



ISSUE OF UKRAINIAN PASSPORTS

**MONITORING REPORT ON THE STATE MIGRATION
SERVICE OF UKRAINE TERRITORIAL UNITS IN DONETSK
AND LUHANSK REGIONS**

ISSUE OF UKRAINIAN PASSPORTS:

monitoring report on the State Migration Service of Ukraine territorial units in Donetsk and Luhansk regions

This report is prepared based on the results of monitoring of territorial units of the State Migration Service of Ukraine in Donetsk and Luhansk regions in the government-controlled areas, as well as on the results of analysis of current legislative framework and law-enforcement practice by territorial units of the State Migration Service in Donetsk and Luhansk regions. The report identifies the main problems and trends in issuance of the passport of a citizen of Ukraine to the persons, who apply to the territorial units of the State Migration Service in Donetsk and Luhansk regions in the government-controlled areas of Ukraine, with a focus on the peculiarities of documenting the persons from the non-government controlled areas of Ukraine.



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GLOSSARY

SMS	State Migration Service
SFS	State Fiscal Service
EECP	Entry/exit checkpoint
CAO	Code of Ukraine on Administrative Offenses
MIA	Ministry of Internal Affairs
NGCA	Non-government controlled areas
GCA	Government-controlled areas
UNHCR	United Nations High Commissioner for Refugees
FLAC	Free legal aid center

1 SECTION

Methodology

Preparation of this report was preceded by monitoring of the territorial units of the SMS in Donetsk and Luhansk regions on the government-controlled areas carried out by the team of monitors of the Charitable Foundation “The Right to Protection” (CF “The Right to Protection”).

The monitoring lasted for **11 weeks** in total: from May 20 to June 07 and from July 10 to August 30, 2019. It was conducted in the form of interviewing the persons, who approached the territorial units of the SMS in Donetsk and Luhansk regions on the government-controlled areas.

THE FOLLOWING ISSUES WERE THE MAIN SUBJECT OF MONITORING:

- ① Inserting a photo into a passport, issued before 2014 in the territory, which at present is not under control of the government, upon reaching the age of 25 and 45 years.
- ② Exchange of a passport in case of its loss or damage, issued before 2014 in the territory, which at present is not under control of the government.
- ③ Establishment of belonging to citizenship of Ukraine of a person who had a passport a citizen of the former USSR.
- ④ Issuance of the passport of a citizen of Ukraine to a person who has reached the age of 14 years.
- ⑤ Issuance of the passport of a citizen of Ukraine for the first time upon reaching the age of 18 years.

Inclusion of this list of questions to the monitoring interview is explained by the legal practice of the CF «The Right to Protection» lawyers, which proved that in these situations individuals had difficulties in obtaining the identity documents most often. The process of issuance of a passport of a citizen of Ukraine or inserting a photo thereto may be significantly complicated by the need to undergo the procedures of identification and establishment of identity foreseen by the legislation.¹

In total, during the monitoring, **350 persons**² among those who addressed the territorial units of the SMS in Donetsk and Luhansk regions were interviewed. The interviews were conducted in a confidential manner.

In addition to the above questions, the interview also included questions regarding the age, gender, place of residence of a person (GCA or NGCA), possible difficulties caused by necessity to cross entry-exit checkpoint from NGCA to GCA and vice versa, as well as regarding the cases of approaching FLAC concerning issuance the passport of a citizen of Ukraine.

Respondents were able to evaluate the work of the territorial units of the SMS, which they approached, namely: 1) whether the person was able to resolve his/her issue during the first visit to the territorial unit of the SMS (except when repeated visit was required according to the procedure) and 2) whether a person had any comments regarding the work of the territorial units of the SMS, to which he/she applied for issuance of the document.

For ethical reasons, the report does not specify the title of the territorial unit of the SMS, where the responses were obtained.

1. Resolution of the Cabinet of Ministers of Ukraine No. 302, which stipulates the “Procedure for processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of the passport of a citizen of Ukraine”.

2. Results of the interviewing cannot be extrapolated to all the persons who applied to the SMS territorial units in Donetsk and Luhansk regions.

The term “respondent” does not differentiate the gender of a person, that is, the term can be understood both as a male and a female.

The report analyzed and laid out the results of monitoring conducted by the CF “The Right to Protection” in the territorial units of the SMS in Donetsk and Luhansk regions in government-controlled areas.

To prepare this report, the analysis of the current legislation was conducted concerning the issuance of the passport of a citizen of Ukraine and the practice of the legal team of CF “The Right to Protection”, which, with the support of the United

Nations High Commissioner for Refugees, provides direct legal aid in obtaining identity documents to stateless persons and those at risk of statelessness.

The report contains recommendations regarding elimination of deficiencies in the existing procedures on issuance of passports, addressed to the Verkhovna Rada of Ukraine, Cabinet of Ministers of Ukraine and the State Migration Service of Ukraine, based on the results of the monitoring and implementation of paragraph 5.3. of the Action plan of the Cabinet of Ministers of Ukraine.

The Plan is intended to improve the mechanisms for obtaining the citizenship documents.³



3. Resolution the Verkhovna Rada of Ukraine on approval of the Action Plan of the Cabinet of Ministers of Ukraine dated October 04, 2019, available at the link: <https://zakon.rada.gov.ua/laws/show/188-20#n2>

2 SECTION

Introduction

The armed conflict in the East of Ukraine and formation in 2014 in Donetsk and Luhansk regions of self-proclaimed “people’s republics” caused a number of problems with documenting of people residing in these territories or who had received identity documents there before 2014. Absence of identification documents often deprives these persons of the opportunity to exercise their social, economic, political and other rights. Thus,

a person without a passport or with invalid or damaged passport is restricted in the freedom of movement, access to medical and social services, cannot be officially employed, cannot register a marriage or birth of a child, etc. These rights are guaranteed to the people by the state, but due to the conflict in the East, some people are deprived of access to these rights.

Particularly vulnerable in this situation are the persons from NGCA⁴; for them, issuance of identity documents in case of loss, damage or invalidity became a real life challenge.

In the cities and villages of Donetsk and Luhansk regions, which were defined by law, territorial units of the SMS ceased their activity.⁵ As a consequence, in order to apply to the territorial unit of the SMS, located in the government-controlled area, for obtaining a passport, the persons residing on NGCA have to travel long distances and pass the EECP. In turn, passing of the checkpoint can be complicated and physically exhausting, accompanied by waiting for several hours in open air in different weather conditions, as evidenced by the monitoring of conditions of passing the checkpoints, conducted by CF “The Right to Protection”.⁶

Many persons apply to the territorial units of the SMS in Donetsk and Luhansk regions for obtaining the passport of a citizen of Ukraine for traveling abroad or for obtaining the passport in the form of ID card, etc. The persons, who earlier obtained Ukrainian passport in GCA, usually can receive the services mentioned above without any difficulties. However, further, this report will address the situations, in which the persons from the NGCA have encountered obstacles in obtaining identity documents.

4. Hereinafter, we speak both about the persons who currently reside in the territories temporarily not under control of the Government and those who previously resided and received the passport of a citizen of Ukraine there.

5. Decree of the Cabinet of Ministers of Ukraine No. 1085-r dated November 07, 2014 approved the list of the settlements, where state authorities will not temporarily exercise their powers. Available at: <https://zakon.rada.gov.ua/laws/show/1085-2014-%D1%80>

6. For more information on the conditions of crossing the checkpoints, see the monitoring report “Assessment of conditions of crossing of the line of conflict through checkpoints for entry and exit” prepared by the CF “Right to Protection”, is available at the link: <http://r2p.org.ua/wp-content/uploads/2019/05/Otsinka-umov-peretynu-LZ-cherez-KPVV.pdf>

3 SECTION

The procedures of identification and establishment of identity by territorial units of the State Migration Service concerning persons from the non-government controlled areas

In order to be issued with the passport of a citizen of Ukraine, the person must be identified. According to the results of identification and confirmation of the fact of belonging to the citizenship of Ukraine, the territorial units of the SMS take a decision on issuance of the passport of a citizen of Ukraine. If the territorial unit of the SMS cannot identify the person, confirm his/her belonging to the citizenship of Ukraine and, accordingly, issue a passport of a citizen of Ukraine, such individual must undergo the procedure of establishment of the identity.

However, for some persons from NGCA, the procedures of identification, establishment of identity and confirmation of the fact of belonging to the citizenship of Ukraine often preclude the issuance of the passport of a citizen of Ukraine.

According to the monitoring results, the necessity to undergo the procedures of identification and establishment of identity was faced by the individuals who addressed to the territorial units of the SMS in order to:

- Insert a photo into a passport issued until 2014 in the territory which is currently non-government controlled, upon reaching the age of 25 and 45.

- Exchange a passport, issued before 2014 in the territory which is currently non-government – controlled, in case of its loss or damage.

According to the current legislation, upon reaching the age of 25 and 45 years, a photo must be inserted in the passport of a citizen of Ukraine during the month therefrom. If a person did not insert the photo within the period specified by law, the passport is considered invalid.^{7,8} In such a case, as well as in the case of damage or loss the passport of a citizen of Ukraine of the sample of 1994, issued before 2014 in the territory which is currently non-government controlled, for the purpose of further documentation of a person, the territorial unit of the SMS must identify them and confirm his/her belonging to the citizenship of Ukraine.

IDENTIFICATION OF THE PERSON

Usually the person is identified on the basis of information obtained from the database of the Unified State Demographic Register (USDR) and other state and unified registers, information databases.⁹ However, these registries may not have information about all the persons.¹⁰ Prior to

7. Paragraph 8 of the Regulation on the Passport of a Citizen of Ukraine. Available at the link: <https://zakon.rada.gov.ua/laws/show/2503-12>

8. According to the explanations posted on the official website of the State Migration Service, the person cannot be identified using the passport of a citizen of Ukraine of 1994 sample (booklet), since this document is “morally outdated” and also the one that can be easily forged. In particular, according to the SMS explanations, when a person applies for documentation, starting from 2013, the data of the passport is verified with the data of the SMS unit which issued the passport. In fact, for persons from the territory temporarily not under control of the Government of Ukraine this means that even with a valid passport of a citizen of Ukraine, an individual may be forced to undergo the procedure for establishment the person and verification of citizenship of Ukraine, since most persons from the territory temporarily not under control of the Government of Ukraine will not be able to be identified using the procedure of identification by the SMS territorial unit.

9. Paragraphs 40, 41 of the Procedure for processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2015, No. 302.

10. This discrepancy was due to the fact that the Resolution of the Government No. 784 on approving the Procedure, which defines the procedural issues of maintaining the unified electronic and communications database of the Unified State Demographic Register, was adopted only in October, 2017.

the start of operation of the USDR, namely until 2017, the SMS did not have a single electronic database of issued passports, which has led to the lack of information on passports of the citizens of Ukraine issued before 2014 in the territory which is currently non-government-controlled.

In absence of information about the person in the existing state and unified registers and other informational databases, the legislation provides for the possibility to send a request to the relevant body, institution, organization or territorial units of the SMS.¹¹

Where the SMS is unable to confirm the identity of the applicant through electronic databases and registers, the person, who applies for issuance of the passport of a citizen of Ukraine, must obtain a paper Form No. 1¹², which is held in the archive of the territorial unit of the SMS at the place of issuance of his/her passport. However, it is impossible to obtain Form No. 1 from the files of the territorial units of the SMS, which remained in NGCA, and therefore it is impossible to verify the data on the persons, who received Ukrainian passports before 2014 in the territory which is currently non-government controlled.

That is why the territorial units of the SMS often cannot identify the person and confirm his/her belonging to Ukrainian citizenship and, accordingly, cannot issue a passport of a citizen of Ukraine. In this case, an individual must undergo not only the identification procedure, but also the procedure for establishment the person and confirm his/her belonging to the citizenship of Ukraine.

The legislation does not set out the list of the documents that should be taken into account when conducting the procedure of identification. **The documents, which the respondents provided for**

identification, included the following: passport of a citizen of Ukraine for travelling abroad, driver's license, military registration card, extract from the register of voters, birth certificate, taxpayer's registration card, marriage certificate, work record book, education certificate, student's record book, household register.

ESTABLISHMENT OF IDENTITY OF THE PERSON

In absence of identity documents with photo, the person will have to undergo the procedure of establishment of identity. The procedure of establishment of identity of a person in order to verify documents and information, including obtaining a photo, which will allow to identify him/her, foresees sending requests to the relevant authorities (in particular, the Ministry of Internal Affairs, National Police, Ministry of Justice, bodies of the State Fiscal Service, educational institutions, military units, military registration offices, penal institutions, etc.).

Information on the persons from NGCA is obtained, in particular, according to the data of the State Register of Voters by sending requests to its respective departments.¹³ However, it is not always possible for the SMS to obtain from the State Registry of Voters the information needed to identify a person. In this case, in order to establish the identity of the person, an employee of the territorial unit of the SMS conducts an **interview of the applicant's relatives and neighbors**.

According to the monitoring results, the majority of the respondents, who had undergone or were required to undergo the procedure for establishment of person's identity, reported the need to involve their neighbors/relatives in the number of 3 persons. It should be noted that, in accordance with the current legislation, in order to establish the identity of a person not exactly 3 relatives/neighbors must be involved.

11. Paragraph 41 of the Procedure of processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2015 No. 302.

12. Application for issuance of a passport containing information about the person, and, in particular, series and number of the passport, date and place of issue, grounds, on which the document was issued, etc.

13. Procedure of processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2015 No. 302.

Procedure of establishment of person's identity lasted on average up to 2 months, in some cases up to 1 month. It should be noted that there were also cases where the procedure of establishment person's identity took longer than 2 months foreseen by the legislation.

A CASE FROM THE PRACTICE OF THE CF "THE RIGHT TO PROTECTION"

The applicant approached CF "The Right to Protection" in order to receive a passport of a citizen of Ukraine while serving his sentence. However, all of his documents, including his passport, remained in NGCA. He did not have any relatives. Passport officers of the prison colony, where the applicant was serving a sentence, for many years unsuccessfully tried to help him to receive the passport of a citizen of Ukraine.

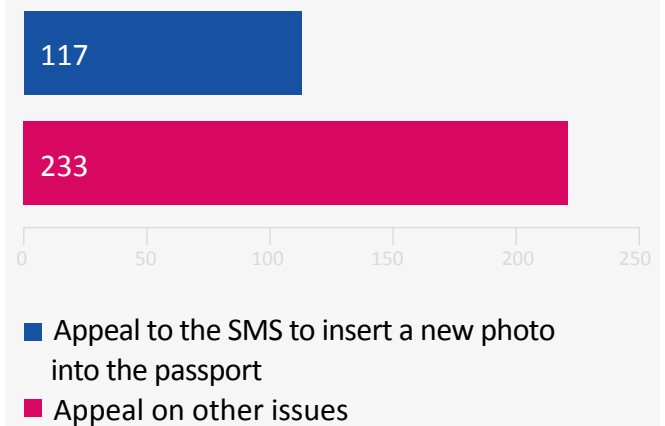
Lawyers of the CF "The Right to Protection" helped the applicant to receive the birth certificate repeatedly. However, when applying to the territorial unit of the SMS for issuance of Ukrainian passport, the applicant got rejection, as he had no evidence of his citizenship of Ukraine, namely: residence in Ukraine as of 1991. As the territorial unit of the SMS cannot obtain information from the files from its territorial units that remained in NGCA, the applicant had to approach the court.

Lawyer of the CF "The Right to Protection" collected evidence of the applicant's residence on the territory of Ukraine as of 1991, evidence of his citizenship of Ukraine and filed a corresponding claim to the court. As a result, the court by its decision ordered to issue a passport, which the applicant received 2 months after his release from the place of serving his sentence.

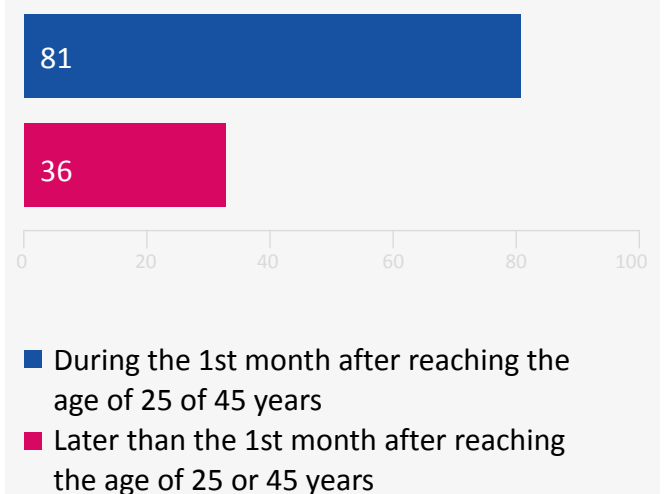
Results of interviewing the persons, who applied to the territorial unit of the SMS in order to insert a photo into a passport, issued before 2014 in the territory which is currently non-government controlled upon reaching the age of 25 or 45 years.

117 respondents from 350 applied to the territorial units of the SMS to insert a photo into a passport issued before 2014 in the territory which is currently non-governmental-controlled upon reaching the age of 25 or 45 years.

Reasons for approaching the territorial units of the SMS



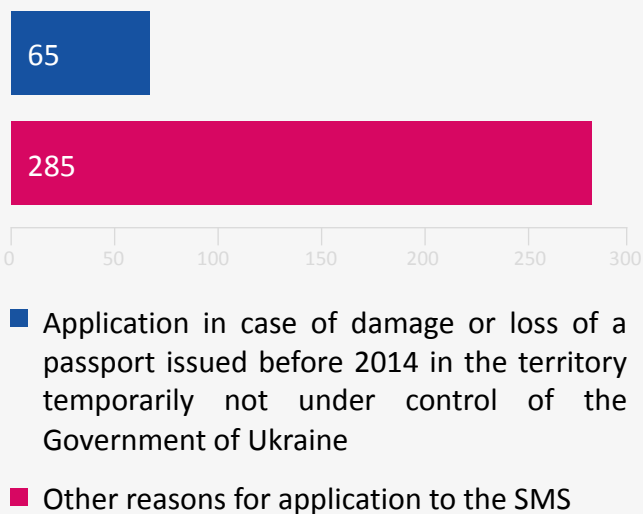
Approaching by respondents to the territorial units of the SMS in order to insert a photo in the passport



Of the **117 respondents**, who applied to the territorial units of the SMS in order to insert the photo in the passport, **81 persons** applied within one month upon reaching the age of 25 or 45 years, i.e. within the term established by law. **24 respondents from 36**, who applied to the territorial units of the SMS with a violation of the term, underwent the procedure of establishment of person's identity or stated the need to undergo such a procedure in future.

The results of interviewing the persons, who applied to the territorial units of the SMS with the purpose to exchange a passport in case of the loss or damage of a passport issued before 2014 in the territory which is currently non-government controlled

Reasons for approaching the territorial unit of SMS



65 respondents from 350 approached the territorial units of the SMS to exchange their passport in case of loss or damage of a passport issued before 2014 in the territory **which is currently non-government controlled**; **35** of them underwent the procedure for establishment of person's identity or were informed that they have to undergo the mentioned procedure.

One respondent stated that he, within the stipulated period of 1 month, applied to the territorial unit of the SMS for inserting a photo in the passport upon reaching the age of 45 years, but he was verbally refused to do so and was offered to obtain the passport of a citizen of Ukraine in the form of ID card.

It should be noted that the current legislation provides the exhaustive list of circumstances under which the passport of 1994 sample must be exchanged for an ID card.¹⁴ In a situation where a person has within the stipulated by law period applied to the territorial unit of the SMS for replacement of photo, the exchange of a passport of 1994 sample for an ID card is not mandatory (although it is an option at the request of the person).

One respondent, who had applied to the territorial unit of the SMS for inserting a photo without violating the stipulated term, stated that he needed to undergo the procedure for establishment of person's identity. In his turn, he was unaware of the need to involve neighbors and relatives from NGCA. Moreover, the respondent did not have any neighbors or relatives in the NGCA, so, in order to undergo the procedure, he invited a relative and a neighbor with registered addresses within the GCA. After long talks with the employee of the territorial unit of the SMS, the respondent underwent the procedure for establishment of persons identity without involving relatives and neighbors from NGCA.

The aforementioned case demonstrates a number of problems faced by the persons from NGCA if they need to obtain a passport of a citizen of Ukraine or insert in the passport a photo:

- People lack information on the peculiarities of the procedure of identification and establishment of identity of the person, in particular, on the need to have identity documents and involve witnesses to identify them.

14. Paragraph 6 of the Procedure of drawing up, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2015 No. 302: <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF/print>

- Where a person needs to undergo the procedure for establishment of person's identity with involvement of relatives and neighbors, some persons may have no witnesses at all, who could confirm their identity in the territorial unit of the SMS in GCA.
- Vague legislative regulation of the procedure for establishment of person's identity, which leads to the application of legislative norms at the discretion of a particular employee of the territorial unit of the SMS.

In one case, there was a person who received a passport before 2014 in the territory which is currently non-government controlled and lost it, already being on the GCA. She applied to the territorial unit of the SMS several times, but in order to issue a passport, SMS needed to establish the identity of person's identity with involvement of witnesses. In turn, in order to attract witnesses, the person had to go to NGCA, which was impossible without a passport and the relevant certificate from the territorial unit of the SMS.¹⁵

In this case, a separate problem is the possibility of passing the checkpoint by the persons, who, for certain reasons, were unable to submit relevant documents at the first request to the territorial unit of the SMS for obtaining a passport and, consequently, receive the certificate stipulated by the current legislation of Ukraine.

There was a case, when 3 persons from relatives and neighbors were required to identify the person in the territorial unit of the SMS. However,

the person was in common-law marriage with her husband, and therefore her husband could not be involved in the procedure for establishment of person's identity. As a result, this person had to bring her elderly mother from NGCA in order to establish her identity in the territorial unit of the SMS.

This case illustrates the imperfection of the procedure for establishment of person's identity enshrined in legislation. In particular, it would be appropriate to expand the number of persons who may be involved in the procedure of establishment of person's identity.

Therefore, the procedure for establishment of identity of a person by the territorial unit of the SMS is not always effective, given that not all persons can ensure personal presence of relatives or neighbors at the territorial unit of the SMS, given that relatives and/or neighbors do not always have financial or physical ability to appear in the territorial unit of the SMS, especially when it comes to a trip from NGCA. It is important to note that only those relatives or neighbors who have a valid ID can be interviewed. However, not all applicants have neighbors or relatives, who can confirm their identity.

Those respondents, whose identity was not established as a result of the procedure for establishment of person's identity and/or whose citizenship was not verified, should apply to the court to establish their identities and/or verify the fact of their residence in the territory of Ukraine as of August 24, 1991 or November 13, 1991 or the fact of their parents' residence in Ukraine as of the said dates.

15. Procedure for passing the checkpoints, provided by the "Temporary procedure for control over movement of persons across the line of conflict within Donetsk and Luhansk regions". As a general rule, crossing the line of conflict by the citizens of Ukraine is possible subject to presentation of identification documents, as well as recording such persons in the electronic register. Temporary procedure for control over movement of persons across the line of conflict within Donetsk and Luhansk regions provides for a special Certificate for the persons, who have applied to the SMS territorial unit for obtaining a passport of a citizen of Ukraine, which is taken into account when the persons cross the line of conflict. Thus, the legislator envisaged the possibility of crossing the demarcation line for those persons, who do not have identification documents, but have applied to the SMS territorial unit with the intention to obtain it. However, it should be noted, that such a Certificate should be issued in the SMS territorial unit, and therefore there is a risk that, if a person left the territory temporarily not under control of the Government and for some reasons could not apply for obtaining a passport of a citizen of Ukraine in the SMS territorial unit, this person will not be able to obtain the said Certificate, and therefore, without a passport of a citizen of Ukraine or any other identification document, this person will not be able to return to the territory not under control of the Government.

CONCLUSION:

Both in the case of inserting a photo in the passport issued before 2014 on the territory which is currently non-governmental-controlled upon reaching the age of 25 or 45 years, and in the case of exchange of a passport in case of the loss or damage of the passport issued before 2014 on the territory which is currently non-governmental-controlled, persons usually had to undergo the procedure for establishment of person's identity in the territorial unit of the SMS.

Monitors of the CF "The Right to Protection" recorded cases, when persons from NGCA came to the territorial unit of the SMS to obtain a passport instead of the lost/damaged one, but did not have information about the documents to be provided and the probable need to involve their relatives/neighbors for further procedure of establishment of the person's identity.

According to the results of the monitoring, it can be concluded that the practice of applying the law on

this issue is ambiguous and varies depending on the territorial unit of the SMS. In most cases, the territorial units of the SMS required involvement of 3 relatives and neighbors to confirm the identity of the applicant. At the same time, the applicants did not always have the opportunity to involve witnesses to confirm their identity, which is a serious obstacle for obtaining a passport of a citizen of Ukraine. Therefore, there is an obvious need to expand the range of persons, who can confirm the identity of the applicant in course of the procedure of establishment of identity of a person.

The need to undergo the procedure for establishment of person's identity for the individuals from NGCA for obtaining a passport of a citizen of Ukraine or inserting a photo in a passport can be considered as a discriminatory practice in comparison with those persons, who received passports in other regions of Ukraine, which have not been affected by armed conflict.



4 SECTION

Exchange of the passport of a citizen of the former USSR

In spite of the fact that almost 30 years have passed since the collapse of the Soviet Union, in the territory of Ukraine there are still persons who have passports of the USSR sample or have lost such passports and have never received the passports of the newly formed states.

Since 2005, the documents using passport-blanks of the former Soviet Union have been considered invalid. However, not all the residents of Ukraine exchanged their passports by January 01, 2005, as was required by law, for various reasons. Thus, all those persons who did not exchange the USSR passport by January 01, 2005, after that date have actually found themselves in the territory of Ukraine without a valid passport document.

As for today, there is no statistics on how many people with Soviet passports live in Ukraine. In 2018, about 100 persons who had passports of the USSR sample and did not exchange them in time, or lost such passports and did not receive the new ones, applied to the CF "The Right to Protection" for legal assistance.

According to Part 1 of Article 3 of Law of Ukraine "On Citizenship of Ukraine", following persons are considered as citizens of Ukraine:

- 1)** all citizens of the former USSR who, at the time of declaration of independence of Ukraine (August 24, 1991), permanently resided in the territory of Ukraine;
- 2)** persons, irrespective of race, color, political, religious and other beliefs, sex, ethnic and

social origin, property status, place of residence, linguistic or other characteristics, who, at the time of entry into force of the Law of Ukraine "On Citizenship of Ukraine" (November 13, 1991) resided in Ukraine and were not citizens of other countries.

Depending on whether the passport of the USSR was present and whether this passport contains mark on residence registration of the person in the territory of Ukraine as of August 24, 1991 and November 13, 1991, the procedure that a person must undergo to obtain a passport of a citizen of Ukraine will be different.

In particular, when contacting the territorial unit of the SMS, issuance of a passport of a citizen of Ukraine will not cause difficulties for the persons holding a passport of a citizen of the former USSR and having the corresponding mark on the residence registration in it.

The procedure becomes more complicated if a person does not have a passport of a citizen of the USSR or does not have the mark on residence in the territory of Ukraine as of August 24, 1991 or November 13, 1991 in the passport. In such cases, a person should apply to the court to confirm the fact of permanent residence in the territory of Ukraine as of the above dates.

In the absence of the passport of a citizen of the USSR and the necessary mark on residence registration, a person needs not only to establish the fact of residence in the territory of Ukraine, but also to undergo the procedure of establishment of person's identity.¹⁶

16. If a person has lost the passport of a citizen of the former USSR, he or she must provide a reference under Form 1 (application for processing of the passport), reference on the residence registration as of August 24, 1991 or as of November 13, 1991 (if the residence was registered).

A CASE FROM THE PRACTICE OF THE CF “THE RIGHT TO PROTECTION”

The applicant was born in 1957 in the Republic of Belarus, which at that time was a part of the USSR, and that is where she received the passport of a citizen of the USSR. Subsequently, the applicant met a man from Ukraine, with whom she decided to get married.

In October 1991, the applicant received a certificate of departure from her place of residence and moved to Kyiv, where she married, registered her residence and received a new passport, which was still of the USSR sample. In 1997, when applying to the passport office, the applicant was refused to exchange the passport of a citizen of the USSR for the passport of a citizen of Ukraine. The fact was that the applicant had chosen a bad time to move: the USSR had just broken up into independent states, there was no time to settle all citizenship issues, and the applicant was not put the stamp “citizen of Ukraine” in her new passport, as she did not have a registration of the place of residence at

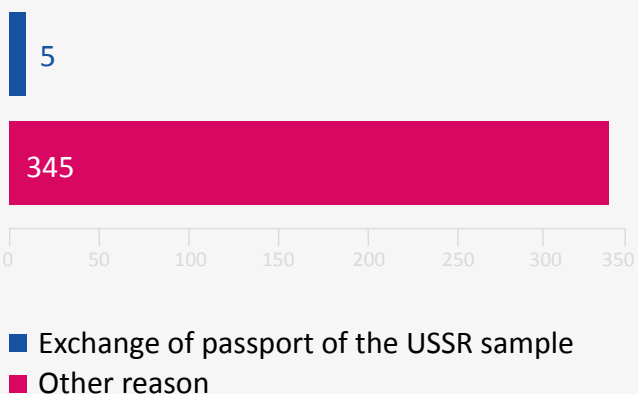
the time of declaration of independence of Ukraine (August 24, 1991) or at the time of adoption of the Law of Ukraine “On the Citizenship of Ukraine” (November 13, 1991).

As a result of applying to the Consulate of the Republic of Belarus, the applicant received a certificate on absence of citizenship of that state, since her registration had already been cancelled at the time considered to be the date of independence of Belarus. Thus, the applicant remained stateless, although she has been living in Ukraine since the first days of independence of Ukraine and was married to a Ukrainian citizen.

Lawyers of the CF “The Right to Protection” have collected the necessary package of documents in order to apply to the court and establish the fact of the applicant’s residence in the territory of Ukraine at the time of adoption of the Law of Ukraine “On the Citizenship of Ukraine”, although there was no mark about this fact. The applicant then applied to the territorial unit of the SMS and received the passport of a citizen of Ukraine.

THE RESULTS OF INTERVIEWING

Reasons for approaching the territorial unit of the SMS



Only 5 respondents out of 350 applied to the territorial units of the SMS to exchange a Soviet passport. All of them reside in GCA. At the time of applying, all the respondents were over 45 years. Among the reasons why they were unable to obtain the passport of a citizen of Ukraine earlier, the respondents mentioned, among other things, complex administrative procedures and failures to achieve results.

One respondent indicated that he did not need the passport of a citizen of Ukraine before. Another reason was the lack of knowledge on the procedures for obtaining the passport of a citizen of Ukraine.

One respondent stated that, due to the absence of valid identity document, he encountered

problems with issuance of the passport of a citizen of Ukraine for his child upon reaching by him the age of 14.

The respondent, who previously resided in the territory of the Russian Federation, applied to the territorial unit of the SMS to obtain the passport of a citizen of Ukraine, provided a document proving his identity. As a result of the application, the territorial unit of the SMS established the identity of the applicant, but did not verify the citizenship of Ukraine. Thus, the person needed qualified legal assistance to apply to the court and establish the fact of his residence in the territory of Ukraine as of August 24, 1991 and November 13, 1991. It should be noted that this respondent addressed to the Free Legal Aid Centers for assistance in obtaining the identity document, but received neither primary, nor secondary legal aid in this regard. You can read on the access of undocumented persons to legal aid regarding processing of identity documents in section 7 of this report.

CONCLUSION:

Despite the fact that the monitoring revealed a small number of requests to the territorial units of the SMS on exchange of passports of the USSR sample (only 5 respondents), according to the information of the CF "The Right to Protection", the number of such persons is much bigger. One of the reasons for non-applying by the persons who have (or had and lost) the passport of a citizen of the former USSR to the territorial units of the SMS is the lack of information on the possibility to obtain a passport of a citizen of Ukraine or passport of another country. Another reason for the low level of applying to the territorial units of the SMS may be the lack of access to secondary free legal aid for persons, who do not have identity documents. Secondary legal aid is required for preparation an application to the court for establishing the fact of residence in the territory of Ukraine as of August 24, 1991 and November 13, 1991, which is a key stage for obtaining the passport of a citizen of Ukraine for the persons with the passport of a citizen the former USSR or those who had and lost it.



5 SECTION

Issuance of the passport of a citizen of Ukraine to a person, who has reached the age of 14 years

If a person under 18 years old applied to the territorial unit of the SMS for obtaining a passport, he or she must provide the original of his/her birth certificate

and originals of the documents proving the citizenship and identity of the parents or one of them, who at the time of birth were/was citizens/citizen of Ukraine.

A CASE FROM THE PRACTICE OF THE CF “THE RIGHT TO PROTECTION”

The girl was born in 2004 in Kyiv region. However, the circumstances were such that, at the time of her birth, her parents did not have valid identity documents. In addition, they were not officially married. In this regard, when registering the birth of the child, the name of the father was inscribed according to the mother’s words. After a while, parents of the girl finished their relationship, and the child stayed with her dad and grandmother.

When the girl was 13 years old and it was time to get a passport, the question of confirmation of citizenship arose which, in accordance with the current legislation of Ukraine, is passed from parents to children (Article 7 of the Law of Ukraine “On the Citizenship of Ukraine”). When applying to the territorial unit of the SMS for obtaining a document, the girl was asked to provide a passport of one of her

parents. The girl was not in contact with her mother. The father, instead, could not legally be considered her dad, since his name was inscribed into the birth certificate according to the words of the girl’s mother and according to the legislation of Ukraine, such record has no legal force. Therefore, the child was at risk of remaining stateless and without any passport.

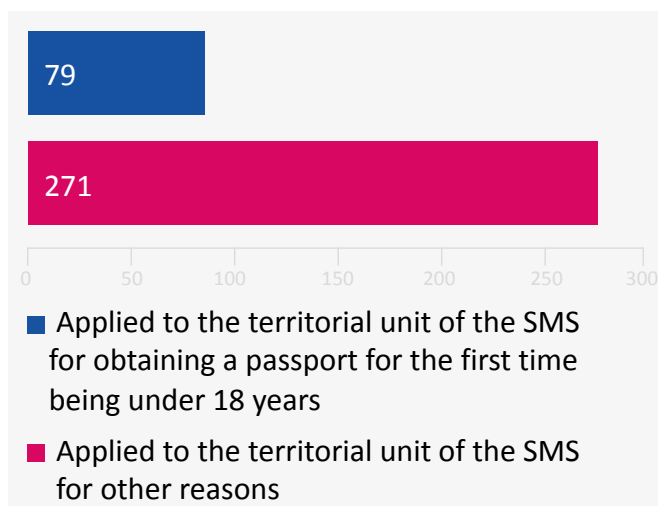
The team of the CF “The Right to Protection” prepared and filed to the court a claim on establishing paternity.

A necessary condition for consideration of the case was the conduct of genetic examination (required by the legislation of Ukraine), after which, by court decision, the man was given the opportunity to apply to the civil registry office for amending the birth certificate of his daughter. When the girl was 14 years old, she applied to the territorial unit of the SMS, where she was issued the passport of a citizen of Ukraine.

The results of interviewing

A large number of respondents referring to the territorial units of the SMS in this region reside in NGCA, so applying to the territorial unit of the SMS with parents requires additional time and financial resources for the family.

Reasons for approaching territorial unit of the SMS



79 respondents from 350 applied to the territorial units of the SMS for the first time before the age of 18.¹⁷

Four persons under the age of 18 had obstacles in first obtaining of the passport of a citizen of Ukraine due to the absence of a valid passport document of their parents’.

There was a case where both parents of the child had their passports damaged and had to exchange them. For individuals from NGCA, this actually means the need to undergo the procedure for establishment of the person in the territorial unit of the SMS. At the same time, their child is unable to be issued with an ID card, and therefore he remains undocumented.

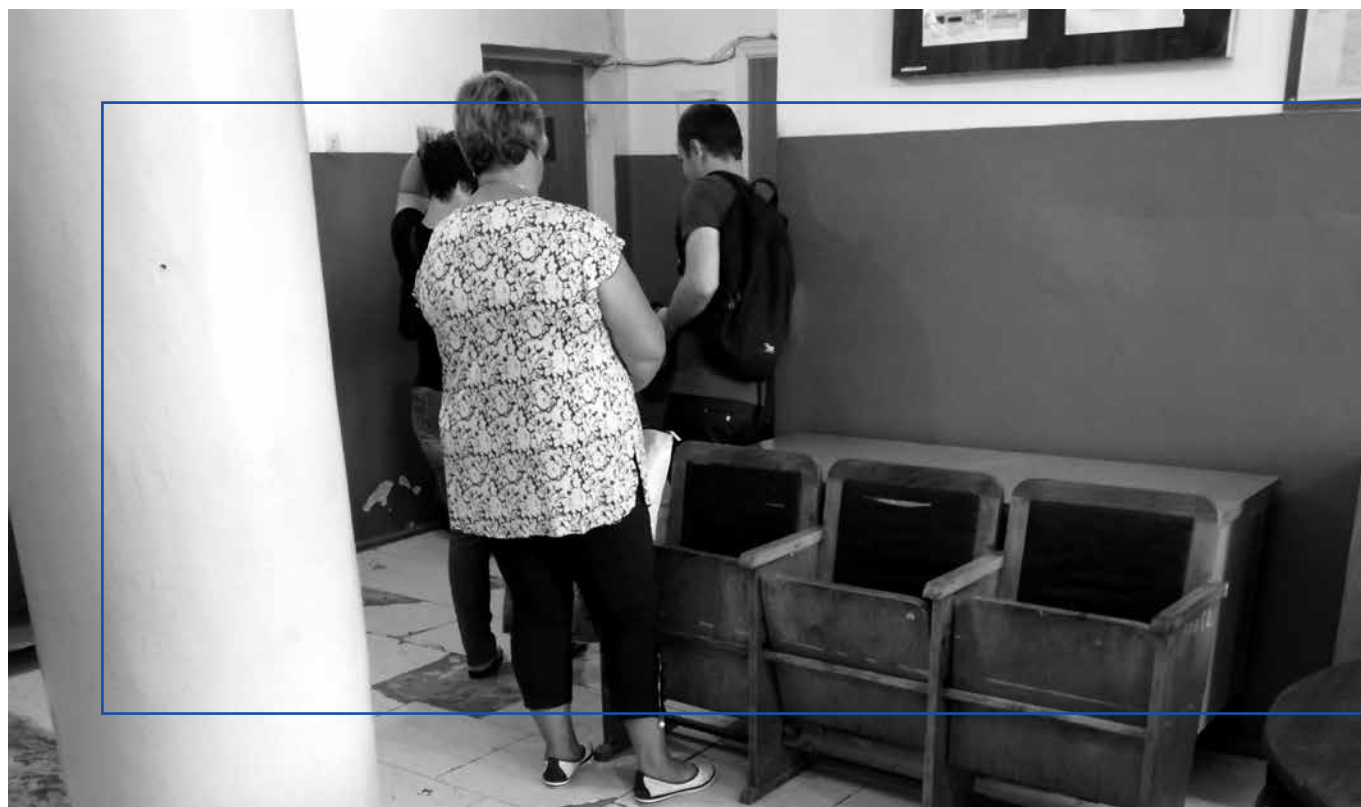
5 respondents reported that they had contacted the territorial units of the SMS without their parents, and just had their identity documents. All these respondents indicated that their parents had no obstacles in leaving NGCA.

The monitors of the CF “The Right to Protection” recorded a situation, where a person under the age of 18 did not know her father, and her mother died. The grandmother came to the territorial unit in order to help her granddaughter to obtain the passport of a citizen of Ukraine, but received a verbal refusal.

CONCLUSION:

A considerable number of respondents applied the SMS territorial units for the first obtaining of passport being under age of 18. In this case, a person depends on the legal status of his/her parents and on the presence of their identity documents.

In case of damage or loss of the parents’ identification documents or if the parents have never received the passport of a Ukrainian citizen, children face the problem in obtaining a passport due to the inability to provide the identity documents of their parents.



17. Interviewing of persons under the age of 18 was conducted with the consent of their legal representatives.

6 SECTION

Issuance of the passport of a citizen of Ukraine for the first time after reaching the age of 18 years

If a person, who has reached the age of 18 years and wants to receive a passport for the first time, applies to the territorial unit of the SMS of Ukraine, the procedure for issuing the passport of a citizen of Ukraine will depend on whether the person was born before or after 1991.

If a person was born before 1991, for issuance of the passport of a citizen of Ukraine the fact will matter of whether a person reached the legal age as of August 24, 1991 or November 13, 1991.

In particular, a **person who, as of August 24, 1991 or November 13, 1991, had not reached the legal age** and resided in Ukraine with his or her parents or one of them, must provide:

- a statement on establishing the citizenship of Ukraine;
- a copy of his/her birth certificate;
- a certificate/court decision¹⁸ on **establishing the fact of his/her residence while being of minor age** in the territory of Ukraine as of the aforementioned dates of 1991 or a **certificate/court decision on establishing the fact of permanent residence in the territory of Ukraine as of August 24, 1991/November 13, 1991 of his/her parents** (one of them) or another legal representative, with whom the minor resided in the territory of Ukraine.¹⁹

It should be noted that as of 2019, all persons who were minors and resided on the territory of Ukraine as of August 24, 1991 and November 13, 1991, have already reached the legal age.

Therefore, in the absence of identification documents, such persons can independently apply to the court to establish the relevant legal facts about themselves.

If a person **was of legal age as of the stated dates of 1991**, he or she should apply to the court for establishing the fact of his/her in the territory of Ukraine as of August 24, 1991 and/or November 13, 1991 and for establishing the identity.

If a person was **born in the territory of Ukraine after 1991**, he/she must provide documents confirming the fact of residence of his/her parents in the territory of Ukraine as of August 24, 1991 and November 13, 1991.

In this case, it is important to understand whether the parents of a person have documents confirming the fact of their residence in the territory of Ukraine as of 1991, since the parents' citizenship of Ukraine or the grounds for acquiring the citizenship of Ukraine is the basis for obtaining the passport of a citizen of Ukraine by their child as a person, who was born in Ukraine after August 24, 1991 and November 13, 1991.

It should be noted that there remains the question on persons, who were born after 1991 in the territory of Ukraine from stateless persons or persons, who did not have any identity documents and had an unregulated legal status.

Notwithstanding the fact that the Statelessness Convention of 1961 ratified by Ukraine stipulates

18. Or the relevant certificate in accordance with paragraph 10 of the Procedure of Processing of Applications and Submissions on Citizenship and Implementation of the Decisions Adopted, approved by the Decree of the President of Ukraine dated March 27, 2001, No. 215. Available at: <https://zakon2.rada.gov.ua/laws/show/215/2001>
 19. Paragraph 10 of the Procedure of Processing of Applications and Submissions on Citizenship and Implementation of the Decisions Adopted, approved by the Decree of the President of Ukraine dated March 27, 2001, No. 215. Available at the link: <https://zakon2.rada.gov.ua/laws/show/215/2001>

that a state should grant citizenship to a person born in its territory unless otherwise a person would be stateless, the mentioned provision has not been implemented into national legislation yet.²⁰

According to the legislation of Ukraine, in order to obtain the passport of a citizen of Ukraine, the one

needs to provide original documents confirming the citizenship and identity of his/her parents (one of them), who, at the moment of birth of the child, were the citizens of Ukraine.²¹ Thus, if the parents do not have identity documents, their children cannot obtain the passport of a citizen of Ukraine.²²

A CASE FROM THE PRACTICE OF THE CF “THE RIGHT TO PROTECTION”

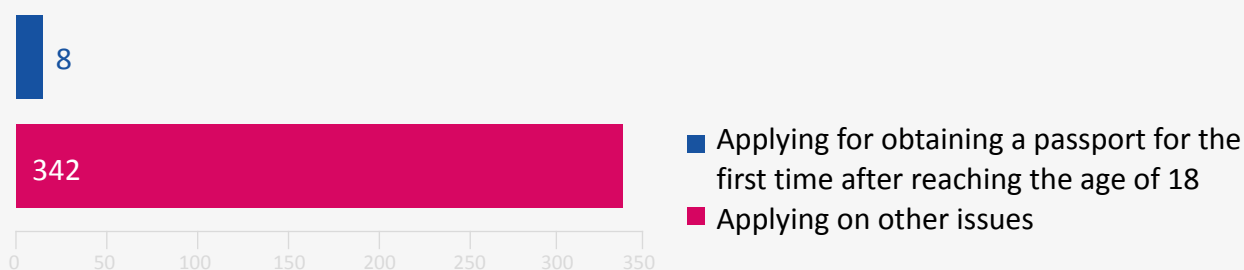
The applicant was born in 1998 in Ukraine from a woman, who was stateless and had no identity documents. The applicant’s mother had previously been documented with the passport of a citizen of the USSR, which she lost after the collapse of the USSR, but before the birth of her daughter. The applicant’s mother did not manage to obtain a passport from one of the newly formed countries, because she was not recognized as a citizen of any of them: neither Kazakhstan, where she was born; nor Russia, where she temporarily resided; nor Ukraine, where she has been living for more than 25 years. As at the legislative level of Ukraine there is no statelessness determination procedure, the

mother of the child could not obtain a document proving her identity and her status of a stateless person. Neither the applicant, nor her mother maintained contacts with the father.

At the time of applying to the CF “The Right to Protection”, the applicant had already reached the age of 21, but she was still unable to obtain a passport of Ukrainian citizen. In accordance with the law for the issuance of the passport, she would need to provide a document proving the identity of her mother, which her mother could not have in the absence of a statelessness determination procedure. Thus, the applicant found herself in a legal vacuum without identity documents. In the future, the unregulated legal status of the applicant will pass on to her children, giving rise to further cases of statelessness.

THE RESULTS OF INTERVIEWING

Reasons for approaching the territorial unit of the SMS



20. Convention on the Reduction of Statelessness (1961). Available at the link: https://zakon.rada.gov.ua/laws/show/995_240

21. Procedure of processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of passport of citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine dated March 30, 2015 No. 302.

22. From the theoretical point of view, the situation may be different for children born on the territory of Ukraine after 1991, when the Law of Ukraine “On the Citizenship of Ukraine” dated October 08, 1991, No. 1636-XII was in force. According to the mentioned version of the Law, the document confirming the citizenship of a person is the passport of a citizen of Ukraine, and for persons under the age of 16 years – a birth certificate. Therefore, persons born after 1991, when the old version of the Law “On the Citizenship of Ukraine” was in force, and who had a Birth Certificate issued by the state of Ukraine, should be considered as citizens of Ukraine. However, in practice, this approach is not applied, so these persons remain in the territory of Ukraine in an unregulated legal status.

8 respondents from 350 applied to the territorial unit of the SMS for the first time after reaching the age of 18 years, 6 of whom are permanently residing NGCA.

Among the reasons for applying to the territorial units of the SMS for obtaining the passport of a citizen of Ukraine after reaching the age of 18, the respondents indicated, in particular, that they were unable to leave the NGCA. One of the respondents said that he had no possibility to apply to the territorial unit of the SMS because of the need to take care his invalid mother, and hence the inability to leave NGCA.

Two respondents indicated that they were unable to apply to the territorial unit of the SMS to obtain the passport of a citizen of Ukraine before reaching the age of 18 due to the inability to provide their parents' original passports.

One of the respondents residing in the GCA said that he had not received the passport of a citizen of Ukraine earlier because of the lack of financial capacity.

Thus, a person, who was born on the territory of Ukraine from parents, who did not have documents, risks becoming a stateless person. In fact, provisions of the Law of Ukraine "On Citizenship of Ukraine" do not contain a mechanism for acquiring Ukrainian citizenship by such a person. Hence, current legislation places a child, who was born on the territory of Ukraine, in full dependence on the legal status of his/her parents.

CONCLUSION:

Although according to the monitoring results a relatively small number of respondents applied to the territorial units of the SMS of Donetsk and Luhansk regions for the purpose of obtaining passports for the first time after reaching the age of 18 years, according to the practice of the CF "The Right to Protection" the number of the persons living in the territory of Ukraine is much bigger.

Often the absence of documents in such persons is caused by the need to provide their parents' (one of them) passports of citizens of Ukraine, which is often a significant obstacle for the applicant. Moreover, some persons face the problem of leaving NGCA or for other reasons are unable to apply to the territorial units of the SMS on time. In case of untimely application, procedure for issuing a passport of citizen of Ukraine becomes more complicated.

Consequently, dependence of a person's legal status on his or her parents, as well as complex administrative procedures, can in the future lead to significant obstacles in establishing the citizenship of Ukraine and issuance of the passport.



7 SECTION

Access to the secondary free legal aid

For some people, who faced the need to obtain the passport of a citizen of Ukraine or insert a photo into the existing passport upon reaching the age of 25 or 45 years, respective administrative procedures can pose significant difficulties. The lack of knowledge about how to pass the administrative procedures (in particular, concerning the procedure of identification or of establishment of person's identity), necessary for obtaining a passport, or the inability to collect the package of the needed documents, is often an obstacle for issuance of the passport of a citizen of Ukraine. In such cases, a need for the qualified legal assistance appears.

In the cases where the territorial unit of the SMS has not established the person's identity of the applicant or his/her belonging to the citizenship of Ukraine, the person must apply to the court to establish his/her identity and the fact of residence in the territory of Ukraine as of August 24, 1991 and November 13, 1991. However, most persons cannot collect the necessary documents and prepare a court application without the help of lawyers, which in turn constitutes a serious impediment for processing of identification documents.

In Ukraine there is a system of state free legal aid. The legislation²³ provides a possibility for a certain range of persons to receive such assistance; however, the persons who need to receive an identity document are not put in a separate category of recipients of secondary legal aid. In most cases, persons who have difficulties in obtaining of their identity document theoretically fall under the criteria of the Law of Ukraine "On Free Legal Aid" as those having low income²⁴. However, in practice, the stated regulation cannot be implemented, since such persons cannot confirm their low income by the relevant documents²⁵. Thus, a vicious circle is formed, where a person needs a qualified legal aid to obtain a passport, and must provide identity documents in order to obtain legal aid.

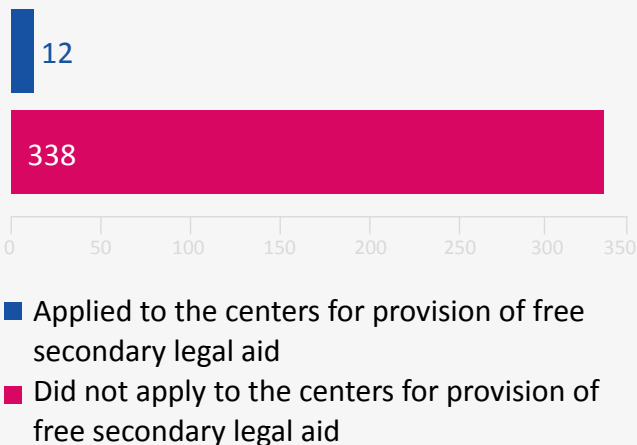
For their part, undocumented persons have the opportunity to contact the FLAC. However, in order to obtain an identity document, it is secondary legal aid that is often needed, i.e. preparation of court applications, filing attorneys' requests for obtaining evidence.

23. Law of Ukraine "On Free Legal Aid", available at the link: <http://zakon5.rada.gov.ua/laws/show/3460-17/print1509544605884117>

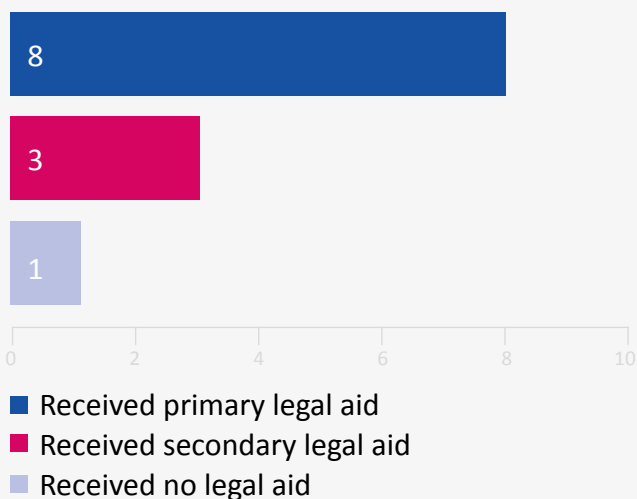
24. Persons, whose average monthly income does not exceed two levels of subsistence, calculated and approved by law for persons belonging to the main social and demographic groups of the population, as well as persons with disabilities receiving a pension or retirement benefit in the amount not exceeding two levels of subsistence for disabled persons, are entitled to all kinds of legal services provided for in Part two of Article 13 of this Law.

26. In particular, the person must provide a reference from the social protection bodies on receipt (non-receipt) of social aid in order to confirm the fact that the person is (is not) registered in the labor and social protection department, as well as of the fact, that such person receives or does not receive social aid as a poor one. In absence of such a reference, the person shall submit the following documents: reference on the composition of the family and references on income of each member of the family for the period of the last 6 months; reference on registration in the center of employment on reference on the payments made to the person; reference on filing the statement of property and income, etc. However, in absence of the passport, a person cannot obtain any of the above documents and therefore cannot submit them to the center for provision of free secondary legal aid.

Respondents' approaching FLAC



The results of the respondents' application to FLAC



According to the monitoring data, only **12 out of 350** respondents applied to the centers for provision of secondary free legal aid on the issues related to obtaining of identity documents.

8 out of 12 respondents indicated that they had received only verbal advice, i.e., primary legal

aid. **One respondent** stated that when applying he received neither primary, nor secondary legal aid.²⁶ Thus, because of the legislative gap, the vast majority of persons, who need to obtain identification documents, cannot make use of services provided by the lawyers of the centers for provision of free secondary legal aid. It should be noted that the lawyers and attorneys of the centers for provision of free secondary legal aid can provide secondary legal aid pro bono at their discretion.²⁷

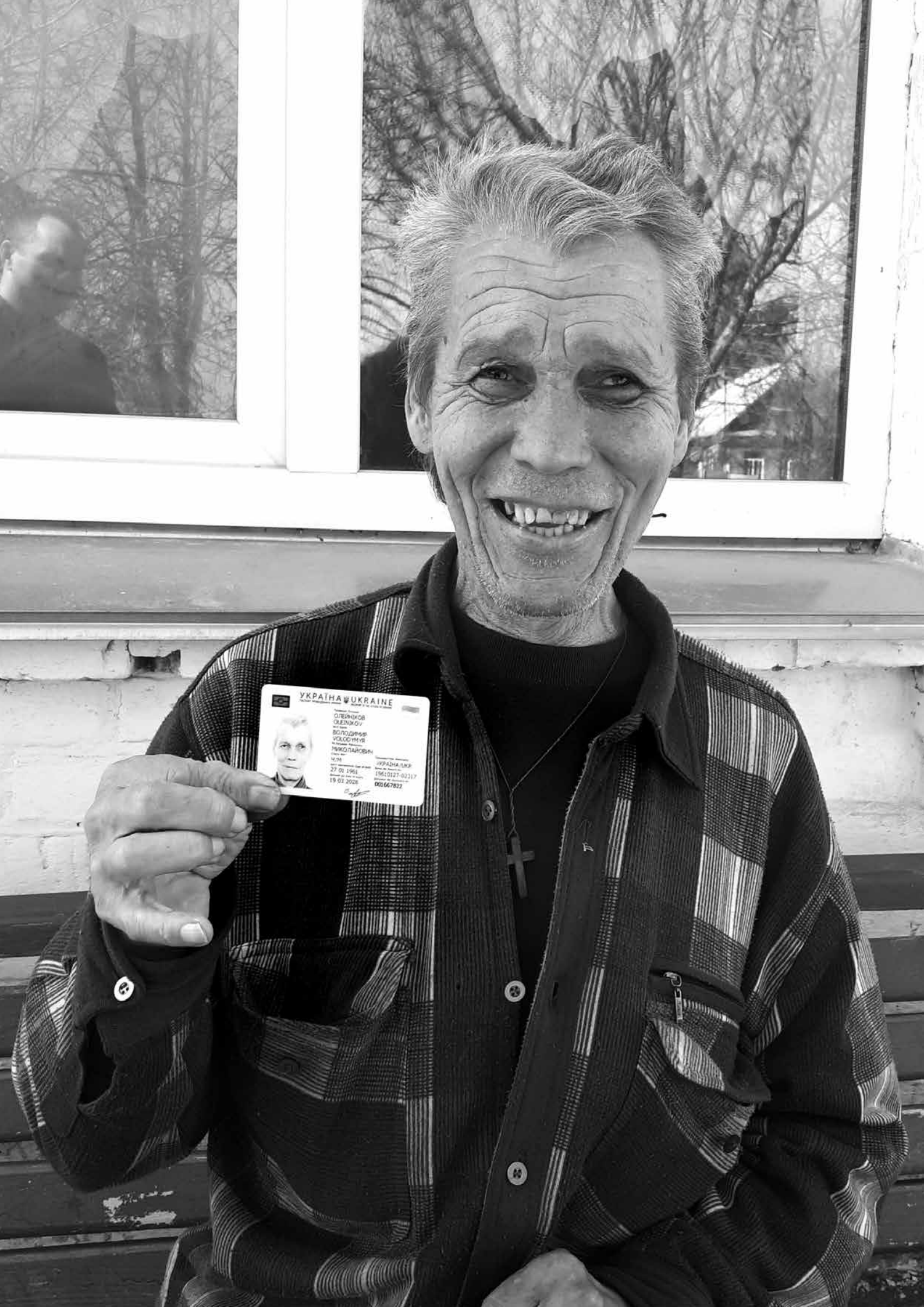
The monitoring results show that a number of persons who apply to FLAC in Donetsk and Luhansk regions of Ukraine (GCA) for the purpose of obtaining an identity document is a small percent from the general amount of applicants. The reason for such a small number of applications may be the lack of knowledge about the possibility of obtaining free legal aid (in particular, primary legal aid) in FLAC. Another reason, why persons avoid applying to the centers for provision of free secondary legal aid, is the inability to obtain secondary free legal aid by those persons, who do not have identity documents, while primary legal aid they can obtain through consultation directly in the territorial units of the SMS.

CONCLUSION:

At the time, legal mechanism for obtaining secondary free legal aid by persons without identity documents, in particular, on the issues related to obtaining identity documents, is not introduced. Such a legal gap is a significant obstacle for issuance of identity documents for those persons, who need to establish their identity and the fact of residence in the territory of Ukraine as of August 24, 1991 and November 13, 1991 in court.

26. Despite the fact that the legislation does not regulate the provision of secondary legal aid to persons without identification documents, 3 respondents indicated that they received secondary legal aid when applying to the Centers for provision of free secondary legal aid on issues related to processing of a passport. It is important to note that in all three cases, persons applied for obtaining of passport for the first time being under the age of 18 years. It is likely that this category was able to obtain free secondary legal aid, as the legislator allocates children in a separate category of subjects of the right to receive secondary legal aid.

27. During cooperation with the local FLAC, the CF "The Right to Protection" established that some centers still find the opportunity to provide secondary legal aid to persons, who do not have the required package of documents. For instance, one of the centers for provision of free legal aid can be used as a positive example: an undocumented person submits an explanatory note to the Center about his/her lack of identification documents and his/her inability to provide the required package of documents to confirm his/her status of a poor person in accordance with Part 1, paragraph 1 of Article 14 of the Law; the lawyer of the Center, whom the person appealed to, in turn submits an application to the Director of the Center, stating the reasons for the inability of the applicant to submit the required package of documents and the readiness to take responsibility for provision of legal aid to the applicant; the Director of the Center issues a decree permitting the lawyer to provide free secondary legal aid to the applicant, who does not have an identification document. All the above documents are uploaded to the electronic system of the Center for provision of free secondary legal aid.



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8 SECTION

Other problems identified during the monitoring

The monitoring interview contained a separate box for comments, where respondents were able to provide any information that they considered relevant and related to their application to the territorial units of the SMS.

Access to administrative services and quality thereof

Among the comments on the quality of administrative services provided by the territorial units of the SMS in Donetsk and Luhansk regions, noted by respondents, there are the following:

- verbal refusals to accept documents for issuance the passport of a citizen of Ukraine;
- employees of the territorial units of the SMS provide insufficiently detailed and informative consultations;
- impolite behavior of the employees of the territorial units of the SMS towards the applicants;
- long queues in the territorial units of the SMS in Donetsk and Luhansk regions;
- difficulties in registration in the electronic queue, in particular due to the lack of time available for registration.

Lack of knowledge about the procedure for issuance of the passport of a citizen of Ukraine

One should emphasize the lack of awareness about the procedures prescribed by law for issuance of the passport of a citizen of Ukraine or inserting a photo card in the passport upon reaching the age of 25 or 45 years. In particular, there were cases, where persons applied to the territorial units of the

SMS with an incomplete package of documents, which, in turn, led to the need for repeated application, and this is especially burdensome if a person resides on NGCA.

Other reasons for applying to the SMS

76 out of 350 respondents, interviewed by the monitors of the CF “Right to Protection” applied to the territorial units of the SMS for reasons not considered in previous sections of this report. In particular, these reasons were: issuance of a passport for travelling abroad, obtaining of ID card by persons with registered place of residence on GCA, exchange of the passport in connection with the damage thereof or change of surname, which, as a rule, did not require the persons from NGCA to undergo additional procedures. In such cases, no further questioning of these persons was conducted, as this report is based on the assumption that when contacting the territorial units of the SMS for the above reasons, they would have no problems related to their identification and the inability to obtain an identity document.

CONCLUSION:

As a result of the monitoring, in addition to the main subject of the study, some related problems relevant in terms of documenting persons in Donetsk and Luhansk regions, were identified. In particular, it can be concluded that excessive work load of the territorial units of the SMS causes difficulties in registration in the electronic queue, which, in turn, makes it impossible for people to apply to them. Another obstacle for the issuance of the passport of a citizen in the studied region is the lack of knowledge among people about the peculiarity of the procedure of identification and of establishment of person's

identity, which in some cases causes the need for repeated application to the territorial unit of the SMS. These problems need to be addressed

promptly, as they, in combination with already complex administrative procedures, create additional barriers for documenting individuals.



9 SECTION

Conclusion and recommendations

Taking into account the above results of the study, it can be concluded that the current legislative regulation of issuance of documents for the persons from NGCA is discriminatory and often impedes the issuance of the passport of a citizen of Ukraine, leaving the person in uncertain legal status. Absence of the identification document deprives a person of the access to a number of the rights guaranteed by the Constitution and legislation of Ukraine, and therefore marginalizes him/her in public life. Moreover, such a person remains unidentified by state and therefore such a person remains beyond its control.

In conditions of the armed conflict, persons from NGCA cannot freely approach the territorial units of the SMS in GCA for obtaining passports. On the other hand, the current legislative regulation of documenting with the passport of a citizen of Ukraine is unfavorable for its own citizens. In particular, in Ukraine remain complex administrative procedures for issuing the passport of a citizen of Ukraine to the persons from NGCA in case of its loss, damage or invalidity.

Considering the results of monitoring in relation to issuance of the passport of a citizen of Ukraine in Donetsk and Lugansk regions by the relevant territorial units of the State Migration Service, as well as of the analysis of the provisions of the current legislation and practice of their application, the following recommendations were developed:

Recommendations for the Verkhovna Rada of Ukraine:

- By amending Article 14 of the Law of Ukraine “On Free Legal Aid”, to grant persons, who do not have identity documents, the access to secondary free legal aid in the matters related to the issuance of the documents.
- To amend Article 8 of the Law of Ukraine “On the Citizenship of Ukraine” on the exercise of the right to acquire the citizenship of Ukraine by territorial origin of an adult born in Ukraine after August 24, 1991 and who cannot acquire citizenship by birth, in particular: to provide the possibility of registration of such person as a citizen of Ukraine upon his/her own request.²⁸
- To consider and adopt the draft Law “On Amendments to Certain Legislative Acts of Ukraine on Recognition as Stateless Persons”, which provides the introduction of a statelessness determination procedure, providing such persons with identity documents and permits for residence in Ukraine.

Recommendations for the Cabinet of Ministers of Ukraine:

- To develop and approve information campaign on the need to obtain the passport of a citizen of Ukraine; to cover the procedure for issuance of the passport of a citizen of Ukraine for the persons from NGCA in media.²⁹

28. A person born on the territory of Ukraine after 1991, who cannot acquire the citizenship of his/her parents due to the lack of identification documents of the parents, becomes a stateless person himself/herself. In fact, the Law of Ukraine “On the Citizenship of Ukraine” does not contain a mechanism for acquiring the citizenship of Ukraine by such a person, which is contrary to the requirements of the international law.

29. During the monitoring, there were recorded cases, when the persons did not possess the relevant information on the procedures required to pass for obtaining the passport of a citizen of Ukraine, applied to the SMS with incomplete package of documents, etc. In such situations, Donetsk and Luhansk regional authorities impede the processing of the documents for such persons. Moreover, in some cases, when the first application to the SMS was unsuccessful, some individuals from the territory temporarily not under control of the Government refuse to re-apply because of financial or other personal circumstances.

- To amend the subparagraph 3 of paragraph 43 of the Procedure for processing, issuance, exchange, transfer, seizure, return to the state, invalidation and destruction of passport of citizen of Ukraine, approved by the Resolution of the Cabinet of Ministers of Ukraine of March 30, 2015, No. 302, which shall extend the range of the persons who may be involved to the procedure of establishment of identity of the person to “persons who have known the applicant for a long time” (which may include colleagues, former teachers, partners, civil spouse, etc.).
- To review the workload of the employees of the territorial units of the SMS, who are involved in work on the processing of identification documents and, in particular, carry out the procedures for identification and for establishment of person’s identity.
- To elaborate information materials concerning the procedure of the issuance of the passports to the persons from NGCA and to disseminate it through the information stands of the territorial units of SMS in Donetsk and Luhansk regions, as well as in the areas of crossing the entry/exit checkpoint and on the Internet resources.
- To oblige the employees of the territorial units of the SMS to provide written rejections to accept the documents for the issuance of a passport.³²

Recommendations for the State Migration Service of Ukraine concerning the law-enforcement practice by the territorial units of the SMS:

- To identify a person who hold a passport-booklet in accordance with it, in cases when a person applies for inserting a photo in passport-booklet upon reaching the age of 25 or 45 years within the period stipulated by law, taking into account that this document is valid according to the current legislation.³⁰
- To limit the number of the persons who need to be involved for establishment of identity of the person by one individual from among relatives/ other persons, who has known the applicant for a long time; to involve two individuals for establishment of person’s identity in exceptional cases only. It is appropriate to abandon the practice of involving three individuals from among relatives/neighbors for the purpose of establishment of person’s identity.³¹



30. Explanations of the State Migration Service on the “moral outdated» of the booklet-passport and on the need to establish the identity of a person in some cases are questionable, particularly in the context, when thousands of people in Ukraine encounter obstacles in obtaining the identification documents. According to the estimates of the UNHCR, as of 2019, in Ukraine over 35,600 stateless persons and persons under risk of statelessness reside. Available at the link: <https://www.unhcr.org/en/%d0%be%d1%81%d0%be%d0%b1%d0%b8-%d0%b1%d0%b5%d0%b7/%d0%b3%d1%80%d0%be%d0%bc%d0%b0%d0%b4%d1%8f%d0%bd%d1%81%d1%82%d%b2%d0%b0>

31. It should be noted that the dedicated normative act regulating the procedure for establishment of the person does not provide for the need to involve exactly 3 persons from among relatives and neighbors for establishment of identity. During the monitoring it was noted that it was usually required to involve 2-3 persons from among relatives or neighbors to establish the identity of a person. At present, there is no general consensus on the number of persons to be involved to the procedure for establishment of person’s identity, and the decision is made at the discretion of a particular employee of the SMS territorial unit.

32. During the monitoring, there were cases indicated, when the persons were verbally refused to accept the application for the issuance of a passport of a citizen of Ukraine. In such cases, some persons just did not understand why their documents were not accepted for consideration.





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