto* stateless persons with passports from the Soviet Union whose status in Ukraine is not legally regulated.

Under Article 203 of the Code of Ukraine on Administrative Offences, a person without personal identification or with invalid or outdated identification could be fined the equivalent of between 30 and 50 months' worth of the tax-exempt minimum wage.⁷⁶ Also, in cases when parents fail to register their children's birth by the one-month deadline, there is a fine imposed on them after they initiate the procedure for late birth registration (Art. 212-1).⁷⁷ In a number of discussions and interviews with Roma in Ukraine they stated that this is one of the obstacles precluding them from accessing personal identification.

The problem of relatively high court fees hampering Roma access to the courts was also raised by NGOs providing legal aid for Roma without personal documents, such as the organizations

⁷³ As reported during the meetings with the relevant NGOs in Uzhgorod, in Odesa and especially with IDPs in Merefa (Kharkiv region) held on 17 March 2017, 28 March 2017 and 31 March 2017.

⁷⁴ Ukraine does not have a statelessness determination procedure in place, and therefore one of the main recommendations from a number of civil society organizations and the UNHCR is the introduction of a statelessness determination procedure.

⁷⁵ According to interviews with the Roma community in the Odesa region on 28 March 2017.

⁷⁶ *Op. cit.*, note 57, p. 8. Non-taxable income (NTI) is 17 UAH. 30 NTI = 510 UAH (approximately 17 EUR) and 50 NTI is approximately 28 EUR.

⁷⁷ *Ibid.*

Desyate Kvitnya (10th of April), Stanitsya Kharkiv (Station Kharkiv) and Right to Protection (R2P).⁷⁸ The Law on Court Fees⁷⁹ does not provide those without personal documents or stateless persons with the right to be exempted from paying the fee. Additionally, the procedures for determination of the fact of birth could include a DNA analysis, which could cost up to 5,000 UAH (approximately 160 EUR).⁸⁰ In some cases the UNHCR and other stakeholders provide funding to cover this kind of cost, but the sustainability of this approach is questionable. Without amendments to the existing legal framework, those without documents cannot be exempted from paying court fees and other costs and must count solely on assistance provided through projects supported by international governmental or non-governmental organizations.

Finally, in some cases, NGOs that are experienced in providing legal aid to Roma who lack personal identification raised concerns about transportation and other costs for initiating proceedings for obtaining internal passports or birth registration. For example, in the Odesa region, there are only two locations where Roma without registered residences (*propiska*) are allowed to submit applications to register their residence at the address of a homeless centre – the City of Odesa, and the Odesa regional homeless centre.⁸¹ For some applicants, particularly those living in isolated villages and *tabors*, this is clearly too far to travel to register in person and, combined with Roma distrust and fear of the authorities, the burden of such travel prevents them from exercising their human rights.

Lack of awareness-raising and outreach initiatives

The vast majority of officials and representatives of public authorities interviewed stated that a lack of education and high illiteracy rates among Roma are some of the key aspects that prevent Roma from exercising their right to access personal documents. While this may be true, it is also very important to note that almost none of the authorities stated that they had conducted awareness-raising or information campaigns for Roma without personal documents in which they comprehensibly explain the importance of personal documents and the procedures for their issuance. Existing good practices in Ukraine and other OSCE participating States prove the need and positive impact of awareness-raising activities about the importance of birth registration, obtaining identification documents, procedures and available assistance in this process.

Widespread poverty, residence in the remote and often segregated settlements are additional factors contributing to the lack of personal documentation by Roma in Ukraine. Reaching out to such communities can be one of the effective tools employed by the authorities to ensure access to civil registration and identity documents. In Ukraine similar outreach activities are not officially conducted. State representatives indicate that financial and human resources constraints prevent them from engaging in this kind of work. It is also very important to note that in some

⁷⁸ Interviews conducted on 28 March 2017 and 31 March 2017.

⁷⁹ Verkhovna Rada of Ukraine, Law of Ukraine on Court Fees, Law No. 3674-VI, 8 July 2011, <<http://zakon3.rada.gov.ua/laws/show/3674-17/print1489007495067300>>.

⁸⁰ It remains unclear whether the applicant has to pay for this test. According to the information from the representatives of the Ministry of Justice, the DNA test is free of charge. However, the NGO Stanitsya Kharkiv stated that this test costs up to 5,000 UAH (approximately 160 EUR).

⁸¹ Interview conducted on 27 March 2017.

cases, representatives of the State authorities said one of the main problems in this area is the fact that “Roma are not willing to come to our office to get documents”.⁸²

IV ACCESS TO PERSONAL DOCUMENTS FOR INTERNALLY DISPLACED ROMA

According to the UNHCR, the estimated number of Roma IDPs in Ukraine is 9,000,⁸³ some of whom experience significant challenges accessing personal identification. Most of these challenges are related to forced displacements and their vulnerability is related to their life in crisis-affected areas before their displacement.

Obstacles to accessing documents among Roma IDPs

A., a Roma man, is from Donetsk, where he lived with his family before the crisis in and around Ukraine started in March 2014. Now he cannot be registered as an IDP because he does not have an internal passport – it was taken away from him by a police officer when he was arrested once, and was never returned. All his efforts to retrieve his confiscated internal passport have failed. In November 2016 A. applied for a new internal passport and was provided with a temporary certificate of identity as a citizen of Ukraine, issued by the SMS. After this document expired, A. is still without his internal passport and citizenship and has no opportunity to apply for state-provided assistance for IDPs. All the official information about A. (form 1 on the issuance of his first internal passport, information about his imprisonment, etc.) is still located on the territory of the Donetsk Region and cannot be obtained either by A. or by the SMS. Although A. has been directed to initiate a court procedure to establish his identity, he cannot afford legal representation, and the state-provided free legal aid office is asking for his proof of identity before providing him free legal services.

Lawyers assisting Roma who have no personal documents claim that the SMS continues to direct such applicants to initiate court procedures to establish their identities. By doing so, the SMS is avoiding exercising their own discretion in such cases and is shifting the burden elsewhere in the system.

According to the information collected during the course of this study, most of the problems that IDP Roma experience are related to their lack of personal identification and/or lack of proof of their previous residence in the Donetsk and Luhansk regions. That prevents them from enjoying basic economic and social rights and services such as social assistance and from enjoying the right to education, employment opportunities, and/or housing support as well as from accessing state-provided assistance for IDPs. A crucial challenge for Roma IDPs applying for formal IDP status is the lack of evidence of their registration in crisis-affected areas. In most situations, the excessive burden of proof required in these cases prevents Roma from obtaining the necessary documents.

⁸² Information from the meeting with the Special Monitoring Mission to Ukraine (SMM), 30 March 2017.

⁸³ Meeting with the UNHCR Office in Kharkiv, 31 March 2017.

Finally, children born in Eastern Ukraine and IDPs from the territory not under the control of the Ukrainian authorities are at risk of statelessness.⁸⁴ In this situation, birth registration may be initiated only in the territory under the control of the Ukrainian authorities. This means parents need to cross the contact line⁸⁵ in order to register their children, not always an easy task.

Even though the Government has introduced a simplified, one-day court procedure for establishing the fact of birth, it is applicable only for IDPs lacking personal identification due to the crisis in and around Ukraine. The Roma IDPs who were interviewed are either not informed about these developments or are reluctant to address the courts in these cases.⁸⁶

V ROMA WITHOUT DOCUMENTS – ACCESS TO OTHER HUMAN RIGHTS

Access to personal identification is a key prerequisite for the enjoyment of the full catalogue of human rights. Key problems related to Roma accessing personal documents include denial of the right to quality education, the right to adequate housing, healthcare and social assistance, and denial of access to employment opportunities. Additionally, the lack of personal documents impedes Roma freedom of movement in Ukraine.

According to the information gathered during the field visits, Roma children without documents (proof of birth registration) are reportedly precluded from enrolling in regular elementary schools in some regions. For example, in Beregovo, Transcarpathia region, Roma children without birth certificates are not allowed to enrol in regular schools and the only education they are provided is in the so-called “Roma schools” with predominantly Roma students.⁸⁷ In the city of Uzhgorod, Roma children without birth certificates are accepted into segregated Roma schools on the condition that they provide a birth certificate before graduating from the ninth grade. Bearing in mind the problem of the deep-rooted segregation and social exclusion of Roma in Ukraine and the often low level of formal education they attain, this situation prevents Roma from escaping the cycle of poverty. The issue of access to quality education for Roma without documents was also addressed in the last review session of the UN Committee on Economic, Social and Cultural Rights.⁸⁸ However, no or very limited progress has been made in that regard.⁸⁹

It has been reported that pregnant Roma women without personal documents cannot undergo regular medical check-ups, which affects their health. In certain cases, Roma women without personal documents decide not to deliver in state hospitals and maternity wards. Rather, they choose to deliver their children at home without the assistance of qualified medical personnel and with the support of other women from the community. Mothers who deliver at home tend not to register such births or to register them late. Additionally, as reported by NGOs working

⁸⁴ *Op. cit.*, note 57, p. 5.

⁸⁵ Contact line – the line of contact between opposing forces in a military conflict.

⁸⁶ Information from the meeting with the SMM, 31 March 2017.

⁸⁷ Interview in Beregovo, conducted on 20 March 2017.

⁸⁸ Concluding observations on the sixth periodic report of Ukraine, UN Committee on Economic and Social Rights, 2014, para. 17, p. 6, UN Doc. No. E/C.12/UKR/CO/6.

⁸⁹ Assessment Report, *op. cit.*, note 3, pp. 23–24.

with Roma women, in some regions Roma women have experienced problems accessing maternity hospitals because of their lack of personal documents.⁹⁰

Furthermore, as a result of the medical reform in 2017, in order to be provided with healthcare all citizens of Ukraine should conclude an agreement with their family doctor. It is feared that without internal passports, Roma are precluded from signing such agreements and therefore precluded from accessing health care.⁹¹ However, it remains to be seen how the reform will be carried out and the possible implications of the reform for Roma without personal documents will be.

This situation could be solved by introducing specific measures ensuring the enjoyment of the right to health for Roma and other persons without access to personal identification. By doing this, the government would tackle two key challenges: access to healthcare for the underprivileged, and the intergenerational problem of Roma lacking personal documents.

Access to housing benefits and enjoyment of the right to adequate housing are also hampered by the lack of personal documents. This is one of the key issues internally displaced Roma experience after their forced displacement from crisis-affected areas.

Finally, employment opportunities are not easily accessible for IDPs in general. Employers are reluctant to offer IDPs jobs⁹² and the employment situation for IDP Roma without personal documents is even worse. None of the Roma without personal documents who were interviewed during the course of this study was formally employed. All said they were working in the informal sector in low-paid and often physically very demanding jobs.

VI THE WAY FORWARD: CONCLUSIONS AND RECOMMENDATIONS

To “respect, protect and fulfil”⁹³ the human rights framework, as well as their already-ratified human rights instruments and commitments, the Ukrainian authorities should provide a clear roadmap for their future steps to improve access to birth registration and internal passports for Roma. Given the importance of personal documents for the enjoyment of the full catalogue of human rights, measures related to accessing such documents would also have a significant impact on addressing the deep-rooted marginalization of Roma, combatting discrimination against Roma, enhancing Roma inclusion and improving their access to other human rights. In

⁹⁰ Information from International Charitable Organization “Roma Women’s Fund Chiricli”, NGO meeting, 17 March 2017, Kyiv.

⁹¹ The medical reform has not been implemented at the time of writing. For the link between access to personal documents and the right to the highest attainable standard of health and healthcare, please see the report submitted by the Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health, Paul Hunt, Addendum, Mission to Romania, paras. 74–81, 21 February 2005, UN Doc. No. E/CN.4/2005/51/Add.4.

⁹² Information from the SMM Kharkiv, 31 March 2017.

⁹³ According to the UN Office of the High Commissioner for Human Rights, the “obligation to respect” means that States must refrain from interfering with the enjoyment of guaranteed human rights. The “obligation to protect” requires States to protect individuals and groups against human rights abuses, while the “obligation to fulfil” means that States must take positive action to facilitate the enjoyment of basic human rights.

order to reach this most vulnerable and discriminated population, the authorities should adjust their existing policies and amend the legal framework. The ongoing reform of the public administration is a perfect opportunity for such adjustments. Both court procedures and awareness-raising and information campaigns targeting the Roma community would play a key role in more effectively approaching the resolution of these problems.

Access to the court in cases related to birth registration

Free legal aid for Roma without access to personal documents

In 2011 Ukraine adopted the Law on Free Legal Aid⁹⁴ which established a network of centres for secondary legal aid (i.e. legal counselling and legal representation before a court) where citizens, foreign nationals, stateless persons, refugees and persons in need of subsidiary protection may apply for secondary legal aid. Individuals whose monthly income falls below the prescribed level for social security are entitled to secondary legal aid provided by a Legal Aid Centre (hereinafter: LAC). Additionally, persons living with disabilities and persons from the temporarily occupied territories are entitled to this service without being required to prove their monthly income.

For Roma without personal documents it is not always easy to access free legal aid. In some cases they cannot obtain a personal tax number⁹⁵ and cannot prove they have insufficient income, while in other cases they cannot prove their identity to the LAC.

Roma without personal documents usually seek legal and other assistance through local Roma mediators, Roma leaders and activists, or in some cases through NGOs providing legal aid. Nevertheless, this assistance is not always sustainable and local NGOs struggle to meet all the needs of the Roma communities they serve.

Project support is always provided to local NGOs for a limited period of time, usually on a yearly basis, and some donors have not been able to continue their support for the provision of free legal aid to Roma without personal documents. This means some of them lost their representation halfway through their legal proceedings. For example, the NGO 10th of April stated that after their project for the provision of free legal aid for access to personal documents ended there were at least ten Roma left whose cases were still open.⁹⁶ Similarly, for a number of years the NGO Roma Human Rights Centre in Odesa provided legal and technical assistance for Roma without personal documents in Odesa, from informing them about the importance of personal documents to making field visits, providing transportation to administrative service centres, providing legal assistance and reimbursing their administrative fees. This activity is now not being funded, and in some cases activists from the Roma Human Rights Centre are contributing their own money to provide Roma with assistance in obtaining their personal

⁹⁴ Verkhovna Rada of Ukraine, Law of Ukraine on Free Legal Aid, Law No. 3460-VI, 2 June 2011, <<http://zakon2.rada.gov.ua/laws/show/3460-17/print1475564456082547>>.

⁹⁵ A tax number is obtained after an application is submitted to the tax authorities where applicants must provide data about their internal passport.

⁹⁶ Interview on 28 April 2017.

documents. In the city of Uzhgorod there is just one *pro bono* licensed lawyer in private practice supporting Roma applying for internal passports or late birth registration. This is obviously not sufficient for the needs of the entire region of Transcarpathia.

At the vast majority of LACs, Roma without personal documents are not in a position even to be provided with the secondary legal aid needed for initiating the civil or administrative procedures for obtaining personal documents. In other words, in order to get legal aid to apply for an internal passport, Roma need to provide the authorities with an internal passport.

Of the three LACs visited in the regions, the only exception to this was witnessed in the Transcarpathia region, where the LAC in Uzhgorod accepts a certificate of identity provided by a local NGO as identification – this is either a membership card, or an extract from the membership registry, or simply a certificate stating the holder’s name and date of birth.⁹⁷ In order to overcome obstacles to accessing to free secondary legal aid it is highly important to allow people with no identification to apply for and be eligible for secondary legal aid and to receive it, especially in cases related to establishing the fact of birth.

Legal remedy for Roma without access to personal documents

Another important aspect of access to justice for Roma in cases related to their personal documents is related to the right to legal remedy. During the course of the research, the administrative practice of so-called “oral rejections” was identified as well-established in situations where Roma are not able to provide the authorities with all the required documents when applying for birth registration or an internal passport.

In these cases the authorities are legally entitled to orally reject applications for internal passports or birth registration. This means there is no record of this official rejection and therefore the decision cannot be appealed. In some cases this is done simply by not accepting the application with the attached documents, while in other cases the application is rejected after a preliminary inspection of the documents attached. While it is clear that in cases where certain documents are not provided the application should indeed be rejected, the administrative practice of verbal rejection strips Roma and others of their right to appeal and to use all existing legal remedies in such cases. None of the Roma interviewed during the field visits ever appealed to a second-instance administrative body or court when they were rejected while applying for personal documents or instructed to initiate a court procedure to obtain them.

Finally, it is worth noting that in some cases the Roma without personal documents who are referred to the court procedure for the establishment of the fact of birth are actually unable to initiate this procedure precisely because they lack identification.

Awareness-raising, information campaigns and outreach

Active engagement of authorities in awareness-raising and conducting information campaigns should be an integral part of the strategy to tackle the lack of civil registration and identification

⁹⁷ Information from the meeting with the LAC in Uzhgorod, 20 March 2017.

documents among Roma. One of the foremost reasons for the increase of Roma registered in the birth registry books in the Odesa region is indeed related to the awareness-raising and information campaigns conducted by the regional office of the Department of State Registration there over the last two years. Furthermore, another example of positive steps taken by the Ukrainian authorities was a public awareness campaign, run by the Ministry of Justice of Ukraine in summer 2017 in all regions of Ukraine to explain the importance of birth registration and obtaining of personal documents among Roma.⁹⁸

These types of activities have also yielded positive results in other OSCE participating States. For example, in Serbia the UNHCR, the Ministry of Public Administration and Local Self-Government, and the Ombudsperson signed a Memorandum of Understanding⁹⁹ and started joint activities to tackle the problem of Roma access to personal documents. Those efforts included advocating for a list of legislative changes; introducing a non-contentious procedure for determining the date and place of a birth; establishing a technical group for the implementation and co-ordination of the measures prescribed in the Memorandum; a series of information campaigns; and outreach and trainings for the judiciary, employees in institutions for social protection, registrars, and police officers working on procedures for issuing personal documents or registering residence.¹⁰⁰

Outreach to the community – Good practice from the Odesa region

In its efforts to increase the number of registered Roma, the regional office of the Department of State Registration and Notary in Odesa organized a series of meetings with local Roma communities and consultations with women in maternity wards mainly aiming to deliver them information about birth registration, to clarify existing procedures for them, and to encourage Roma to register their children immediately after birth. In this regard, close co-operation with local Roma NGOs is a very important element. Another important element is that the regional authorities implemented a pilot project in 34 maternity wards and hospitals where parents were provided with birth certificates immediately after the birth of a child.

These campaigns were part of a specific project implemented by the above-mentioned authorities and included information sharing through newspaper articles, TV appearances, meetings with local Roma community members, and other activities aimed at explaining the importance of possessing personal documents and the procedures for obtaining them. These activities resulted in an increased number of Roma registered in the birth registry books in the Odesa region.¹⁰¹

⁹⁸ For more information, see the webpage of the Ministry of Justice of Ukraine, <<https://minjust.gov.ua/news/ministry/integratsiya-romskoi-natsionalnoi-menshini-v-ukrainske-suspilstvo>>.

⁹⁹ D. Rako, “Progress Can Be Made”, European Network on Statelessness, April 2012, <<http://www.statelessness.eu/blog/progress-can-be-made>>.

¹⁰⁰ See more in the text box Mobile units for Roma outreach – Good practice from Serbia, p. 39 of this report.

¹⁰¹ For example, in 2015 there were 78 Roma provided with birth registration, while in 2016 there were 221 Roma registered in birth registries. Finally, in the first three months of 2017 there were already 96 Roma registered in the birth registry books in the Odesa region.

Due to their poverty and the fact that Roma often live in remote areas, administrative centres and other authorities responsible for conducting procedures for issuing personal documents are not easily accessible to them. In such cases, outreach to the most underprivileged and isolated Roma communities could yield effective results. Experiences from other OSCE participating States with mobile units for providing legal and social assistance to Roma show that in some cases these initiatives can be crucial for improving Roma access to personal documents. There is already such practice, employed by international organizations and some local NGOs, providing legal assistance through the deployment of mobile units, particularly in the Kharkiv region.¹⁰²

Mobile units for Roma outreach – Good practice from Serbia

Mobile units for Roma outreach started as a project initiative supported by the UNHCR office in Serbia and implemented by the non-governmental organization Praxis, one of the main free legal aid providers for Roma without personal documents. Today, this idea is recognized at the national level as one of the key elements not just for access to personal documents, but also for the effective inclusion of Roma in general. Mobile units are now introduced in 20 cities and municipalities in Serbia. These units consist of local Roma co-ordinators, teaching assistants, health mediators, and representatives of the Social Welfare Centres and the National Employment Service. Having in mind the importance of outreach in this matter, the government, with the support of international organizations,¹⁰³ decided to include the work of mobile units for Roma inclusion in the measures and activities prescribed by the Action Plan for the Implementation of the Strategy for Inclusion of Roma in the Republic of Serbia 2016–2025. The current number of 20 mobile units is planned to be increased.¹⁰⁴

In addition to the ongoing legal reform and the relaxation of administrative practices in cases related to accessing personal documents, it is also very important to note that the success stories about enhanced access to personal documents for Roma are multidimensional in nature. Efforts to improve access to personal documents for Roma should include not just legal reform, but also capacity building for the judiciary and civil servants, outreach and information campaigns, revocation of fines imposed on persons without personal documents, the abolition of court fees for the procedure for establishment of the fact of the birth, and improved access to justice in cases related to accessing personal documents.

¹⁰² Information from the meeting with the SMM, 30 March 2017.

¹⁰³ For more information about mobile units for Roma inclusion, please see: <<http://www.osce.org/serbia/242091>>; <<http://europa.rs/we-are-here-together-european-support-for-roma-inclusion/?lang=en>>.

¹⁰⁴ Action Plan for the Implementation of the Strategy for Inclusion of Roma in the Republic of Serbia for 2017–2018, measure and activity 3.6.1.2.

ANNEX I: SELECTED INTERNATIONAL CASE LAW

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ANNEX II: SELECTED REFERENCE DOCUMENTS

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ANNEX III: EXCERPTS FROM RELEVANT LAWS AND REGULATIONS¹⁰⁵

Civil Code of Ukraine¹⁰⁶

Article 49: Civil status acts

1. Civil status acts are events and actions that are inseparably connected with a person and which start, modify, amend or suspend his/her capacity to be the subject of civil rights and obligations.
2. Civil status acts are: the birth of a person and establishment of his or her origin¹⁰⁷, acquisition of citizenship, resignation from citizenship and its loss, achievement of the corresponding age, etc.
3. The birth of a person and his or her origin, citizenship, marriage, divorce in cases prescribed by the law, change of name, and death are subject to state registration.
4. Registration of civil status acts is performed according to the law.

The birth of a person and his or her origin, [...] adoption, deprivation and renewal of parental rights, marriage [...] etc. are subject to mandatory registration in the State Registry of Civil Status Acts through the procedures approved by the Government of Ukraine.

Law of Ukraine on State Registration of Civil Status Acts¹⁰⁸

CHAPTER II

THE SYSTEM OF BODIES OF STATE REGISTRATION OF CIVIL STATUS ACTS

Article 4: Bodies of state registration of civil status acts

1. The bodies of state registration of civil status acts:
 - 1) the central authority of the executive power implementing state policy in the field of the state registration of civil status acts;
 - 2) the offices of state registration of civil status acts at the Main Department of Justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, the Main Departments of Justice in the regions, in the cities of Kyiv and Sevastopol, in districts, in municipal departments, in cities (of the cities of regional status), and city/district departments of justice (hereinafter referred to as “offices of state registration of civil status acts”);
 - 3) the executive bodies of villages and city councils (except for cities with regional status).

¹⁰⁵ The following excerpts are unofficial translations and provided for reference only.

¹⁰⁶ Verkhovna Rada of Ukraine, “Civil Code of Ukraine”, 16 January 2003, <<http://zakon3.rada.gov.ua/laws/show/435-15>>.

¹⁰⁷ Origin here to be understood as a person’s affiliation with parents.

¹⁰⁸ Verkhovna Rada of Ukraine, “Law of Ukraine on State Registration of Civil Status Acts”, 1 July 2010, <<http://zakon2.rada.gov.ua/laws/show/2398-17>>.

Article 6: Competence of the bodies of state registration of civil status acts

1. The offices of state registration of civil status acts carry out the state registration of the birth of an individual and his/her origin, marriage, dissolution of marriage, change of name, or death; make changes in the records of civil status acts and annul them; from the State Registry of Civil Status Acts, administer it, save its archives, and carry out other duties prescribed by law.
2. Executive bodies of villages and cities (except cities with regional status) carry out state registration of the birth of an individual and his/her origin, marriage and death.
[...]
4. The bodies of state registration of civil status acts issue certificates of state registration of civil status acts.

Article 7: Obtaining documents and information required for the state registration of civil status acts by the bodies of state registration of civil status acts

1. The bodies of state registration of civil status acts are authorized to obtain, free of charge, through the procedures established by law, the necessary documents and information concerning the state registration of civil status acts from state organs, enterprises, institutions and organizations.

Article 8: Activities of the bodies for registration of civil status acts with the state

1. The activities of the bodies of state registration of civil status acts with the state are founded on the principles of legality and of the protection of the rights and legal interests of citizens and the state [...].

Chapter III

THE PROCEDURE OF STATE REGISTRATION OF CIVIL STATUS ACTS

Article 9: State registration of civil status acts

1. The state registration of civil status acts is performed in order to secure realization of the rights of a person, official recognition, and certification by the State of the fact of the birth of an individual and his or her origin, marriage, dissolution of marriage, change of name and death.
2. State registration of civil status acts is performed by writing records of civil status acts.
3. A record of a civil status act is a document from a body of state registration of civil status acts that contains personal data about a person and certifies the fact of state registration of a civil status act.
A record of a civil status act is created in two copies.
A record of a civil status act is an indisputable evidence of facts unless otherwise established by a court.
4. To perform the state registration of a civil status act, an applicant provides a passport as a citizen of Ukraine or as a foreign national, supplemented by documents that certify the facts subjected to registration.
5. The rules of performing the state registration of civil status acts, their modification, renewal and annulment are approved by the Ministry of Justice of Ukraine.

Article 13: State registration of the birth of a person and his or her origin

1. The state registration of the birth of a person is performed at the same time as the establishment of his or her origin and the assignation of person's family name, first name and

patronymic. The origin of an individual so registered is determined by the rules of the Family Code of Ukraine.

2. The state registration of the birth of a child is performed upon the written or oral application of the parents or one of the parents at the place of birth of the child or the place of residence of the parents.

If state registration is performed in the place of residence of both parents or one of them, then at the parents' request the child's place of birth can be recorded either as the factual place of birth or as the place of residence of both parents or one of them.

If the parents are deceased, or if they are not able, for other reasons, to register the fact of birth of a child, then state registration is performed at the request of relatives, other people, or a representative of the healthcare institution where the child was born or where the child is placed.

3. The state registration of the birth of a child is to be performed no later than one month after the birth, but in the case of a stillbirth, no later than three days after delivery.

4. The basis for performing the state registration of the birth of a child is [...] approved by the central state authority in the field of healthcare by documents certifying the fact of the birth of a child.

If the child is born outside of a hospital, the document certifying the fact of the birth of a child is issued by a hospital which has examined the mother and her child. If no hospital has examined the mother and her child, the document certifying the fact of the birth of a child is issued by a medical consultative commission.

In the case of the absence of a document issued by a hospital or a medical consultative commission able to certify the fact of the birth of a child, the basis for registration of birth is a court judgment establishing the fact of the birth.

7. State registration of the birth of a child who has been left at a hospital or other healthcare institution, abandoned or found, is performed by the body for registration of civil status acts with the state at the request of the guardianship authority.

The first name, second name and patronymic of a child whose parents are unknown, as well as information about his or her parents, are recorded on the basis of a decision by the guardianship authority.

8. The state registration of the birth of a child older than one year is performed by the body of state registration of civil status acts located in the place of residence of the child at the request of the parents of the child or other interested persons, supplemented by a document certifying the fact of birth, that the child is registered with a healthcare authority, and a document from the child's place of residence.

If a child is older than 16 years, the state registration of the child's birth can be done at the child's request, supplemented by the child's passport as a citizen of Ukraine.

Article 19: Reissuing certificates of the state registration of civil status acts

1. Reissuing certificates of the state registration of civil status acts, the original of which has been lost, stolen, damaged or destroyed, is performed by the bodies of state registration of civil status acts at the request of a person in whose name the record was made, or of said person's parents, adoptive parents, guardians, trustees, or representatives of healthcare institutions, educational or other child care institutions where the child lives on a permanent basis, or at the request of the guardian authority.

Law of Ukraine on the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or His/Her Special Status¹⁰⁹

Article 13: Title and type of documents issued using the Single State Demographic Register

1. The documents issued using the Single State Demographic Register are divided according to their functional purpose into:

1) documents certifying the identity of a person and the person's citizenship of Ukraine:

- a) passport of a citizen of Ukraine;
- b) passport of a citizen of Ukraine for international travel;
- c) diplomatic passport of Ukraine;
- d) service passport of Ukraine;
- e) certificate of a sailor;
- f) certificate of a crew member;
- g) certificate for return to Ukraine;
- h) temporary certificate of a citizen of Ukraine;

2) Documents certifying the identity of a person and the person's special status:

- a) driver's license;
- b) certificate of a stateless person for travel abroad;
- c) certificate of permanent residence;
- d) certificate of temporary residence;
- e) migrant card;
- f) certificate of refugee status;
- g) travel document of a refugee;
- h) certificate of a person requiring complementary protection;
- i) travel document of a person provided complementary protection.

Article 21: Passport of a citizen of Ukraine

1. The passport of a citizen of Ukraine is a document identifying a person and certifying the person's citizenship of Ukraine.

[...]

3. The passport of a citizen of Ukraine is issued to people under 18 years old for four years and for people above age 18 for 10 years.

4. The passport of a citizen of Ukraine is issued in the form of a card with a contactless electronic chip.

5. The processing of the passport of a citizen of Ukraine is performed by the executive of the Register. Accepting application questionnaires to add information to the Register and to issue a passport of a citizen of Ukraine is performed by the executive of the Register or by authorized persons specified by paragraph 4 of part 1 of Article 2 of the Law.

6. The passport of a citizen of Ukraine is issued no later than 20 working days from the day of submission of the completed application questionnaire or no later than ten working days from the day of submission of the completed application questionnaire for urgent procedures. The

¹⁰⁹ Verkhovna Rada of Ukraine, "Law of Ukraine on the Single State Demographic Register and the Documents that Confirm the Citizenship of Ukraine, Identify a Person or a Person's Special Status", 20 November 2012, <<http://zakon2.rada.gov.ua/laws/show/5492-17/page2>>.

passport of a citizen of Ukraine applying for the first time is issued no later than 20 working days from the day of submission of the completed application questionnaires.

7. The following information is included in the passport of a citizen of Ukraine:

- 1) name of the state;
- 2) title of the document;
- 3) name of the individual;
- 4) sex of the individual;
- 5) citizenship of the individual;
- 6) date of birth of the individual;
- 7) unique reference number of the Register;
- 8) number of the document;
- 9) expiration date;
- 10) date of issuance;
- 11) authority providing the document to the applicant (its code);
- 12) place of birth of the applicant;
- 13) digital image of the face of the applicant;
- 14) digital signature of the applicant;
- 15) tax code of the applicant.

8. The passport of a citizen of Ukraine includes records in the Ukrainian and English languages and the written statement that “This passport of a citizen of Ukraine is the property of Ukraine”.

9. The electronic contactless chip in the passport of a citizen of Ukraine above 18 years old records the passport holder’s digital signature by means of a procedure approved by the Government of Ukraine.

Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine¹¹⁰

Article 2: Freedom of movement and free choice of residence in Ukraine

Citizens of Ukraine, as well as foreigners and stateless persons who legally reside in Ukraine, are guaranteed the freedom of movement and choice of residence on its territory, except for limitations as prescribed by law.

Registration of the place of residence, or of a person’s permanent residency, or of a person’s absence can in no way be a condition for the realization of the rights and freedoms established by the Constitution, the laws or the international treaties of Ukraine, nor can it be a reason for their limitation.

Article 3: Definitions

Place of stay – the administrative unit where an individual resides less than six months a year;

Place of residence – accommodation situated in the territory of the administrative unit where a person lives, and/or specialized social institutions, social services and social protection institutions or military units;

A person – a natural person;

¹¹⁰ Verkhovna Rada of Ukraine, “Law of Ukraine on Freedom of Movement and Free Choice of Place of Residence in Ukraine”, 11 December 2003, <<http://zakon3.rada.gov.ua/laws/show/1382-15>>. English translation is available at: <<http://www.legislationline.org/documents/action/popup/id/7120>>.

Registration body – the executive body of a village, town or city council, or the village head (if under the law a village council executive body has not been established) which maintains the registration of residence and the withdrawal from registration of residence of persons on the territory of the administrative unit covered by the authority of the village, town or city council.

Article 6: Registration of residence

A citizen of Ukraine, as well as a foreigner or a stateless person who is permanently or temporarily residing in Ukraine shall, within 30 days after the removal of the person's residence record from the registry and arrival in a new place of residence, register place of residence. Parents or other legal representatives must register the residence of a new-born within three months of the date of the state registration of the new-born's birth. Registration of residence is performed on the day of submission of documents by a person. Registration of residence at the request of a person can be done by a registration authority with the simultaneous removal of the previous residence record.

For registration a person or his or her legal representative submits the following to the authority (including through a centre for providing administrative services):

Written application;

An identification document; children under 16 must submit their birth certificate. The information about the place of residence will be recorded in this document;

Proof of payment of the administrative fee;

Documents proving the person's right to live in the housing or residence, or the person's registration in a specialized social institution, social service or social protection institution, or military unit, the address of which is indicated during the registration;

Military ID or certificate of military registration (for those citizens required to apply to the military register).

Article 6.1: Peculiarities of the residence registration for homeless people

Homeless people and others who have no permanent place of residence are registered at the address of a specialized social institution, social service and/or social protection institution established by a local self-government.

Submission of an application for the registration or withdrawal of registration of the residence of such persons in the manner and terms established by this Law is assigned to the appropriate specialized social institution, social service and/or social security institution where these persons reside.

Article 9.1: Reasons for refusal of registration or withdrawal of registration of residence

The registration authority refuses to register or to remove the registration of a residence record if: a person has not submitted the required necessary documents or information prescribed by this law;

the submitted documents contain false information or the submitted documents are invalid;

a person applying for registration is under 14 years of age.

The decision to refuse shall be delivered on the day of the application's submission. The submitted application shall be returned to the person along with an indication of the reasons for the rejection.

Law of Ukraine on Citizenship of Ukraine¹¹¹

Article 1: Definitions

The following definitions shall apply in the context of this Law:

- Ukrainian citizenship: legal connection between a given natural person and Ukraine in terms of mutual rights and obligations;
- Citizen of Ukraine: a person granted Ukrainian citizenship in keeping with procedures established by the laws of Ukraine and international agreements to which Ukraine is a party;
- Stateless person: a person not considered by any country as that country's citizen under that country's legislation;
- Residing in Ukraine on lawful grounds: a stay in Ukraine by a foreigner or stateless person in possession of an old Soviet passport in the 1974 format, marked to the effect that the bearer is permanently or temporarily registered in the territory of Ukraine, or in possession of a foreign passport duly registered in Ukraine, or a certificate allowing permanent or temporary residence on the territory of Ukraine, or if a given person has refugee status or is granted asylum in Ukraine.

Article 2: Principles of Ukrainian legislation concerning citizenship

Ukrainian legislation concerning citizenship relies on the following principles:

- (1) Single citizenship, namely Ukrainian citizenship, ruling out the possibility of citizenship of political subdivisions of the territory of Ukraine; if a citizen of Ukraine becomes a citizen of any other country or countries, Ukrainian law shall recognise that citizen only as a Ukrainian subject; if a foreign citizen receives Ukrainian citizenship, Ukrainian law shall recognise that citizen as a Ukrainian subject;
- (2) Prevention of statelessness;
- (3) Impossibility of Ukrainian citizens being deprived of Ukrainian citizenship;
- (4) Recognition of the Ukrainian citizen's right to change citizenship;
- (5) Impossibility of a foreign subject or stateless person automatically becoming a citizen of Ukraine after marrying a Ukrainian citizen or of a Ukrainian citizen's wife (husband) becoming a Ukrainian citizen, or either of the spouses being a Ukrainian citizen automatically losing Ukrainian citizenship after divorce, or if the other spouse terminates Ukrainian citizenship;
- (6) Equality of Ukrainian citizens before the law, regardless of why, how or when they became citizens of Ukraine;
- (7) Retention of Ukrainian citizenship regardless of the place of residence.

Article 3: Belonging to citizenship of Ukraine

Citizens of Ukraine are:

- (1) All citizens of the former USSR who were permanent residents of Ukraine on the date of proclamation of its independence (24 August 1991);
- (2) Persons regardless of race, colour, political, religious and other beliefs, sex, ethnic and social origin, property status, place of residence, language or other distinctions, who lived in Ukraine

¹¹¹ Verkhovna Rada of Ukraine, "Law of Ukraine on the Citizenship of Ukraine", 18 January 2001, <<http://zakon2.rada.gov.ua/laws/show/2235-14>>. English translation available at: <<http://www.legislationline.org/documents/action/popup/id/7179>>.

and were not foreign subjects on the date of enactment of the Law of Ukraine "On Ukrainian Citizenship" (1636-12, 13 November 1991);

(3) Persons who arrived in Ukraine for permanent residence after 13 November 1991, and whose former Soviet passports in 1974 format are marked with "citizen of Ukraine" record by internal affairs bodies of Ukraine, as well as their children arriving together with them to Ukraine, provided they were minors at the time;

(4) Persons receiving Ukrainian citizenship under the laws of Ukraine and international treaties to which Ukraine is a party.

Persons indicated in Section 1 of this Article 3 shall be citizens of Ukraine as of 24 August 1991; those in Item (2) as of 13 November 1991; those in Item (3) as of the date their passports were marked with "citizen of Ukraine" record.

Article 4: Legislation on citizenship of Ukraine

Matters relating to citizenship of Ukraine are regulated by the the Constitution of Ukraine (254k/96-VR), this Law, and international treaties to which Ukraine is a party.

Should an international treaty contain rules other than those set forth in this Law, the rules of the international treaty shall have precedence.

Article 5: Documents attesting to Ukrainian citizenship

Documents attesting to Ukrainian citizenship shall be as follows:

- (1) Passport of a citizen of Ukraine;
- (3) Passport of a citizen of Ukraine for travelling abroad;
- (4) Temporary certificate of a citizen of Ukraine;
- (6) Diplomatic passport;
- (7) Service passport;
- (8) Seaman's identity card;
- (9) Certificate of a crew member;
- (10) Certificate for return to Ukraine.

CHAPTER II ACQUIRING UKRAINIAN CITIZENSHIP

Article 6: Grounds on which Ukrainian citizenship is acquired

Ukrainian citizenship shall be acquired:

- (1) by birth;
- (2) by territorial origin;
- (3) as a result of [legal procedures] granting citizenship;
- (4) as result of renewal of citizenship;
- (5) as a result of adoption;
- (6) as result of guardianship or custody, in the case of a minor;
- (7) as a result of guardianship/custody appointed for a person recognised as deprived of legal capacity by a court of law;
- (8) due to a minor's one or both parents being citizens of Ukraine;
- (9) as a result of filiation;
- (10) due to other reasons envisaged by international treaties to which Ukraine is a party.

Article 7: Ukrainian citizenship by birth

A person whose parents or either of the parents was a citizen of Ukraine at the time of that person's birth shall be a citizen of Ukraine.

A person born on the territory of Ukraine of stateless parents who are lawful residents of Ukraine shall be a citizen of Ukraine.

A person born outside Ukraine of stateless parents who are lawful permanent residents of Ukraine, and who has not acquired foreign citizenship by birth, shall be a citizen of Ukraine.

A person born on the territory of Ukraine of parents who are foreign subjects and who are also lawful, permanent residents of Ukraine, and if that person does not acquire either parent's citizenship at birth, that person shall be a citizen of Ukraine.

A person born on the territory of Ukraine of parents where either parent has refugee status or has been granted asylum in Ukraine, and if that person did not acquire either parent's citizenship, or acquired the citizenship of the parent having refugee status or asylum in Ukraine, that person shall be a citizen of Ukraine.

A person born on the territory of Ukraine of parents with one being a foreign subject and the other a stateless person permanently, lawfully residing in Ukraine, and if that person did not receive the foreign parent's citizenship at birth, that person shall be a citizen of Ukraine.

A new-born found on the territory of Ukraine without known parents (i.e. in the case of a foundling) shall be a citizen of Ukraine.

A person entitled to Ukrainian citizenship by birth shall be a citizen of Ukraine from the date of his or her birth.

Article 8: Ukrainian citizenship by territorial origin

A person or at least one of that person's parents or both, grandfather or grandmother, sister or brother born or constantly residing before 24 August 1991 on a territory that became part of Ukraine as per the Law of Ukraine "On Ukraine's Legal Succession", as well as in other territories being part of the Ukrainian National Republic, Western Ukrainian Republic, Ukrainian State, Ukrainian Socialist Soviet Republic, Transcarpathian Ukraine, Ukrainian Soviet Socialist Republic (Ukr.SSR), currently being a stateless person or foreigner and undertaking to terminate foreign citizenship, and submitting an application for Ukrainian citizenship [declaration of intention], as well as that person's children, shall be registered as citizens of Ukraine.

A minor born or permanently residing on the territory of the Ukr.SSR (or if at least one of that person's parents, grandfather or grandmother was born or permanently resided in any of the territories indicated in Section [Paragraph] 1 of this Article 8), currently being a stateless person, shall be registered as a citizen of Ukraine if so applied for by either parent or by the minor's guardian/custodian.

A minor born on the territory of Ukraine of parents being foreigners, and if that minor received the citizenship of any other country(ies), and [if that citizenship was later] terminated, shall be registered as a citizen of Ukraine if so applied for by either of the parents or by the minor's guardian/custodian.

Rules of procedure for processing, issuing, exchanging, delivering, seizing, returning to the State, recognizing as inactive or annulling the passport of a citizen of Ukraine¹¹²

General provision

1. The passport of a citizen of Ukraine is the document identifying a person and certifying the citizenship of Ukraine.
2. The passport of a citizen of Ukraine is issued in the form of a card featuring a contactless electronic chip.
3. Every individual above 14 years old must obtain a passport of a citizen of Ukraine.
4. The passport of a citizen of Ukraine is issued for people under 18 years old for four years and for people above 18 for 10 years.
5. If the passport of a citizen of Ukraine is lost or stolen, a new passport is issued.
6. The passport is to be exchanged if:
 - 1) The information recorded on the passport changes (except for additional variable information);
 - 2) The citizen has obtained a tax code;
 - 3) A mistake in the existing passport is identified;
 - 4) The passport expires;
 - 5) The passport is in poor condition;
 - 6) After an individual possessing a 1994 year standard passport turns 25 years of age or 45 years of age (on request).
7. The processing (including in the case of lost or stolen passports), change, and issuing of the passport are to be performed:
 - 1) For a person who is 14 years old after submission of a request by the individual;
 - 2) For a person who is 14 years old but who is found by the court to have limited civil capacity or no civil capacity – at the request of one of the person's parents, guardians or other legal representatives (hereinafter - legal representatives);
 - 3) For a person serving a sentence in penitentiary institution or is on a long-term in-patient treatment in closed institutions of the Ministry of Health – at the request of an authorized officer of the relevant institution (hereinafter - authorized person).
8. The passport is issued:
no later than 20 working days from the day of submission of the completed request for issuance of a passport;
no later than ten working days from the day of submission of the completed request for urgent issuance of a passport.
14. The following information is included with the application for issuance of a passport:
 - 1) name of the applicant;
 - 2) date of birth;
 - 3) place of birth (state, region, district/city, village);
 - 4) sex;
 - 5) date and basis for acquiring citizenship;
 - 6) unique reference number in the Register;

¹¹² Government of Ukraine, Regulation No. 302, "Rules of procedure for processing, issuing, exchanging, delivering, seizing, returning to the state, recognizing as inactive or annulling the passport of a citizen of Ukraine", 25 March 2015, <<http://zakon2.rada.gov.ua/laws/show/302-2015-%D0%BF>>.

- 7) digital image of the applicant's face;
- 8) digital signature of the applicant
- [...]
- 11) place of residence specifying the address (state, region, district/city, village, street, house number, building, flat);
- 12) contact [telephone] number and/or @ [email address];
- 13) required document upon which the passport is processed;
- 14) information about an applicant's legal representative or authorized officer;
- 15) additional variable information (place of residence, births of children, marriage and dissolving of marriage, change of name, and if available, tax number or decision not to have a tax number);
- 16) proof of payment of the administrative fee or exemption from such payment.

Obtaining of information and cooperation in the process of identification of a person

16. The SMS (State Migration Service) has the right to obtain information from state and unified registers in the process of identification of a person and from other databases of companies, institutions and organizations to the extent necessary for identification of a person.

[...]

18. Should the SMS not have any information that the applicant holds Ukrainian citizenship, the SMS then investigates the fact of the person holding Ukrainian citizenship, including by inquiring with the Ministry of Foreign Affairs concerning the obtaining of Ukrainian citizenship and/or registering on a permanent or temporary basis with a Ukrainian consulate abroad.

Submission of documents for issuance, change of passport

19. The documents for passport processing (including replacement for a lost or stolen passport) or for a change of passport are submitted to centres of administrative services, state companies belonging to the SMS and their separate branches (hereinafter: authorized actors), the territorial bodies and the territorial divisions of the SMS.

Submissions are made to the territorial bodies of the SMS only in case of registration of lost or stolen passports, or change of passports issued for which the relevant information was recorded in the Register.

Submission of documents for passport issuance (including lost or stolen passports) or for change of passport is done only at the territorial divisions of the SMS in the following cases:

A person acquires Ukrainian citizenship;

Processing of documents for issuing of a passport to a person 18 years old or older who has no document with a photograph that has been issued by the relevant authorities;

Processing of documents for issuing of a passport to a person 18 years old or older who has provided a court judgment establishing his/her identity (for people whose identity was not established as a result of the procedure of identification of a person);

The return for permanent living of a person who used to live permanently abroad;

Processing of the documents of a person who is not able to move due to health issues;

When a person is sentenced to prison or is placed in a closed hospital.

20. Documents for processing (including lost or stolen passports) and issuing passports or a change of passport for a citizen of Ukraine are submitted by a person or by the person's legal representative or authorized agent to the territorial body of the SMS, or by an authorized actor in the person's place of registered residence.

A person 14 years old or older whose place of residence is not officially registered submits documents for the first issuing of a passport to the territorial body of the SMS, or the person's authorized actor submits them in the place of *de facto* residence of the person in Ukraine.

A document in the case of a lost/stolen/change of a passport that was initially issued with data recorded in the Register is submitted to any territorial body of the SMS, including by an authorized actor.

A person sentenced to jail or in a closed hospital submits documents via the administration in the place of that person's location to the territorial division of the SMS.

IDPs submit documents to the territorial body/division of the SMS, or their authorized actor submits them in the place of residence documented by the IDP's certificate of registration.

A homeless person submits documents to the territorial body/division of the SMS, or the homeless person's authorized actor submits the documents at the place of future registration of the homeless person's place of residence.

Activities of the officers of the SMS receiving documents for processing or change of passport

24. When an officer of the SMS has identified, while reviewing the submitted documents, that some are missing, or that documents are provided that do not correspond to the standards, the territorial body/division/actor informs the applicant that the documents are rejected. On request, such rejection can be provided in writing.

The applicant has the right to re-submit the documents if the circumstances that determined the rejection no longer obtain.

25. If the documents correspond to the necessary requirements established in this procedure, the officers of the SMS use the Register and electronic signature to produce the application for a passport.

26. After the application is produced, the officer of the SMS prints it and provides it to the applicant for examination.

27. The applicant certifies the correctness of the information by signing.

28. After the application has been examined by the applicant it is examined by the officer and signed by the officer of the SMS.

29. The officer of the SMS scans the documents submitted by the applicant together with the application using the Register's equipment.

Submission of documents for passport and their processing

35. The Applicant provides the following documents for issuing of a passport:

1) birth certificate or document certifying the fact of birth issued by another state (hereinafter – birth certificate);

2) originals of documents certifying the citizenship and identifying the person(s) of one or both parents who, on the date of the applicant's birth, were citizens of Ukraine (in order to certify that the applicant has Ukrainian citizenship).

If these documents are missing, or if one or both parents, on the date of the applicant's birth, was/were citizen(s) of another state, or had no citizenship, or if the person obtained Ukrainian citizenship on the territory of Ukraine, then the certificate of registration of the person as a citizen of Ukraine is provided;

3) passport of a citizen for travel abroad (for people returning for permanent residence to Ukraine from permanent residence abroad);

- 4) certificate of registration as a homeless person (for a homeless person);
 - 5) certificate of registration as an IDP (for an IDP);
 - 6) court judgment identifying a person (for people who were not identified as a result of identification by the SMS);
 - 7) a document certifying the applicant's legal representative;
 - 8) proof of payment of the administrative fee or exemption from payment;
 - 9) a document with variable information for recording on the chip (if any):
 - about a place of residence – certificate of registration of an approved standard;
 - about the birth of children – birth certificates for children;
 - about marriage or dissolution of a marriage – certificate of marriage, certificate of dissolving a marriage, judgment dissolving a marriage;
 - about change of name – certificate about a change of name, birth certificate, certificate of marriage, certificate of dissolving the marriage, judgment dissolving the marriage;
 - certificate with a tax number or declaration of rejection of assignment of a tax code;
 - 10) document with a photograph issued by the competent authority, for people applying for their first passport after turning 18 years old. If such a document is lacking, the applicant provides a written explanation about the place where the applicant lives, studies, works, or has been sentenced and information about the applicant's parents or other relatives who shall be involved in the procedure of the applicant's identification;
 - 11) one 10x15 cm photograph for scanning and storing a digital image of the applicant's face in the Register – for disabled persons who are not able to move by themselves, or persons serving prison sentences, or people assigned to closed hospitals.
38. After accepting the application and supplementary documents, the officer of the SMS performs the identification of the person for whom the passport is requested.
39. Identification of the person is performed using the information from the Registry. The decision about issuing a passport is delivered by the territorial division of the SMS after the identification of the applicant and the establishment of the fact that the applicant holds Ukrainian citizenship.
40. Identification of the person in whose name the passport is requested and, if information about that person is missing from the Registry, the identification is performed using the information from available state and unified registers and from other information sources at the disposal of the state or companies, institutions and organizations.
42. Concerning people age 16+ with no registered place of residence, the examination of their 1994 year standard passport issued at their previous place of residence, and, in case they lack such a passport, examination of a passport presented by the minor's legal representatives from the place of *de facto* residence.
43. If an applicant older than 18 has not submitted documents with the applicant's photograph, the procedure of identification of the applicant is performed via sending inquiries to the police, the ministry of justice, the tax authorities, educational institutions, the military, prisons and other sources and databases at the disposal of the state, companies, institutions and/or organizations, including submission of a photograph of the applicant to investigate the information written by the applicant in order to identify that applicant. During the investigation, all information is taken into account.
- At the same time an investigation is performed using the databases of the State Migration Service.

In exceptional cases when there is no photograph of the applicant and when the identification of the person as stated above proves unsuccessful, the in order to identify the applicant, the relatives and/or neighbours mentioned in the applicant's written explanation are questioned. After their questioning, the Act of Identification of the applicant is completed using the template approved by the Ministry of the Interior.

The duration of the period of identification of a person may not exceed two months.

44. As a result of the procedure of identification of a person, certifying the fact of issuing of the birth certificate as well as certifying that a person holds Ukrainian citizenship, an officer of the SMS prepares the conclusion of the procedure, which is approved by the head of the territorial body of the SMS.

If, after applying the above-mentioned procedure, the person has still not been identified, the decision is delivered to reject issuance of the passport and the applicant is informed of that decision.

Reasons to reject the application for issuance of a passport

100. A territorial body/division of the SMS may reject issuance of a passport if:

- 1) a person is not a citizen of Ukraine;
- 2) a person has a passport of 1994 standard valid as of the date of submission of the application documents;
- 3) information provided by the applicant was not corroborated by information in the Register;
- 4) a legal representative has not presented proof of authorization to act on behalf of the person applying;
- 5) a person has provided incomplete information and some documents are missing;
- 6) a person was not identified by the procedure of identification of a person.

101. The reasons for rejection are specified in a letter to the applicant.