



**Interim report  
Universal Periodic Review  
(Fourth cycle - mid-term, 2020)**

**STATE OF OBSERVANCE OF THE RIGHTS OF REFUGEES, ASYLUM SEEKERS  
AND STATELESS PERSONS IN UKRAINE**

**Coalition of Non-Governmental Organizations**

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## GLOSSARY

SMSU - State Migration Service of Ukraine

CP - complementary protection

LoU - Law of Ukraine

SBGS – State Border Guard Service of Ukraine

ECtHR – European Court of Human Rights

FSLA – free secondary legal aid

FLAC - Free Legal Aid Center

MCC - Migrant Custody Centre

CAJ – Code of Administrative Justice of Ukraine

NHRS - National Human Rights Strategy

MoJ - Ministry of Justice of Ukraine

TIN – taxpayer identification number

TAC – Temporary Accommodation Center for Refugees

USEDE – Unified State Electronic Database on Education

CSPR – Center for Social and Psychological Rehabilitation

VRU – Verkhovna Rada of Ukraine

MIA – Ministry of Internal Affairs of Ukraine

USDR – Unified State Demographic Register

CMU – Cabinet of Ministers of Ukraine

SCR – state civil registration

NGCA - non-government controlled areas (parts of Donetsk and Luhansk regions)

GCA - government controlled areas

TOT – temporarily-occupied territory (includes Crimea and parts of Donetsk and Luhansk regions)

SDP - statelessness determination procedure

SRACS - state registration of acts of civil status

## INTRODUCTION

The Coalition presenting this submission is an informal association created in May 2020 specifically for joint preparation of this report. It covers the implementation status of UPR recommendations, given to Ukraine in 2017, regarding the observance of rights of refugees, asylum-seekers and stateless persons in Ukraine most fully and comprehensively. It consists of formalized structures, i.e. 5 non-governmental organizations:

***“The Right to Protection” Charitable Fund (R2P)*** is one of the leading expert legal organizations in Ukraine on asylum, statelessness and internal displacement. The Fund has significant experience in providing legal assistance to marginalized groups, including refugees, persons in need of complementary protection, asylum seekers, stateless persons, undocumented persons, internally displaced persons and people affected by the conflict. R2P was registered in 2013 and is the successor of HIAS-Kyiv, which operated in the field of asylum and statelessness in Ukraine since 2007. From HIAS, R2P inherited its structure and its status as an executive partner of the UNHCR. R2P is headquartered in Kyiv and has a network of offices in Eastern Ukraine. R2P is also a member of the European Network on Statelessness.

***ROKADA Charitable Foundation*** was created in 2003 as a response to the social challenge of not accepting refugees and to help the state meet the requirements of the Geneva Convention relating to the Status of Refugees, which was ratified by Ukraine on January 10, 2002. Since Rokada experts have an extraordinary experience in working with refugees and are experts in the cultural and mental characteristics of refugees, ROKADA is often attracted to the development of instructions and manuals for working with refugees. ROKADA participated in the development of a program for teaching the Ukrainian language for refugees, interdepartmental instructions for working with unaccompanied minors, teaching aids for secondary school teachers working with refugees, rules for admission to general education institutions, provisions on individual education, external studies, etc. ROKADA is a member of the Coalition “Rights of the Child in Ukraine”, a member of the Public Council under the State Migration Service.

***DESYATE KVITNYA (THE TENTH OF APRIL)*** was established in 2012 to protect the rights of vulnerable groups: refugees, internally displaced persons, stateless persons and persons at risk of statelessness. The organization provides legal and social assistance in the South of Ukraine as an executive partner of UNHCR. As a member of the European Network on Statelessness, NGO “Desyate Kvitnya” since 2018 conducts research on theoretical and practical issues related to the rights of stateless persons in Ukraine in the framework of the project StatelessnessIndex. <sup>1</sup>

NEEKA (*International Fund for Health and Environment Protection “Region Karpat”*) is a non-governmental organization operating in Western Ukraine. The organization was founded in the late 1990s and has partner organizations in Hungary, Slovakia, Romania and Netherlands. Since that time NEEKA provide legal and social assistance to refugees and asylum seekers. In 2017, NEEKA started to implement a pilot project to provide legal assistance to stateless persons and persons at risk of statelessness, which has been successfully implemented so far. The main NEEKA’s goal is to assist the Ukrainian Government in the implementation of the newly adopted legislative acts concerning refugees, asylum seekers and stateless persons and creation of real environment for local integration.

**The Institute on Statelessness and Inclusion** is an independent non-profit organisation dedicated to promoting an integrated, human rights-based response to the injustice of statelessness and exclusion. Established in August 2014, it is the first and only global centre committed to promoting the human rights of stateless persons and ending statelessness. The Institute has made nearly 70 country-specific UPR submissions on the human rights of stateless persons, and also compiled summaries of the key human rights challenges related to statelessness in all countries under review under the 23rd to the 36th UPR Sessions.<sup>i</sup>

**Additionally, the European Network on Statelessness (ENS)**<sup>ii</sup> provided editorial input and comments on the sections of this report focusing on the rights of stateless persons in Ukraine. ENS is a civil society alliance of over 150 NGOs, lawyers, academics, and other independent experts in 41 countries, committed to addressing statelessness in Europe. ENS organises its work around three pillars – law and policy development, awareness-raising and capacity-building - and provides expert advice and support to a range of stakeholders, including governments.

## METHODOLOGY

In November 2017 the National Report of Ukraine in the framework of the Universal Periodic Review (UPR) was considered at the 28th session of the UPR Working Group of the UN Human Rights Council (HRC). Following alternative reports were submitted to HRC by NGOs: a joint alternative report in relation to statelessness, access to nationality and human

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<sup>i</sup> For more information, please visit: <https://www.institutesi.org/>

<sup>ii</sup> For more information, please visit: <https://www.statelessness.eu>

rights in Ukraine <sup>98</sup> and an alternative report particularly covering rights of asylum seekers, refugees and persons in need of complementary protection<sup>iii</sup>.

The first alternative report revealed that although Ukraine acceded to the 1954 Convention Relating to the Status of Stateless Persons (1954 Convention) and the 1961 Convention on the Reduction of Statelessness (1961 Convention) in March 2013, the problem of statelessness in Ukraine has not reduced. The second report particularly revealed problems with the implementation of principle of non-refoulement towards asylum-seekers.

Current report covers two topics: a state of observance of asylum-seekers' and refugees' rights and a state of respect of stateless persons' rights in Ukraine. It is relevantly structured and at the end of each section a list of recommendations is included for the Government.

## 1. STATE OF RESPECT FOR THE RIGHTS OF REFUGEES AND ASYLUM SEEKERS

1. Article 14 of the Universal Declaration of Human Rights provides for the right of everyone to seek an asylum from persecution in other countries and to enjoy this asylum. Ukraine, in general, adheres to these international obligations, in particular regarding the legislative enshrinement of the right and the procedure for recognition as a refugee. At the same time, the right of a person to be recognized as a refugee or a person in need of CP is not always effectively implemented in the activities of state executive bodies and courts. This leads to a violation of the person's right to asylum (protection), and entails other violations of fundamental human rights.

2. A person's right to asylum (protection) is closely linked to other fundamental human rights, including the right to life, liberty and integrity of person, the right not to be subjected to torture or other inhuman or degrading treatment or punishment, the right to legal personality, the right to privacy and family life, the right not to be arbitrarily arrested, detained or expelled, the right to freedom of movement, the right to freedom of thought, conscience and religion, the right to social security, the right to work, the right to an adequate standard of living, and the right to education.

3. Access to the refugee recognition procedure and the effectiveness of such a procedure have two aspects. First, recognition of a person as a refugee or a person in need of CP guarantees that the person will not return to a situation in which he or she may experience an irreversible violation of his or her fundamental rights. Second, recognition of a person as a refugee or a person in need of CP gives this person the right to stay in the country legally and exercise such rights as the right to work, the right to education, the right to health care, the right to marriage.

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<sup>iii</sup> Stakeholders Report, "Protection of rights of asylum seekers, refugees and persons in need of complementary protection, within the frameworks of implementation of the "non-refoulement" principle and procedural guarantees against forcible returns", R2P, page 9, access address: [https://www.upr-info.org/sites/default/files/document/ukraine/session\\_28\\_-\\_november\\_2017/js10\\_upr28\\_ukr\\_e\\_coverpage.pdf](https://www.upr-info.org/sites/default/files/document/ukraine/session_28_-_november_2017/js10_upr28_ukr_e_coverpage.pdf)

## *1.1. Access to the asylum (protection) procedure in Ukraine*

4. Legislative regulation of the asylum (protection) procedure, in particular, the Law of Ukraine “On Refugees and Persons in Need of Complementary or Temporary Protection”, meets international standards in general, but the right to asylum is not always properly implemented in the activities of the SMSU, SBGS and national courts, which includes, inter alia, actual denial in access to this procedure.

5. Although national legislation establishes the right and procedure of seeking for asylum at the border, as evidenced by the UNHCR, in practice, asylum seekers face difficulties.<sup>2</sup> In 2019 UNHCR pointed registered cases of denial in access to the procedure of applying for asylum at the border or difficulties with such an access.<sup>3</sup> In 2020, there are no improvements.

### *1.1.1. "Formal" grounds for denial in access*

6. In most cases SMSU provides access to the asylum procedure properly. However, there are cases of non-admission to the procedure. This usually applies to persons who do not have documents proving the legality of their stay in Ukraine, regardless of whether the person is in Ukraine for a long time or applies immediately after crossing the border.

7. SMSU refuses to accept the repeated application<sup>4</sup>, without careful and thorough analysis of the new circumstances; such a refusal usually occurs automatically. In addition, when the person applies to the SMSU, he or she may be required to provide documents that are not established by current legislation (for example, a notarized translation of documents that a person attaches to his/her application).

8. The legislation of Ukraine provides for sanctions for illegal stay on the territory of the country, but it does not limit the right of a person, who is on the territory of Ukraine illegally, to seek protection. In practice, however, the illegality of a person's stay on the territory of Ukraine is often seen as a basis for a decision on forced return with subsequent forced expulsion, and an attempt to seek asylum – solely as a strategy for the offender to evade expulsion. There are cases when a person who applied to the SMSU after crossing the border of Ukraine illegally, clearly expressed a desire to seek asylum in Ukraine and stated the persecution, to which he had been subjected in the country of origin. However, the person was detained for expulsion purposes. Such a person was not granted access to the asylum procedure. The asylum seeker to applied to the ECtHR (application No. 30503/19 was accepted by the Court and scheduled for distribution).

9. A particularly significant problem in accessing the procedure is the situation when an asylum seeker is not allowed to cross the state border by the SBGS on formal grounds, such as “did not confirm the purpose of the visit” or “does not have enough funds”, or because the entry ban was not revoked. In fact, such a person becomes arbitrarily imprisoned in the transit zone of the international airport for further forcible return to the country of departure. ECtHR is considering a complaint from asylum seekers – citizens of Kyrgyzstan, who found themselves in such a situation in 2012 (application No. 18603/12). Also, similar cases (with subsequent submission to ECtHR) occurred in 2014 and 2017. In particular, in 2014, a Palestinian citizen

suffering from diabetes and blind in one eye was actually detained for 15 days in the transit zone of Boryspil Airport and denied in access to the procedure before R2P and UNHCR intervened, submitting an application according to the Rule 39 of the Rules of the Court (application No. 55057/14). In other case, in 2017, the same fate at the same airport befell several Zimbabweans, who were never allowed to enter Ukraine to seek for protection and were sent to a transit country (application No. 54506/19). The most recent similar incident at Boryspil Airport happened<sup>iv</sup> to an Uzbek citizen almost before the outbreak of the COVID-19 epidemic in February 2020.<sup>5</sup> That is, the problem is remaining unresolved for almost a decade.

10. Strict deadlines in applying for the asylum are a significant challenge for asylum seekers as well.<sup>6</sup> In the practice of the SMSU, the term “with no delay”, applying to the applications for asylum, is interpreted as meaning that asylum seekers who arrived to Ukraine illegally have only five working days to submit an application, as well as persons who crossed the border legally. Failure to comply with this requirement even for valid reasons (such as illness, general illiteracy or lack of knowledge of the Ukrainian language and/or ignorance of the existence of an international protection procedure) may result in refusal to accept or consider the application, and in any case is considered by the SMSU and the courts as a significant reason in favor of denial in asylum.

### *1.1.2. Lack of qualified translators*

11. There are systematic problems with ensuring by the state authorities of the right to access to asylum procedure, the main of which is the lack of qualified translators. In Ukraine, only the persons entered in the Register of Translators (maintained by SMSU) have the right to translate for SMSU purposes; their work is paid at the rates set by the state. As the Register of Translators includes the number of the translator's Certificate (Diploma) or other document confirming the fluency in the foreign language, in the register there are no translators-speakers of rare languages (Tigrinya, Somali, Urdu, Bengali, Swahili, etc.). Due to the lack of registered translators, asylum seekers are often asked to bring their own translator when applying for asylum.<sup>8</sup> In addition, asylum seekers are forced to translate their documents, which they attach to the application, at their own expense, which is often impossible due to their tough financial situation. Lack of translation is usually exacerbated by insufficient clarification of asylum procedures and the lack of free legal aid.

12. According to the results of monitoring in 2019, UNHCR recommended Ukraine to ensure timely access by asylum seekers to the asylum procedure, and to improve the situation with provision of free linguistic assistance. In 2020, there are no significant improvements in the situation.

### *1.1.3. Obstacles in access to free legal aid*

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<sup>iv</sup> according to R2P and Ombudsperson's Office



With introduction of a free legal aid system in Ukraine, there is some improvement in provision of such an aid to asylum seekers when appealing against the decisions of the SMSU, but such assistance is not always provided and is often formal. Current legislation significantly narrows the circle of asylum seekers who are entitled to free legal aid. Such assistance can be obtained only from the moment a person submits an application for recognition as a refugee or a person in need of complementary protection and is documented with certificate of an asylum seeker, issued by SMSU.<sup>10</sup>

Although the right to obtain an assistance of a attorney by a child separated from a family or an incapacitated person has been declared, current legislation<sup>11</sup> does not contain a clear procedure thereof and order of recruiting or appointing a lawyer from the FLAC. The Law on Refugees does not require the SMSU to notify the relevant FLAC of the need to provide legal assistance to an asylum seeker, nor does it provide for directing of such a person to the relevant FLAC.

15. An asylum seeker who has reached the age of majority must apply to the FLAC or to the territorial body of justice at the place of actual residence.<sup>12</sup> In this case, representation of his or her interests will be carried out on the basis of a power of attorney. In the case where the asylum seeker does not personally seek assistance, an attorney to provide free legal aid is not actually appointed. Interaction between the SMSU units and local FLACs is not legally ensured.

16. The Law on Refugees contains numerous references to the possibility of participation of an asylum seeker's attorney in the process of considering his/her application for protection, but these references are not provided with an appropriate procedure for involving such an attorney.<sup>13</sup>

17. The Law on Refugees stipulates that the appointment of an attorney to provide legal assistance to a person is carried out by: the person, his/her legal representatives, as well as other persons at the request or consent of the person whose application is being considered. The SMSU may appoint an attorney *in the manner prescribed by law through a bar association (i.e. on a paid basis)*, and in the territory where the FLACs started operating – through these bodies (institutions) in accordance with the law governing the provision of free legal aid.<sup>14</sup> This rule establishes no requirement for provision of real free legal aid to vulnerable person, but establishes the right of the SMSU to choose and appoint or not to appoint an attorney, assign an attorney through the bar association or through the FLAC, without providing real opportunities for the client to apply for free legal aid himself/herself.

18. The possibility of access to the free legal aid by asylum seekers in the time required for them is leveled by a too short period for appealing against the decisions of the SMSU (5 days)<sup>15</sup>, and in contrast – too long period for consideration of the application for free legal aid provision (10 days).<sup>16</sup> Given these deadlines, the asylum seeker, in fact, is deprived of the opportunity to appeal the decision of the SMSU or its units within the statutory period using the help of FLAC. As a result, if, for example, it is a decision of the SMSU to refuse to accept the application, the person is not documented by the Certificate of seeking protection and is considered to be in Ukraine illegally, which, in turn, significantly increases the likelihood of his/her detention by the SMSU employees as an illegal migrant and his/her further expulsion to the country of origin.

19. Despite the fact that the SBGS is obliged to accept applications for recognition as a refugee or a person in need of CP as well as to inform FLACS on the cases of detention, the

current legislation<sup>17</sup> neither provides for informing FLACs on the asylum seeker's wish to apply for protection in Ukraine at the border, nor for informing FLACs on the claims for detention, forced return or expulsion, nor on the asylum seeker's wish to appeal the decision on forced return or expulsion.

#### *1.1.4. Access to asylum procedure in detention*

20. Restriction of access to asylum procedures for detainees raises the greatest concern. Administrations of places of imprisonment, as a rule, accept asylum applications and submit them to the SMSU. But such applications are either not registered at all or are considered in accordance with the LoU "On Citizens' Appeals"<sup>18</sup> and end with a formal reply on the need for a personal application of the asylum seeker to the SMSU body. An example is the case of an asylum seeker detained for expulsion and placed in Mykolayiv MCC, who applied to the SMSU for recognition him as a refugee or a person in need of CP. The person's application was not properly accepted and registered, despite the fact that the application had been submitted to the MCC administration several times. The asylum seeker applied to the ECtHR (application No. 53200/19 accepted by the Court and scheduled for communication).

21. There are other cases known, when MCC detainees have claimed that their asylum applications were ignored. Mostly, this problem is caused by the imperativeness of the provisions of Article 7, part 1 of the Law on Refugees, which with no compromise requires personal application by an asylum seeker. The same problem exists for asylum seekers detained in pretrial detention centers (SIZO) under temporary or extradition arrest. Currently, ECtHR is in the process of communicating with asylum seeker from Uzbekistan, who found himself in a similar situation in 2012 (application No. [72510/12](#)).

22. In addition, foreigners and stateless persons are restricted in their access to justice during detention, forced return and expulsion procedures. Thus, in Zakarpattia region there are frequent cases, when the decision on detention, forced return and expulsion is executed so quickly from the moment of opening the proceedings (for example, within an hour) that the person does not have the opportunity to appeal against it. The legislation also does not regulate the period, during which such cases may be considered.

### **1.2. Disadvantages of the asylum procedure**

23. NGOs are concerned about the excessive number of refusals to grant refugee status, as well as certain shortcomings in the legal regulation of the asylum procedure and its practical implementation.

#### *1.2.1. Low level of "recognition"*

24. According to the SMSU statistics, in 2017, 95 decisions were made to recognize a person a refugee or a person in need of CP and 228 decisions to refuse such recognition.<sup>19</sup> In 2018, these indicators were 99 and 284, respectively<sup>20</sup>, in 2019 – 93 and 352<sup>21</sup>, for three months

of 2020 – 33 and 52<sup>22</sup>. Thus, the number of refusals reaches 70-75%. However, most refusals to grant asylum are made not due to the consideration of the application on the merits, but due to refusing to accept the application at all, or refusing to process the documents required for the application (rejection in admissibility), which is not reflected in the above statistics. Thus, the real level of refusals in asylum in Ukraine is significantly higher. Of particular concern is the low level of recognition as a refugee or persons in need of CP of asylum seekers from the Syrian Arab Republic. There are numerous cases, where such persons came through the entire national procedure, but the decisions in their cases were on forced return to their country of origin, which was upheld by all the court instances (for example, in case No. 522/6640/18).<sup>23</sup> Although Ukraine has an established practice of prohibition of forced return or expulsion to the Syrian Arab Republic.

### *1.2.2. Lack of legal certainty*

25. The problem of the actual heterogeneity of judicial practice is exacerbated by the lack of clear legislation<sup>24</sup> on assessment of risk for a person due to forced return or expulsion. As a result, all the asylum seekers in Ukraine found themselves under the risk of expulsion<sup>25</sup>. Particularly extreme are cases where persons lose the refugee status. For example, a citizen of Sudan, who was recognized as a refugee in Ukraine in 1998, and in 2017 was deprived of this status on formal grounds. This person lived in Ukraine for the most part of his life and has virtually no ties to Sudan, but the decision on expulsion was made and upheld by courts of all levels. Thus, a person is at risk of expulsion after 25 years of legal stay in Ukraine.

26. The Law on Refugees provides for three stages of consideration of applications for recognition as a refugee or a person in need of CP. A person may be denied in accepting an application for recognition as a refugee or a person in need of CP. Such a procedure is provided for obviously fraudulent applications (the applicant pretends to be another person, or submits forged documents, or such a person has already been denied before, if there are no new circumstances). The applicant may be denied in consideration of his application (rejection in admissibility). Such a procedure is provided for obviously unfounded applications (for example, in case of arrival from an obviously safe country). An asylum seeker may also be denied in recognition as a refugee or a person in need of CP as a result of consideration of his/her application on the merits if it is recognized that there is no risk of persecution or serious violation of his/her rights in the country of origin.

27. In practice, SMSU and courts often do not distinguish between refusal to accept an application, refusal to consider an application for admissibility and refusal on the merits. A typical case is when a person is denied in consideration of her/his application, i.e. it is a refusal on the grounds of admissibility. However, when challenging a decision, national courts in fact do not decide whether the conditions of admissibility have been met, but decide on the merits of the application, i.e. decide whether the person is a refugee or a person in need of CP although this is clearly beyond the consideration of the case. Such confusion of procedures is a consequence of insufficient training of the SMSU staff and judges, as well as insufficient attention to this category of cases by the judiciary authorities.

28. Another problem is misunderstanding by the SMSU staff and judges of the concept of persecution or threat. The lack of personal persecution in the past is generally interpreted as the strongest argument in favor of refusal in granting an asylum. Such aspects such as belonging to a persecuted social group, violence against relatives or the general violence in the country of origin (for example, in the Syrian Arab Republic, Afghanistan, Yemen or Somalia) are often not taken into account at all.

29. Another problem is the lack of clear criteria in the LoU on Refugees for the reliability, significance and relevance of information about the country of origin of the asylum seeker. As a result, SMSU staff, when preparing conclusions for decision-making, use Wikipedia, travel companies' websites and web resources, that were repeatedly exposed in the spread of fake information, such as lenta.ru, topwar.ru and afghanistan.ru.

### *1.2.3. Deadline for appeal, “insignificance”, “cassation filters”*

30. Appeals against decisions of the SMS of Ukraine and its territorial bodies also have a defect in the form of clearly insufficient term for such an appeal in view of the requirements of the CAJ.<sup>26</sup>

31. A threatening trend that emerged in 2019 and especially in 2020 is the consideration of asylum cases by courts as “insignificant” ones. The concept of insignificant case is indeed provided by Article 4 of the CAJ in order to expedite the consideration of certain categories of cases and to reduce the burden on courts, but cases concerning the status of refugee or a person in need of CP are not classified as insignificant. However, judges often refer these cases to the category of cases on the stay of foreigners in Ukraine, which belong to the category of insignificant, and do not accept the arguments of asylum seekers that the case, the consequences of which determine his or her life and fate, in principle cannot be considered as insignificant. Because of the expedited procedure, asylum seekers cannot reckon on a cassation appeal, which significantly reduces the effectiveness of national courts as national remedies.

32. Moreover, so-called “cassation filters” enshrined in legislation<sup>27</sup> not only significantly narrowed the grounds for cassation appeal against lower court decisions, even in cases considered in ordinary, full-fledged proceedings. They also made it impossible to achieve a positive decision in a situation where it is needed to derogate from legal positions, previously expressed by the Supreme Court in similar cases, as only the Supreme Court may make such a derogation, and the courts of lower instances are forced to apply such previous legal positions.

### *1.2.4. Undocumentedness of the asylum seekers*

33. Throughout the procedure, the problem of documenting the asylum seeker in a proper way. The certificate of an asylum seeker, issued by SMSU, confirms only the legality of the asylum seeker's stay on the territory of Ukraine and is not an identification document, and the identification documents are actually seized from the moment of submitting an application.<sup>28</sup> This makes it virtually impossible to obtain any services or assistance that require identification. This applies to the civil registration (births of children, marriage registration, death registration),

the exercise of the right to work (obtaining TIN, obtaining by the employer of a work permit for an asylum seeker, registration in a banking institution), receiving medical care (except for urgent), notarial and financial services, etc.

### 1.3. State efforts to improve access to asylum (protection) procedures

34. The state is making some efforts to improve the quality of asylum application procedures. In particular, trainings are provided for the staff of the SMSU, the SBGS and judges on the procedure for considering applications from persons with refugee status or persons in need of CP. There is a gradual improvement in the quality of decisions of these services and court proceedings, in particular on taking into account international treaties, reports of international organizations, as well as decisions of the ECtHR. Particular emphasis should be placed on the increasingly responsible attitude of judges towards procedural requirements, in particular with regard to the involvement of translators and the analysis of information on the country of origin. However, these positive developments are mainly related to the growing professionalism of individual civil servants and judges, rather than to changes in the state migration policy as a whole.<sup>29</sup>

35. On April 24, 2020, the draft Law “On granting protection to foreigners and stateless persons” was registered in the VRU under No. 3387.<sup>30</sup> Earlier, experts from the R2P and UNCHR were involved in the work on the draft, but at the last stage the vast majority of their proposed amendments were unilaterally rejected by the SMSU. It should be noted that the adoption of the draft No. 3387, on the one hand, might help to solve some of the problems described above. For example, it introduces a certain procedure for filing an application for protection for persons who are detained in MCC or are under temporary or extradition detention in pre-trial detention centers. It also extends the term for appealing against decisions of the SMSU and its territorial bodies to 1 month. However, it retains a number of controversial rules, such as obligation of asylum seekers to apply with no delay. Moreover, in fact, it introduces a general rule on the detention and placement in the MCC of all asylum seekers who are on the territory of Ukraine at the time of application illegally. Certificate of asylum seeker remains a document that certifies only the legality of the stay on the territory of Ukraine, but does not identify the person. The problem of the criteria of reliability, significance and relevance of information about the country of origin has not been solved yet. Moreover, a de facto discriminatory ban on the registration of marriage between an asylum seeker and any other person is introduced. Human rights organizations and UNHCR have made a number of comments on this draft, which may be taken into account by the Parliament as amendments when adopting the draft law.<sup>31</sup>

### 1.4. Socio-economic rights of refugees and asylum seekers

36. When it comes to respecting the rights of the above categories, the main unresolved issue is the lack of a comprehensive approach to the asylum system. Current legislation and draft

laws in the field of regulation of socio-economic relations, as a rule, do not take into account the interests of these persons.

#### *1.4.1. The right to housing, medical care, social services*

37. One of the important issues is the restriction of access to MCC and social housing. Thus, according to the SMSU statistics, about 1,000 people apply for protection in Ukraine every year.<sup>32</sup> The total number of places in all MCCs is 421. Legislation of Ukraine<sup>33</sup> does not provide social housing for asylum seekers, refugees and persons in need of CP. Therefore, most of these persons have to provide for their basic needs on their own.

38. Asylum seekers are also limited in the access to free social services. Receipt of such services is provided for those who are included in the Register of recipients of social services. However, most asylum seekers cannot be included in this register due to the inability to obtain TIN.<sup>34</sup> In addition, although the Ministry of Social Policy of Ukraine has developed State Standards for Social Services, the list of vulnerable categories does not include the above categories of persons.

39. Asylum seekers and their children are restricted in their right to medical care. Adults have no right to free medicine, and children, although have such a right, cannot execute it, as in order to sign a declaration with a family doctor for a minor child, his/her parents must provide the identification document.<sup>35</sup> Parents must also provide a child's Birth certificate. But asylum seekers usually do not have these documents. Ombudsperson raised this issue in his Annual Report for 2018<sup>36</sup>, and recommended that the Ministry of Health develop and submit for consideration by the Verkhovna Rada of Ukraine a draft on provision of medical services to children whose parents do not have identification documents. To the official request of "ROKADA" CF regarding the state of development of such a document, the Ministry of Health replied that as of January 2020, the document had not been developed.

#### *1.4.2. The right to education*

40. Ukraine has not established state courses of Ukrainian as a foreign language for refugees, persons in need of CP and asylum seekers. This is despite the fact that the Integration Action Plan<sup>37</sup> provides, starting from 2013, the establishment of courses of Ukrainian language for refugees and persons in need of CP on the basis of educational institutions and state centers of social integration. Currently, such courses are conducted only with the assistance of UNHCR's executive partners and at the expense of UNHCR. In general, due to the lack of adequate funding, the state does not actually implement the above Integration Action Plan. Centers for Social Integration of Refugees and Persons in Need of Complementary or Temporary Protection have not been created.<sup>38</sup>

41. Children - asylum seekers, refugees and persons in need of CP are not included in the list of persons with special educational needs. However, according to European standards<sup>39</sup>, children with special educational needs are persons under the age of 18, who need additional support in the educational process, in particular, refugee children and migrant children. In

Ukraine, despite the requirements of the LoU “On Education”<sup>40</sup>, the term “children with special educational needs” is used in a narrower sense of inclusive education and covers children with mental and physical disorders and children with disabilities.

42. Although asylum seekers should fall into the category of “persons who have completed general secondary education in a language not belonging to the Slavic languages group” and receive certain benefits in passing an external independent examination, in practice they faced the refusal to grant such benefits due to bylaws inconsistencies<sup>41</sup>. In particular, the Ministry of Education and Science of Ukraine required them to provide documents on obtaining education in non-Slavic language in general secondary education institutions of Ukraine.

### 1.4.3. *The right to work*

43. Not all asylum seekers can exercise the right to temporary employment provided for in Articles 13 and 17 of the LoU “On Refugees and Persons in Need of Complementary or Temporary Protection”. Paragraph 3 of Article 42<sup>1</sup> of the LoU “On Employment”<sup>42</sup> provides that the employer must receive a work permit for a person, in respect of whom there is a decision on processing the documents for recognition as refugee or person in need of CP. Such a permit for asylum seekers is issued free of charge, but establishes a mandatory condition – payment of a monthly salary in amount of at least ten minimum wages. As asylum seekers can usually apply only for unskilled work, this condition cannot be met *a priori*.

44. In addition, Article 265 of the Code of Labor of Ukraine provides for a fine charged from the employer in the amount of 30 minimum wages for using the labor without registration. In turn, Article 203 of the Code of Ukraine of Administrative Offenses establishes that violation by foreigners and stateless persons of the rules of stay in Ukraine, in particular, employment without a permit, entails imposition of a fine in the amount from one hundred to three hundred of non-taxable minimum incomes. Such inconsistency of legislation entails double punishment for the employer for the same offense, and, as a consequence, unwillingness of employers to hire asylum seekers.

45. Refugees and persons in need of CP are restricted in their right to register themselves as unemployed persons. They just cannot provide an original or duplicate of educational documents.<sup>43</sup> Such a discriminatory requirement leads to the fact that these categories of persons are denied in registration as unemployed persons and in payment of unemployment benefits, even if they have work experience in Ukraine.

### 1.4.4. *Children's rights*

46. Children of asylum seekers, refugees and persons in need of CP do not always have identification documents (Birth certificate or national passport). In Ukraine, information about them is entered in the document of one of the parents (Certificate of an asylum seeker, Refugee Certificate, Certificate of a person in need of CP). When it comes to entering information into electronic databases, this makes it impossible to identify those children. Questions arise when

receiving TIN, registering children in electronic databases (registration in schools, USEDE, obtaining documents on basic or complete education, admission to schools, universities, etc.).

47. Children of asylum seekers who were born in Ukraine cannot be placed in TAC, as only person who applied for the status of refugee or person in need of CP are directed there. Members of their families may be sent for placement in TAC together with the above persons. But only if the information about them is included in the application for recognition as a refugee or a person in need of CP.<sup>44</sup> Thus, children born in Ukraine after their parents fill out an application for recognition as a refugee or a person in need of CP are refused to be accommodated in TAC.

48. Children separated from the asylum seekers' families cannot be accommodated with their parents. Thus, provisions of Article 31 of the LoU "On Childhood Protection"<sup>45</sup> stipulate that the SMSU facilitates the search for parents or other legal representatives of refugee children and children in need of CP, separated from their families and placement of such children to appropriate childcare facilities or families. But the issue of placement to childcare facilities or families is not settled for asylum seekers. These children cannot reckon on family forms of placement (guardianship and custody, foster family, family-type orphanages), as such forms of placement are provided only for children who have the status of children deprived of parental care. This status can be obtained only in case of acquiring a status of refugee or a person in need of CP.<sup>46</sup> Children asylum seekers separated from their families are kept in CSPR for several years, and, after they are 18, they are forcibly evicted. Thus, asylum seekers find themselves on the streets without any social guarantees and being not adapted to the realities of life in a society.

49. Refugee children do not receive psychosocial support, as provided for in the Action Plan for the Integration of Refugees and Persons in Need of Complementary Protection<sup>47</sup>. Article 30-1 of the LoU "On Protection of Childhood" establishes that the state creates conditions for medical, psychological, educational rehabilitation and social reintegration of children affected by military operations and armed conflicts. A large number of asylum seeker children come from the countries where armed conflicts continue. However, under the current law, asylum seeker children are not classified as "children affected by military operations and armed conflicts"<sup>48</sup>.

50. Women and children - asylum seekers, refugees and persons in need of CP are often victims of domestic violence. Ukraine has developed a legislation on domestic violence, but it cannot be effectively used by women - asylum seekers, refugees and persons in need of CP. The main obstacle is the language barrier<sup>49</sup>. The issue of isolation from the offender is also unresolved. Round-the-clock stay in the "crisis room" may not exceed twenty days. After the expiration of the term of stay in the "crisis room", the victim can be placed in other specialized facilities that provide social services to victims, but it requires an identification document, which asylum seekers do not have. Moreover, woman is not usually the main applicant for protection in Ukraine and is in the process of recognition as a family member of a male asylum seeker. In case of separation from her husband, she loses the grounds for protection in Ukraine and can be forcibly returned to her country of origin.

**UPR 2017 relevant recommendations:**



Report of the Working Group on the UPR in November 2017 provided the following recommendations for Ukraine, including those concerning protection of rights of asylum seekers:

- 116.27. To intensify the cooperation with the international community to ensure access of international human rights and humanitarian organizations and control mechanisms to the entire territory of Ukraine within its internationally recognized borders in order to monitor, report on human rights situation and address the related problems.
- 116.34. To implement Ukraine's 2015 national Human Rights Strategy in full.
- 116.1. To ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.
- 116.127. To intensify the development of the social security system, to increase the level of social security.
- 116.164. To consider adoption of specific legislation on children's rights in order to ensure the protection of all children without discrimination.
- 116.137. To ensure that the new law on education, which emphasizes the Ukrainian language, does not discriminate the minorities.
- 116.135. To continue efforts to ensure access to education for all children.
- 116.167. To intensify efforts to promote and protect the rights of the child, in particular the right to education.
- 116.175. To protect the cultural, educational, religious and linguistic rights of all communities and minorities living in Ukraine, while welcoming the recent submission by the Venice Commission of the Law on Education in order to receive its expert opinion, which must be taken into account.
- 116.2-116.7. To ratify the International Convention on Protection of Rights of All Migrant Workers and Members of Their Families.
- 116.187. To take measures to ensure respect for the human rights of migrant workers, including by encouraging constructive dialogue and capacity building in order to achieve an effective system of integration of migrant workers.
- 116.130. To take measures to increase the access to health care, in particular with regard to control of infant and maternal mortality.
- 116.160. To improve the prosecution for domestic violence and its prevention, to provide victims of domestic violence with access to shelters and other support services.
- 116.161. To intensify efforts to combat violence towards women and children.
- 116.187. To take measures to ensure respect for the human rights of migrant workers, including by encouraging constructive dialogue and capacity building in order to achieve an effective system of integration of migrant workers.
- 116.99. To ensure mechanisms for access to justice, due process and fair redress without any discrimination – in accordance with international human rights law.

## RECOMMENDATIONS

Ukraine should be encouraged to continue its efforts to implement these recommendations, namely:

1. To specify the legislative provisions on the admission of persons to the asylum procedure. In particular, to create effective procedures for persons who are placed to MCCs, or are in detention, or are not allowed to cross the state border. Do not allow arbitrary refusals in access to asylum procedure.

2. To improve the training of civil servants and judges on asylum procedure, in particular with regards to prevention of unjustified rejection in granting of the status of refugee or person in need of complementary protection, both on admissibility and merits. As well as to introduce clear criteria of reliability, significance and relevance of information about the country of origin in the current legislation.

3. To ensure effective access to free legal aid for all asylum seekers from the moment when they express their desire to apply for asylum and to improve the quality of free legal aid for them.

4. To ensure that persons who wish to apply for asylum are fully informed of the procedure for such an application in a language they understand. In particular, this includes persons under temporary or deportation arrest and persons held in MCC.

5. To provide all persons, who express a desire to apply for asylum, with the assistance of a translator working with a language they understand – for the entire duration of the procedure and appeal against decisions.

6. To provide an opportunity for asylum seekers, refugees and persons in need of complementary protection to act as translators if they are native speakers of a state or common language in their country of origin, without documentary proof of their proficiency. Provided, however, that the proficiency in Ukrainian is duly confirmed in the manner established by the Law of Ukraine “On ensuring the functioning of the Ukrainian language as the state language”.

7. To ensure unhindered access of human rights organizations to persons who wish to seek asylum while in detention.

8. To ensure unhindered access to free social services for refugees, persons in need of complementary protection and asylum seekers in Ukraine;

9. To ensure the possibility of identification of minors from among refugees, persons in need of complementary protection and persons who have applied for asylum in Ukraine, regardless of the availability of identification documents of them and their parents.

10. To ensure that minors whose parents or guardians have applied for the status of refugee or person in need of complementary protection and whose information has not been included in the application for recognition as a refugee or a person in need of complementary protection are placed in Temporary accommodation centers for refugees;

11. To amend the Family Code of Ukraine, the Civil Code of Ukraine, resolutions and decrees of the Cabinet of Ministers of Ukraine, which regulate the forms of placement of children, adding children under the age of eighteen who arrived in Ukraine unaccompanied by parents (children separated from their families) to the list.

12.To develop state programs that provide for the implementation of social and preventive work, rehabilitation measures, psychosocial assistance to refugees, persons in need of complementary protection and persons who have applied for asylum in Ukraine.

13.To amend the Resolution “On approval of the status of a child who suffered from military actions and armed conflicts”, adding children of refugees, persons in need of complementary protection and persons who applied for asylum in Ukraine to the list of persons who came from areas of armed conflicts.

14.In order to bring in line with paragraph 20 of Article 1 of the Law of Ukraine “On Education”, to approve the List of categories of persons with special educational needs, adding asylum seekers, refugees, persons in need of complementary protection and persons who received education in non-Slavic languages (including abroad) to the list.

15.To amend the Procedure for conducting external independent examination, bringing it in line with the Resolution of the Cabinet of Ministers of Ukraine No. 952 dated 14.11.2018 “On some categories of persons with special needs”.

16.To amend the Law of Ukraine “On refugees and persons in need of complementary or temporary protection”, providing real right for persons, who applied for protection, to work, which also requires to amend the Law of Ukraine “On Employment”, providing the right for persons, who applied for asylum, to work without obtaining a work permit for foreigners.

17.To amend the Procedure for registration, re-registration of unemployed persons and Procedure of registration of jobseekers. Amendments must provide an opportunity for refugees and persons in need of complementary protection to submit an incomplete package of documents and the right to receive the minimum unemployment benefit at initial registration if it occurs within twelve months after obtaining a document certifying the granting of the relevant status.

18.To recommend to the Ministry of Public Health of Ukraine to develop and submit for consideration by Verkhovna Rada of Ukraine a draft law on provision of medical services to children whose parents do not have identification documents.

19.To amend the Law of Ukraine “On Prevention and Counteraction to Domestic Violence” and the Procedure for interaction between the persons who carry out activities on prevention and combating domestic violence and gender-based violence, providing an opportunity for the persons, who applied for asylum in Ukraine, to get help, access to shelters and other support services.

20.To amend the Law of Ukraine “On refugees and persons in need of complementary or temporary protection”, providing for implementation of integration programs for persons recognized as refugees or persons in need of complementary protection, and adaptation programs for persons seeking protection in Ukraine. In particular, to provide an opportunity for refugees and persons in need of complementary protection to learn Ukrainian language up to B1 level, and for persons who have applied for protection in Ukraine – up to A2 level.

## 2. STATE OF RESPECT FOR THE RIGHTS OF STATELESS PERSONS

### 2.1. Ukraine's international obligations

1. In 2012, Ukraine received a recommendation in the framework of UPR 97.11. to ratify the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, which was noted by the Government.

2. In 2013, Ukraine acceded to both Conventions relating to statelessness and they form part of national legislation.

3. Other relevant international treaties with provisions relating to the right to nationality to which Ukraine is a State party include: the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979); International Convention on the Elimination of All Forms of Racial Discrimination

(1969); Convention on the Rights of the Child (1989); European Convention on Nationality (1997) (Ukraine acceded in 2006).

4. In 2017, Ukraine received a recommendation in the framework of UPR 116.34 to fully implement its 2015 National Human Rights Strategy, including with respect to protecting the rights of internally displaced persons; ending discrimination based on gender and sexual orientation through the ratification of the Istanbul Convention; and addressing hate crimes through a strengthened criminal justice framework (Canada). It also received a number of recommendations to accede to the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

### *2.1.1. National human rights strategy (NHRS)*

5. The NHRS was approved by the Decree of the President of Ukraine of August 25, 2015. Its purpose is to improve the activities for the establishment and protection of human and civil rights and freedoms in Ukraine<sup>50</sup>. The Action Plan for implementation of the NHRS<sup>51</sup> provides for a number of specific measures to be taken by the end of 2020.

6. The Action Plan envisages, among other things: approval of a legal framework to establish a procedure for determining the status of stateless persons; improvement of the procedure for registration and issuance of travel documents to stateless persons; providing stateless persons with access to free secondary legal aid (“FSLA”); establishing measures for the identification of stateless persons in Ukraine; an information campaign to encourage individuals to obtain identification documents; other activities.

7. As of the first quarter of 2020, the above-mentioned measures of the Action Plan regarding the rights of stateless persons and prevention of statelessness were not fully implemented. Due to the adoption in June 2020 of a new LoU establishing a statelessness determination procedure (see paragraphs 16-17), a legal framework is provided to fully implement measures of the NHRS Action Plan. Thus, some activities may have taken place to raise awareness and identify stateless persons in Ukraine as planned in 2016, but this would be irrelevant prior to the establishment of an SDP.

8. In March 2020, the MoJ initiated a public discussion of the draft amendments to the NHRS<sup>52</sup>. It plans to prepare a new Action Plan for the NHRS with the involvement of civil society<sup>53</sup>.

## *2.2. Statelessness in Ukraine*

9. A LoU № 693-IX “On Amending of Some Legislative Acts Regarding the Recognition as a Stateless Person” (see paragraphs 16-17) changed the definition of a “stateless person” in national legislation according to the 1954 Convention definition. Now the LoU “On the legal status of foreigners and stateless persons”<sup>54</sup> defines a “stateless person” as someone not considered a national of any state “under the operation of its law” instead of “in accordance with its laws”. The law stipulates that stateless persons legally staying on the territory of Ukraine enjoy the same rights and freedoms and have the same responsibilities as Ukrainian citizens.

Stateless persons under the jurisdiction of Ukraine, regardless of the legality of their stay, have the right to recognition before the law and to enjoy their fundamental human rights and freedoms.

10. At the same time, according to UNHCR, more than 35,600 stateless persons and persons at risk of statelessness reside in Ukraine as of 2020. As of the end of 2019, only 5,642 stateless persons had a residence permit<sup>55</sup>. According to other estimates, from 5,000 to more than 80,000 stateless persons reside in Ukraine<sup>56</sup>. According to the World Bank's estimates within the Identification for Development program, as of June 1, 2018, more than 1.2 million persons resided in Ukraine without personal documents<sup>57</sup>.

11. The All-Ukrainian census was last conducted in 2001, and a new census has been postponed ever since. In December 2019, a pilot census was conducted in a part of Kyiv and several settlements of Kyiv region, but its results do not contain data on the citizenship of the respondents. The All-Ukrainian Census is scheduled for 2020. Currently there is no official information on the Census 2020, but a Minister of CMU said in an interview that the Census can be conducted neither in 2020, nor 2021 due to lack of funds<sup>58</sup>.

12. A significant number of people living in Ukraine without documents cannot be documented due to the absence of a statelessness determination procedure. Such persons have been living on the territory of Ukraine for years, deprived of the opportunity to obtain an identification document allowing them to regularize their stay in the country. They remain invisible to the state and cannot exercise their rights to education and medical care, draw up an inheritance, open a bank account, register a marriage, and cross borders freely<sup>59</sup>.

### *2.3. Definition of a stateless person and stateless protection status*

13. According to the 1954 Convention relating to the Status of Stateless Persons, a stateless person is someone who is not considered as a national by any State under the operation of its law. This definition is considered customary international law.

14. The 1954 Convention does not specify a mechanism for the determination of statelessness. However, the Convention implies that States should identify and determine who is stateless under their jurisdiction in order to ensure that they are properly treated within the scope of fulfillment of their obligations under the Convention. UNHCR recommends that this is best fulfilled through the establishment of a Statelessness Determination Procedure and provides guidance to States in this regard<sup>60</sup>. In addition, without proper identification and registration of stateless persons, it is impossible for Ukraine to fulfill its international obligations.

15. The dialogue on the establishment of a SDP began after Ukraine's accession to the 1954 Convention in 2013. In 2015, the Action Plan of the NHRS<sup>61</sup> provided for measures to establish an SDP. In the same year, the SMSU consulted with the public on the relevant draft law<sup>62</sup>. However, for a long time the issue was not considered at the parliamentary level. In 2018, VRU registered the draft law No. 9123<sup>63</sup>, which proposed to amend the Laws of Ukraine on recognition as a stateless person. However, in August 2019, after the parliamentary elections, it was recalled. In October 2019, the parliament registered a similar draft law No. 2335<sup>64</sup>, which in December of the same year was adopted *as the basis* in the parliament.

16. On June 16, 2020, VRU adopted the LoU № 693-IX “On Amending of Some Legislative Acts Regarding the Recognition as a Stateless Person” (draft law 2335), which entered into force on July 18, 2020<sup>65</sup>. The law will become operative within three months: this period is provided for the Government of Ukraine and the central executive bodies to bring their regulations in line with the law. Thus, the SDP will be launched not earlier than October 2020. The actions prescribed in the NHRS Action Plan (including an information campaign and the identification of stateless persons) would ensure that the SDP is efficient and should be implemented by the Government.

17. The new Law determines the procedure for applying for recognition as a stateless person, in particular for a person who does not have a right to reside in Ukraine; ensures the right to all types of free legal aid when applying for recognition as a stateless person; establishes a time limit of 6 months for consideration of the application, which can be extended up to 12 months; provides that the applicant must be issued with a Certificate of application for recognition as a stateless person while the application is being reviewed; stipulates an exhaustive list of grounds for refusal and establishes a procedure for appeal in case of refusal.

18. Currently, there is a regulatory basis for the registration and issuance of a travel document for stateless persons. Ukraine's obligation to issue travel documents for stateless persons is defined in Article 28 of the 1954 Convention relating to the Status of Stateless Persons. However, as of today, only a stateless person with permanent residence in Ukraine (whose status has been established abroad) has the possibility of obtaining a travel document<sup>66</sup>. An individual recognized as a stateless person under the new Law determining an SDP will also be able to obtain a travel document.

## *2.4. Identification of stateless persons*

### *2.4.1. Determination of Ukrainian nationality*

20. In April 2018, the Order of the MIA No. 320 was canceled<sup>67</sup>. It previously approved the procedure for registration and issuance of a passport of a citizen of Ukraine. According to this procedure, any undocumented person could apply to the SMSU unit regarding the loss of a passport (for example, a passport of a citizen of the USSR), and for the identification procedure. If the identity of a person was established, but it was determined that the person was not a national of any state, the person was documented with an appropriate certificate which was further used to acquire the citizenship of Ukraine (Article 3 of the LoU “On Citizenship of Ukraine”<sup>68</sup> and paragraphs 8 and 9 of the Decree of the President of Ukraine “Issues of Organization of Implementation of the LoU “On Citizenship of Ukraine” dated March 27, 2001 No. 215/2001<sup>69</sup> (hereinafter referred to as the Decree of the President of Ukraine No. 215).

21. In the absence of a USSR passport, Decree of the President of Ukraine No. 215 stipulates that the SMSU unit may provide a Certificate of identification of the applicant to establish the citizenship of Ukraine. However, due to the repeal of MIA Order No. 320, establishment of identity in this way became impossible. Identity can only be established in court

in accordance with the provisions of the Civil Procedure Code of Ukraine provided that enough evidence is submitted.

22. Resolution of the CMU No. 302 dated March 25, 2015 “On Approval of the Sample Form, Technical Description and Procedure for Registration, Issuance, Exchange, Forwarding, Withdrawal, Return to the State, Invalidation and Destruction of the Passport of a Citizen of Ukraine”<sup>70</sup> (hereinafter referred to as the Resolution of the CMU No. 302), which replaced the Order of the MIA No. 320, does not determine how to establish the identity of a person who does not have a document confirming citizenship of Ukraine.

23. For example, the SMSU unit in Kyiv recommended that a woman establish her identity in court, despite the fact that her residence on the territory of Ukraine as of August 24, 1991 (the law associates this date with Ukrainian citizenship) was earlier established by the court. A man who applied to the SMSU unit in Kyiv to establish his citizenship of Ukraine also received a refusal, although the fact of permanent residence in Ukraine had also already been established by the court. In both cases, the applicants had to additionally apply to the court for an establishment of identity<sup>71</sup>.

24. A similar situation has developed when establishing identity for the determination of Ukrainian nationality for persons who were born or resided in another state. There are cases when the SMSU refuses to establish the person’s Ukrainian nationality due to the inability to confirm the absence of citizenship of another country. Depending on the requirements imposed by domestic legislation of the relevant country, it may be problematic or even impossible to receive confirmation from a consular department that a person does not hold the nationality of that country, without providing a Certificate of identification with a photo issued by the SMSU. Stateless persons are often unable to obtain the required documentation in their country of birth or country of previous residence due to the lack of travel documents.

#### *2.4.2. The procedure for issuing a Ukrainian passport*

25. According to the CMU Resolution No. 302, establishment of identity may be carried out based on any document with a photo of the person and by testimony of other people. The procedure should be carried out by sending requests for verification of documents and information to government agencies and institutions. The verification process must take into account all the information provided by the applicant.

26. However, Ukrainian legislation does not establish guidance on how SMSU units should act, nor a clear list of documents required from the applicant. Thus, SMSU units often require the applicant to present documents from a certain body, most often from MIA agencies and the penitentiary system, certificates from educational institutions, certificates on military registration and from enlistment offices, and do not take into account the documents of local authorities. The applicant must collect a separate set of documents to obtain a certificate from the enlistment office, while persons who did not attend educational institutions have no possibility of receiving such certificates. This obstacle often impacts disproportionately on Romani communities, who are one of the most marginalized communities in Ukraine and face many barriers to accessing formal education<sup>72</sup>.



27. If the person is not identified through the above-mentioned inquiries, interviews should be held with relatives and neighbors who were mentioned in the applicant's written request. In practice, this procedure involves testimonies from 3 people who must hold a Ukrainian passport, which is not always feasible for homeless people, members of the Roma minority and people who moved from the TOT of Ukraine. At the same time, due to the absence of clear guidance on the number of witnesses required, different requirements have been established in each SMSU unit – from 2 witnesses to 3 witnesses and 2 “attesting witnesses” (5 persons in total).

28. In case of refusal, the person can only be identified by the court. At the same time, socially vulnerable persons in the absence of the necessary material support and identification documents do not have the possibility to apply to court alone or through a representative (lawyer).

29. At the beginning of 2020, the SMSU has twice initiated public consultations on the draft amendments to the CMU Resolution No. 302, which would have a positive impact on the identification procedure<sup>73</sup>. As of the date of submission of this report, the draft has not been considered by the Government.

### *2.4.3. Establishment of identity in the court*

30. The current procedural legislation of Ukraine does not provide for a specific judicial procedure for the establishment of identity, although in the spirit of procedural rules it is a part of every judicial process. Therefore, the practice of establishment of identity in court varies. For example, a court may refuse to establish a person's identity,<sup>74</sup> ignoring the provisions of the CMU No. 302 on the need to establish identity in court if the person cannot be identified by the SMSU unit.

### *2.4.4. Obtaining a Ukrainian passport for the first time*

31. Many members of national minorities in Ukraine are marginalized and face considerable barriers to accessing formal education. As a result, literacy levels are often very low among minority groups in Ukraine. Illiteracy presents a considerable barrier to applying for a Ukrainian passport without assistance, especially for persons who have reached the age of 18.

32. The basic document for the procedure of establishment of identity is a birth certificate. Persons aged 18 and older, who have lost their birth certificate, must provide a Ukrainian passport to restore it. Thus, it is an endless circle: a person cannot obtain a birth certificate or its duplicate without a passport, and cannot obtain a Ukrainian passport without a birth certificate.

33. In 2017, the MoJ clarified that even if a person reaches the age of 18, one of his or her parents may apply to the SRACS department to receive a birth certificate<sup>75</sup>. However, as the explanation of the Ministry is of recommendatory and informative nature, its implementation varies in practice. Relevant amendments must be made to the “Rules for Amendments to Civil Status Records, their Renewal and Annulment”, approved by MoJ Order No. 96/5<sup>76</sup>.

## 2.5. Detention

34. A foreigner or a stateless person, who is the subject of a deportation order, may be detained if there are grounds to believe that this person will try to evade the execution of the deportation decision<sup>77</sup>. In 2017 the period of detention of foreigners and stateless persons in the MCC for identification and deportation was extended by amendments to the CAJ. The established term is 6 months (instead of no more than 6 months), with the possibility of extension up to 18 months (instead of 12 months)<sup>78</sup>.

35. According to the law, extension of the detention period may occur due to non-cooperation of the detained person during his/her identification or due to failure to receive the information necessary for identification from the authorized bodies of the country of probable citizenship<sup>79</sup>. At the same time, SMSU bodies, which submit the relevant claims to the court, can initiate the extension of detention without sufficient grounds, and the court may support such initiatives.

36. Thus, in November 2019, in Ternopil, a man without documents was detained and placed in Volyn MCC for deportation to the Republic of Moldova. However, the Embassy of the Republic of Moldova denied that the man had been documented with a passport and did not have information on the man's citizenship of Moldova. Nevertheless, in May 2020, the man's detention was extended, in particular due to the delay in obtaining additional information from the Embassy of the Republic of Moldova caused by COVID-19<sup>80</sup>.

The man said that he had five minor children in Ukraine and lives in a civil marriage with a Ukrainian citizen. He explained the absence of the identification documents by the fact that he had been born and lived in the Transnistrian Moldavian Republic, which he left at the age of 15<sup>81</sup>.

37. In February 2018, a man without an identification document was detained and placed in Chernihiv MCC. The Embassy of Georgia (where he was to be deported to) in May 2018 replied that the man was not a Georgian citizen. However, in January 2019, the court decided to extend the detention period<sup>82</sup>, while the relevant SMSU unit initiated repeated measures to establish the man's identity. In April 2019, the latter decision was cancelled by the appellate court, and the man was released<sup>83</sup>.

38. In June 2019, a woman without identification documents was detained and placed in the Chernihiv MCC for deportation to the Russian Federation. However, in August 2019, the Russian consulate in Ukraine replied that she was not a citizen of the Russian Federation. Nevertheless, in December 2019, the woman's detention was extended for another 6 months<sup>84</sup>. The court agreed with the SMSU's position that the woman did not cooperate in the establishment of her identity. Instead, the woman explained that she did not know her previous place of residence in Russia and had no information about her parents, which could affect the confirmation of the Russian citizenship.

## 2.6. Prevention and reduction of statelessness

### *2.6.1 Birth registration as a means to prevent statelessness*

39. According to the law, state registration of a child's birth is carried out not later than one month after the birth. Late registration of a child's birth without a valid reason leads to the imposition of a fine. While imposing a fine for late registration of a child's birth is not an actual obstacle for the registration itself, it can serve as a constraint for parents to appeal to SRACS departments for birth registration with a violation of the term.

40. No amendments have yet been made to the Code of Ukraine on Administrative Offenses (Article 212-1), despite the recommendation made by UN Committee on the Rights of the Child in 2011 (CRC/C/UKR/CO/3-4) to abolish any punitive fines for the failure of parents to register their children.

41. For persons born on the territory of Ukraine, the lack of registration of birth with the Register of Act Records kept by the MoJ will result in a refusal to issue a Ukrainian passport. A significant number of Transcarpathian Roma (in some cases, two or three generations of the same family) do not have passports. If the mother or the father does not have a Ukrainian passport, then birth registration is quite difficult, especially concerning a child over one year of age. Birth registration of a minor child, whose parents do not have passports, is even more difficult, because although they live with the child, the mother/father cannot prove the existence of a family relationship with the child.

42. Birth registration of an adult is carried out by a court decision on the establishment of the fact of birth. Due to the lack of documents, the procedure is complicated by the impossibility, firstly, to apply to the court on the person's own behalf, secondly, to collect the necessary documents from the authorities, thirdly, to access FSLA.

43. In 2019, positive changes were made to the Order of the MoJ No. 52/5<sup>85</sup>, in particular with regard to the rights of lawyers to receive and submit documents certifying the SRACS. Thus, certificates of SRACS bodies may be reissued to the representative of the person entitled to re-obtain it. Adult undocumented persons can obtain a duplicate birth certificate through a representative (lawyer) and submit an application for a Ukrainian passport to a SMSU unit.

44. Also, amendments have been made to section 3 of the Instruction on Maintaining the State Register of Civil Status Acts<sup>86</sup>. They allow the applicant's representative to obtain the extract from the State Register of Civil Status Acts, in particular on the basis of a legal aid agreement or a warrant. Such changes were the result of thorough work before the MoJ to promote the rights of attorneys as the only possible representatives of persons who do not have identification documents and proof of their citizenship.

45. According to the clarification of the MoJ provided in 2019, an attorney, as a representative of a person, is entitled to receive certificates and documents certifying the SRACS. Due to this clarification, starting from 2019 the SRACS offices have ceased to refuse attorneys and the attorney is now considered as a proper applicant in such cases.

### *2.6.2 Citizenship of children born in Ukraine whose parents are foreigners or stateless persons*

46. A child born on the territory of Ukraine after 2001 to foreigners or stateless persons may be a citizen of Ukraine only if the parents have documents confirming the legality of their residence (Article 7 of the LoU “On Citizenship of Ukraine”<sup>87</sup>). In practice, this means that if the parents do not have permanent or temporary residence permits, the child may be at risk of statelessness if they do not acquire another nationality at birth.

47. Article 1 of the Convention on the Reduction of Statelessness, 1961 provides that a State must grant its nationality to a person born on its territory, who would otherwise be stateless. Article 7 of the Convention on the Rights of the Child also stipulates that every child has the right to acquire a nationality. However, these provisions have not been properly implemented in Ukraine. This gap in the legal safeguard to prevent childhood statelessness disproportionately impacts on certain groups, including members of Romani national minorities, migrants, and homeless people, who may not hold documents confirming the legality of their residence in Ukraine.

48. The procedure for acquiring citizenship by children of foreigners and stateless persons born in the period 1991-2001 is subject to the provisions of the former LoU “On Citizenship of Ukraine” of 1991. The Law of 1991 provided for the possibility of acquiring Ukrainian citizenship by children born to foreigners and stateless persons, excluding such a possibility for adults. Thus, children of foreigners and stateless persons born on the territory of Ukraine before 2001 cannot apply for Ukrainian citizenship after the age of 18, regardless of the availability of documents of their parents confirming the legality of residence. This can lead to a risk of statelessness and inability to acquire Ukrainian citizenship.

### *2.6.3. Access to free legal aid*

49. Ukraine has a system of state free legal aid. Legislation<sup>88</sup> provides for the possibility of receiving such assistance for certain groups of persons, including stateless persons, who have a document granting them the status of stateless person. However, persons, who are yet to receive an identification document, are not distinguished into a separate category of recipients of FSLA. In most cases, persons who have difficulties in obtaining identification documents, theoretically fall under the criteria of the LoU “On Free Legal Aid” as those having a low level of income<sup>89</sup>. However, in practice this rule cannot be implemented, as such persons cannot confirm the low level of their income with the required documents<sup>90</sup>.

50. Thus, it is a vicious circle, where a person needs qualified legal assistance to obtain a passport, and needs an identification document to obtain legal assistance. Undocumented persons have the possibility to apply to legal aid centers only for advice. However, in order to obtain an identification document, FSLA is usually required, namely for the preparation of applications to the court and sending lawyers’ inquiries in order to collect evidence.

51. The new LoU № 693-IX aims to provide a partial solution to the problem, through the provision of access to free legal aid to people who have applied for recognition as a stateless person (this was also foreseen in the Action Plan of the NHRS). However, other undocumented persons at risk of statelessness, in particular from NGCA, cannot access FSLA during issuance or renewal of identity documents.

## 2.7. Impact of the conflict on statelessness

52. The armed conflict in the Eastern Ukraine and formation of self-proclaimed “people's republics” in Donetsk and Luhansk regions in 2014 caused a number of problems with documenting the people living in NGCA or those who received identification documents there before 2014. Absence of identification documents often deprives these people of the possibility to move freely, receive medical and social services, have the right to work, register a marriage or the birth of a child, etc.

53. In a number of settlements of Donetsk and Luhansk regions SMSU territorial units suspended their operation<sup>91</sup>. As a result, in order to apply to the SMSU unit on the GCA for issuance of a passport, persons living in the NGCA have to travel long distances and pass the entry/exit checkpoints (CP). In turn, passing the CP can be difficult and physically exhausting, followed by several hours of open-air queues in different weather conditions<sup>92</sup>.

### 2.7.1. *Passport issuance to citizens of Ukraine living on NGCA*

54. Prior to the launch of the USDR, namely until 2017, SMSU did not have a unified electronic database of passports issued. Today this is the reason for the lack of information about the passports of Ukrainian citizens issued before 2014 on the NGCA. The law requires identification of every person who receives administrative passport services.

55. The procedure for issuing documents to persons from the NGCA is discriminatory compared to other populations of Ukraine due to the complicated and lengthy identification process. This often prevents the issuance of a Ukrainian passport, leaving a person in an uncertain legal status. In order to exchange a lost or damaged passport issued before 2014 on the NGCA or even to paste a photo into a passport when a person reaches the age of 25 and 45, such a person usually has to go through the procedure of identity establishment in the SMSU unit (described in paragraph 2.4.2 and caused by the absence of the person's data in USDR)<sup>93</sup>.

### 2.7.2. *Registration of births of children born on NGCA*

56. Only 43% of children from TOT in Donetsk and Luhansk regions received birth certificates in accordance with the legislation (according to UNHCR as of autumn 2018)<sup>94</sup>. Another 57% of children do not have Ukrainian birth certificates and may have problems obtaining a passport when they reach the age of 14.

57. Birth certificates issued after the second half of 2014 by the unrecognized self-proclaimed republics are not considered valid. In 2018 a law was adopted, according to which the documents confirming the fact of birth of a child at NGCA are taken into account when registering a birth in the territory controlled by the Government<sup>95</sup>.

58. However, an administrative birth registration procedure for a child born on the TOT has not yet been introduced. The procedure for birth registration is quite complex as of today and requires: obtaining a written refusal from the SRACS department in the GCA, applying to the

court to establish the fact of birth of a child<sup>96</sup> and re-applying to the SRACS department to obtain a birth certificate in the state-approved format – this time with the court decision.

59. Given the complexity of the existing procedure, there is a need to consider the possibility of establishing an administrative procedure (by filing documents to the SRACS department), which will allow birth registration of the children from TOT by the MoJ bodies. Of course, while developing the administrative procedure, measures to minimize the risk of trafficking of children born in the TOT must be envisaged.

## 2.8. Access to medical services

60. Stateless persons, undocumented persons, and persons at risk of statelessness face barriers to accessing social services and medical care. Without a passport, it is impossible to access a family physician who will then sign the necessary declaration to receive primary health care and other types of medical care. In most cases children of undocumented people also do not have a pediatrician.

61. Stateless persons with chronic illness or a disability have almost no access to medical care. Without identification documents, treatment of diabetes, oncology, tuberculosis, and other illnesses is impossible. Undocumented people cannot participate in government programs and receive free medicine, undergo medical examinations (free of charge) or have any potential disability identified, and they usually do not have resources to access healthcare and medication. An undocumented person may be hospitalized only in case of emergency.

62. Although local authorities have declared that anyone who shows symptoms of COVID-19, will be provided medical care, stateless persons can suffer from late diagnosis of the disease, as they do not have access to a physician. At the same time, persons with chronic diseases or disabilities are at risk of COVID-19 complications<sup>97</sup>.

## RECOMMENDATIONS:

To implement the NGOs' previous recommendations provided in November 2017 as part of the third cycle of the UPR<sup>98</sup>, in particular:

1. Fully promote, respect, protect and fulfil its obligations towards stateless persons as set out by International (human rights) treaties.
2. Ensure the right to acquire a nationality for all children born in Ukraine who would otherwise be stateless in accordance with Article 7 of the Convention on the Rights of the Child and Article 1 of the 1961 Convention on the Reduction of Statelessness.
3. Ensure that all children have equal and free access to birth registration and certification, regardless of their parent's (legal) status or documentation. Fully implement the recommendation of the UN Committee on the Rights of the Child in this regard.
4. Ensure that detention is only implemented as a last resort, when necessary and proportionate, after all alternatives (starting with the least restrictive) have been exhausted. The list of alternative measures should be expanded and their application simplified. In order

to determine if detention is necessary and proportionate, statelessness must be identified at the point of the decision to detain and reviewed on a continued basis.

And:

5. To implement the UPR recommendation 116.34: To fully implement its 2015 National Human Rights Strategy, in particular, to introduce a statelessness determination procedure; to ensure access to all types of free legal aid by stateless persons; to proactively identify stateless persons and to inform them about the statelessness determination procedure and required documents.

6. To improve the legislation on establishment of identity in administrative and judicial proceedings, including the procedure for issuing a Ukrainian passport.

7. To simplify the procedure for birth registration of children born in the temporarily-occupied territories of Ukraine.

8. To ensure access to free legal aid for the population from TOT for restoring identity documents.

9. To amend the Decree of the President of Ukraine dated March 27, 2001 No. 215/2001 “Issues of Organization of Implementation of the Law of Ukraine “On Citizenship of Ukraine” in order to prevent refusal of Ukrainian citizenship on the grounds of impossibility to confirm the lack of another nationality.

10. To ensure in law and in practice the opportunity for children of foreigners and stateless persons, who would otherwise be stateless, to obtain the citizenship of Ukraine regardless of their age.

## REFERENCES

<sup>1</sup> <https://index.statelessness.eu/country/ukraine>

<sup>2</sup> Report of the UNHCR in Ukraine for the year 2018 states: “Access to the territory remains a concern for UNHCR. Though national legislation envisages the right and procedures to apply for asylum at the border, in practice border control is very restrictive. The situation is particularly worrying in transit zones at international airports and ports, where access is granted at the discretion of the State Border Guard Service (SBGS)... Despite UNHCR’s interventions, more than 40 persons who informed UNHCR of their intention to apply for asylum in 2017 were not admitted to the territory”, URL: Refugee and Asylum-Seekers Update, Ukraine, 2018. URL: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/08/2018-08-UNHCR-UKRAINE-Refugee-and-Asylum-Seekers-Update-FINAL.pdf>

<sup>3</sup> Ukraine 2019 Participatory Assessment. URL: [https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR\\_Ukraine\\_Participatory\\_Assessment\\_2019.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Ukraine_Participatory_Assessment_2019.pdf)

<sup>4</sup> LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text> . In Article 5 it contains the right of the SMSU to refuse in accepting the application, if the asylum seeker has already applied for protection and has been denied, if the circumstances of his/her case have not changed.

<sup>5</sup> News on the official website of the Ukrainian Parliament Commissioner for Human Rights entitled “During the monitoring visit to the transit zone of Terminal D of Boryspil Airport, we managed to prevent the violation of the rights of a person applying for a refugee status”, dated 24.02.2020. URL: <http://www.ombudsman.gov.ua/ua/all-news/pr/pid-chas-monitoringovogovizitu-do-tranzitnoi-zoni-terminalu-d-aeroportu-borispil-vdalosya-zapobigti-porushennyu-prav-osobi,-yaka-zvernulasya-za-zdobuttyam-statusu-bizhenczya/>

<sup>6</sup> Article 5 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>, establishes the obligation of the asylum seekers to apply “within 5 working days” (for those who crossed the border legally) and “with no delay” (for those who crossed the border illegally), but a late application should not deprive the person of the right to asylum.

<sup>7</sup> This requirement is enshrined in the Procedure for maintaining by the SMSU of the Reference and Information Register of Translators, approved by the order of the Ministry of Internal Affairs of Ukraine No. 228 dated March 11, 2013, URL: <https://zakon.rada.gov.ua/laws/show/z0801-13#Text>

<sup>8</sup> Ukraine 2019 Participatory Assessment. URL: [https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR\\_Ukraine\\_Participatory\\_Assessment\\_2019.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Ukraine_Participatory_Assessment_2019.pdf)

<sup>9</sup> Ukraine 2019 Participatory Assessment. URL: [https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR\\_Ukraine\\_Participatory\\_Assessment\\_2019.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_Ukraine_Participatory_Assessment_2019.pdf)



<sup>10</sup> Paragraph 8 of Part 1 of Article 14 of the LoUe “On Free Legal Aid”, URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>, provides for the provision to foreigners or stateless persons, asylum seekers of all types of legal services, provided by Part 2 of Article 13 of the Law – from the moment of submission of the application for recognition as a refugee or a person who needs additional protection in Ukraine.

<sup>11</sup> According to paragraph 7 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>, participation of a lawyer in the consideration of a complaint concerning a child separated from a family or an incapacitated person is mandatory. Appointment of a lawyer to provide legal assistance to such a child is carried out in the manner prescribed.

<sup>12</sup> This procedure is provided for in Article 18 of the LoU “On Free Legal Aid”, URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>

<sup>13</sup> Part 2 of Article 8 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>, contains a blanket rule that contradicts to paragraph 8 of Part 1 of Article 14 of the LoU “On Free Legal Aid”, URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>. The first Law indicates the desire of the applicant to involve of a lawyer, but does not establish or specify the procedure for appointment of a lawyer in such a case. The second Law determines only the moment of occurrence of a person's right to receive FSLA and the moment of termination of the FSLA, regardless of the applicant's wish. These discrepancies occur also in Part 2 of Article 9 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>.

<sup>14</sup> According to Article 12 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>

<sup>15</sup> The LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>

<sup>16</sup> According to Article 19 of the LoU “On Free Legal Aid”, URL: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>

<sup>17</sup> We are talking about the LoU “On the SBGS of Ukraine”, URL: <https://zakon.rada.gov.ua/laws/show/661-15#Text>, as well as the procedure of informing of the Centers for provision of free legal assistance on the cases of detention, administrative arrest or pre-trial restriction in form of arrest, approved by the CMU Resolution No. 1363 dated December 28, 2011, access URL: <https://zakon.rada.gov.ua/laws/show/1363-2011-%D0%BF#Text>

<sup>18</sup> The LoU “On Citizens' Appeals”, URL: <https://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80#Text>

<sup>19</sup> SMSU performance indicators for 2017, URL: [https://dmsu.gov.ua/assets/files/statistic/year/2017\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2017_12.pdf)

<sup>20</sup> SMSU performance indicators for 2018, URL: [https://dmsu.gov.ua/assets/files/statistic/year/2018\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2018_12.pdf)

<sup>21</sup> SMSU performance indicators for 2019, URL: [https://dmsu.gov.ua/assets/files/statistic/year/2019\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2019_12.pdf)

<sup>22</sup> SMSU performance indicators for the first quarter of 2020, URL: [https://dmsu.gov.ua/assets/files/statistic/year/2020\\_3.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2020_3.pdf)

<sup>23</sup> Information on the case can be found through the database “Judiciary of Ukraine”, a URL: <https://court.gov.ua/fair/>

<sup>24</sup> We are talking about the provisions of the LoU “On the Legal Status of Foreigners and Stateless Persons”, URL: <https://zakon.rada.gov.ua/laws/show/3773-17#Text>, and Articles 288 and 289 of the Code of Administrative Judicial Procedure of Ukraine, URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>, which regulate the procedures of forced return and deportation.

<sup>25</sup> For the risk assessment procedure, see: Committee against Torture General comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22. URL: [https://www.ohchr.org/Documents/HRBodies/CAT/CAT-C-GC-4\\_EN.pdf](https://www.ohchr.org/Documents/HRBodies/CAT/CAT-C-GC-4_EN.pdf)

<sup>26</sup> In accordance with the provisions of Part 1 and Part 9 of Article 12 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>, there are only 5 working days to submit an appeal against the negative decision of the SMSU, which is insufficient, because in accordance with Part 2 of Article 79 of the Code of Administrative Judicial Procedure of Ukraine, URL: <https://zakon.rada.gov.ua/laws/show/2747-15#Text>, all evidence must be submitted by the plaintiff together with the statement of claim.

<sup>27</sup> We are talking about the LoU “On Amendments to the Commercial Procedural Code of Ukraine, the Code of Civil Procedural of Ukraine, the Code of Administrative Judicial Procedure of Ukraine to Improve the Procedure of Litigation”, URL: <https://zakon.rada.gov.ua/laws/show/460-20#Text>

<sup>28</sup> In accordance with the provisions of Part 8 of Article 8, Part 14 of Article 10, Part 17 of Article 11 of the LoU “On Refugees and Persons in Need of Additional or Temporary Protection”, URL: <https://zakon.rada.gov.ua/laws/show/3671-17#Text>, documents identifying the asylum seeker remain in the custody of the SMS of Ukraine from the moment of submission of the application and until the final decision (including in the case of an appeal to the court).

<sup>29</sup> For example, on August 10, 2016, by the Order of the Ministry of Internal Affairs No. 772, Instruction on the Procedure for Actions of Officials of the State Border Service of Ukraine and Interaction with Territorial Bodies of the State Migration Service of Ukraine when Foreigners or Stateless Persons Apply for the Status of a Refugee or a Person in Need of Additional Protection, URL: <https://zakon.rada.gov.ua/laws/show/z1212-16#Text>, was approved. It was aimed at

resolving the above problem of access of asylum seekers to the procedure at the border. However, in the absence of relevant provisions in the legislation governing these related issues, such as the LoU “On Refugees”, “On the Legal Status of Foreigners and Stateless Persons”, “On Border Control”, “On the State Border Service of Ukraine”, this Instruction have not yet created an efficient and effective access procedure.

<sup>30</sup> Draft Law “On Granting Protection to Foreigners and Stateless Persons” No. 3387, URL: [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68661](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68661)

<sup>31</sup> UNHCR comment on the current text of the draft law No. 3387: [https://www.refworld.org/docid/5ed4e0f14.html](https://www.refworld.org//docid/5ed4e0f14.html)

<sup>32</sup> SMSU performance indicators for 2019, URL: [https://dmsu.gov.ua/assets/files/statistic/year/2019\\_12.pdf](https://dmsu.gov.ua/assets/files/statistic/year/2019_12.pdf)

<sup>33</sup> We are talking about the LoU “On Social Housing”, URL: <https://zakon.rada.gov.ua/laws/show/3334-15#Text>

<sup>34</sup> The LoU “On Social Services”, URL: <https://zakon.rada.gov.ua/laws/show/2671-19#Text> came into force on January 01, 2020. Provisions of Article 15 of this Law provide for the creation of the Register of Providers and Recipients of Social Services, where it is stated that the section on recipients of social services includes information about TIN. Most asylum seekers do not have identification documents and can not receive TIN due to the provisions of paragraph 70.5 of Article 70 of Section II of the Tax Code of Ukraine, URL: <https://zakon.rada.gov.ua/laws/show/2755-17> and paragraph 1 of Section VII of the Regulations on Registration of Individuals in the State Register of Individuals, URL: <https://zakon.rada.gov.ua/laws/show/z1306-17#Text>.

<sup>35</sup> The procedure for selecting a primary care physician and the declaration form for the selection of a primary care physician approved by Order of the Ministry of Public Health of Ukraine No. 503 dated March 13, 2018, URL: <https://moz.gov.ua/article/ministry-mandates/nakaz-moz-ukraini-vid-19032018--503-pro-zatverdzhennja-porjadku-viboru-likarja-jakij-nadae-pervinnu-medichnu-dopomogu-ta-formi-deklaracii-pro-vibir-likarja-jakij-nadae-pervinnu-medichnu-dopomogu-mu>

<sup>36</sup> Annual report of the Verkhovna Rada of Ukraine Commissioner for Human Rights on the condition of respect of and protection of human and civil rights and freedoms in Ukraine for 2018. URL: <http://www.ombudsman.gov.ua/files/Dopovidi/Report-2018-1.pdf>

<sup>37</sup> Action plan for the integration of refugees and persons in need of additional protection into Ukrainian society for the period up to 2020, approved by the CMU Order dated August 22, 2012 No. 605-r, URL: <https://www.kmu.gov.ua/npas/245522329>

<sup>38</sup> Order of the Ministry of Internal Affairs of Ukraine No. 1586 dated December 17, 2015 approved the Regulations on the Center for Social Integration of Refugees and Persons in Need of Additional or Temporary Protection. In turn, the CMU issued an Order No. 987-r dated December 27, 2017 “On the Establishment of State Institutions”, according to which the Centers

for Social Integration of Refugees and Persons in Need of Additional or Temporary Protection were established in Kyiv, Odesa and Kharkiv. At the official request of “ROKADA” CF to the CMU to indicate at which addresses the Center for Social Integration was established, a response was received: only in Odessa, at the address of ACF.

<sup>39</sup> European Agency for Special Needs and Inclusive Education, URL: <https://www.european-agency.org/>

<sup>40</sup> The LoU “On Education”, URL: <https://zakon.rada.gov.ua/laws/show/2145-19#Text>

<sup>41</sup> Resolution of the CMU No. 952 dated November 14, 2018 “On Some Categories of Persons with Special Educational Needs”, URL: <https://zakon.rada.gov.ua/laws/show/952-2018-%D0%BF#Text> approved a list of persons with disabilities, who need reasonable accommodation to undergo independent external examination. When passing the external examination, such persons are subject to a reduced passing score, which allows them to enter HEI. Such persons, according to the above resolution, include, in particular, persons who obtained a full general secondary education in a language that does not belong to the Slavic group of languages. When in 2019 asylum seekers who studied in Iran, Iraq, Yemen, applied to the Ukrainian Center for Educational Quality Assessment with a request to apply special conditions to them, they were denied in registration. The Ministry of Education and Science of Ukraine, in response to the request, noted that persons with special educational needs must provide documents on obtaining education in the non-Slavic language in general secondary education institutions of Ukraine.

<sup>42</sup> The LoU “On Employment”, URL: <https://zakon.rada.gov.ua/laws/show/5067-17#Text>

<sup>43</sup> Procedure for registration, re-registration of unemployed persons and Procedure of registration of jobseekers, approved by the CMU under No. 792 dated September 19, 2018, URL: <https://zakon.rada.gov.ua/laws/show/792-2018-%D0%BF#Text>, provides that for registration, an unemployed persons submits to the employment center, among others, a document of education. Many refugees and persons in need of additional protection do not have the possibility to submit the document, and do not have the possibility to obtain the duplicate from their country of origin.

<sup>44</sup> See paragraph 1 of Section 3 of the Regulation on the Accommodation Centers for Refugees, approved by the Order of the Ministry of Internal Affairs of Ukraine No. 503 dated June 14, 2018, URL: <https://zakon.rada.gov.ua/laws/show/z0788-18#Text>.

<sup>45</sup> The LoU “On Protection of Childhood”, URL: <https://zakon.rada.gov.ua/laws/show/2402-14#Text>

<sup>46</sup> A child separated from his/her family acquires the status of a child deprived of parental care in accordance with the Procedure for Carrying Out Activities Related to the Protection of the Rights of the Child by the Guardianship and Custodianship Agency, approved by the CMU Resolution No. 866 dated September 24, 2008, URL: <https://zakon.rada.gov.ua/laws/show/866-2008-%D0%BF#Text>

<sup>47</sup> Action plan for the integration of refugees and persons in need of additional protection into Ukrainian society for the period up to 2020, approved by the CMU Order dated August 22, 2012, No. 605-r, URL: <https://zakon.rada.gov.ua/laws/show/605-2012-%D1%80#Text>

<sup>48</sup> We are talking about the Procedure for Granting the Status of a Child Affected by Hostilities and Armed Conflicts, approved by the CMU Resolution No. 268 dated April 05, 2017, URL: <https://zakon.rada.gov.ua/laws/show/268-2017-%D0%BF#Text>

<sup>49</sup> We are talking about the LoU “On Prevention and Counteraction to Domestic Violence” and the Procedure for interaction between the persons who carry out activities on prevention and combating domestic violence and gender-based violence, approved by the CMU Resolution No. 658 dated August 22, 2018, URL: <https://zakon.rada.gov.ua/laws/show/658-2018-%D0%BF#Text>

<sup>50</sup> NHRS approved by the Decree of the President of Ukraine No. 501/2015 of 25 August 2015 (in English): [https://www.ohchr.org/Documents/Issues/NHRA/Ukraine2015\\_2020.doc](https://www.ohchr.org/Documents/Issues/NHRA/Ukraine2015_2020.doc)

<sup>51</sup> Action Plan on Implementation of the CLU – Code of Labor of Ukraine  
CUAO – Code of Ukraine of Administrative Offenses for the Period until 2020 approved by the CMU Ordinance dated November 23, 2015 1393-p (in English): [https://www.ohchr.org/Documents/Issues/NHRA/Ukraine2015\\_2020.doc](https://www.ohchr.org/Documents/Issues/NHRA/Ukraine2015_2020.doc)

<sup>52</sup> Page from the official website of the MoJ <https://minjust.gov.ua/m/06032020-povidomlennya-pro-provedennya-elektronnih-konsultatsiy-z-gromadskistyuu-schodo-proektu-ukazu-prezidenta-ukraini-pro-vnesennya-zmin-do-ukazu-prezidenta-ukraini-vid-25-serpnnya-2015-roku-5012015-pro-zatverdjennta-natsionalnoi-strategii-u-sferi-prav-ly>

<sup>53</sup> Public discussion, official website of the MoJ <https://minjust.gov.ua/news/announcement/publiczne-obgovorennnya-natsionalna-strategiya-u-sferi-prav-lyudini-2020-dosyagnennya-viklik-ta-podalshi-kroki>

<sup>54</sup> URL: <https://zakon.rada.gov.ua/laws/show/3773-17>

<sup>55</sup> URL: <https://www.unhcr.org/ua/en/stateless-persons>

<sup>56</sup> See Population of Ukraine by place of birth and citizenship according to the All-Ukrainian census: <http://2001.ukrcensus.gov.ua/d/born.zip>; ERRC, ISI, ENS, Desyate Kvitnya (The Tenth of April). Roma Belong - Statelessness, discrimination and marginalization of Romain Ukraine: <http://www.errc.org/reports-and-submissions/roma-belong--statelessness-discrimination-and-marginalisation-of-roma-in-ukraine> ; ENS, The Tenth of April. Statelessness Index Ukraine - 2019 Survey Data: [https://index.statelessness.eu/sites/default/files/ENS\\_Statelessness\\_Index\\_Survey-Ukraine-2019\\_0.pdf](https://index.statelessness.eu/sites/default/files/ENS_Statelessness_Index_Survey-Ukraine-2019_0.pdf) .

<sup>57</sup> <https://datacatalog.worldbank.org/dataset/identification-development-global-dataset>

<sup>58</sup> Interview of the Minister of the CMU Oleg Nemchinov to the Interfax-Ukraine agency: <https://ua.interfax.com.ua/news/interview/656510.html>

<sup>59</sup> More about the problems mentioned in the following publications:

UKRAINE 2019 UNHCR PARTICIPATRY ASSESSMENT, URL: [https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/08/2019-08-19-PA\\_ENG.pdf](https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/08/2019-08-19-PA_ENG.pdf)

UNHCR Statelessness update September 2019, URL: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/10/Statelessness-Update-2019-09-UNHCR-Ukraine-EN-004.pdf>

Statelessness in Russia and Ukraine: opportunities to overcome the problem. Human Rights Report of ADC “Memorial” and Charitable Foundation “Right to Protection”. 2019 (URL: [https://r2p.org.ua/wp-content/uploads/2019/07/stateless\\_ENG.pdf](https://r2p.org.ua/wp-content/uploads/2019/07/stateless_ENG.pdf))

Statelessness Index: Ukraine (URL: <https://index.statelessness.eu/country/ukraine>).

<sup>60</sup> UNHCR Handbook on Protection of Stateless Persons, [https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR\\_Handbook-on-Protection-of-Stateless-Persons.pdf](https://www.unhcr.org/dach/wp-content/uploads/sites/27/2017/04/CH-UNHCR_Handbook-on-Protection-of-Stateless-Persons.pdf)

<sup>61</sup> Subparagraphs 131-4 and 131-5 of the CMU Order dated November 23, 2015, No. 1393-r “On Approval of the Action Plan for the Implementation of the NHRS until 2020”, URL: <https://www.kmu.gov.ua/npas/248740679>

<sup>62</sup> Notice of publication of the draft LoU “On Amendments to the LoU “On the Legal Status of Foreigners and Stateless Persons”, URL: <https://dmsu.gov.ua/diyalnist/konsultaczij-z-gromadskisty/gromadske-obgovorennya/proekt-zakonu-ukrajni-pro-vnesennya-zmin-do-zakonu-ukrajni-pro-pravovij-status-inozemcziv-ta-osib-bez-gromadyanstva.html>

<sup>63</sup> Web page of the draft law: [https://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64673](https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64673)

<sup>64</sup> Web page of the draft law: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_2?id=&pf3516=2335&skl=10](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=2335&skl=10)

<sup>65</sup> In the newspaper “Holos Ukrainy” and in the Bulletin of the Verkhovna Rada of Ukraine

<sup>66</sup> CMU Resolution dated May 7, 2014, No. 153: <https://zakon.rada.gov.ua/laws/show/153-2014-%D0%BF>

<sup>67</sup> Order of the Ministry of Internal Affairs of Ukraine No. 320 dated April 13, 2012 “On Approval of the Procedure for Registration and Issuance of a Passport of a Citizen of Ukraine”, URL: <https://zakon.rada.gov.ua/laws/show/z1089-12>

<sup>68</sup> URL: <https://zakon.rada.gov.ua/laws/show/2235-14#Text>

<sup>69</sup> The said certificate may be issued by the SMSU unit in accordance with paragraphs 8 and 9 of the Procedure for Proceedings on Applications and Submissions from the Citizenship of Ukraine and Implementation of Decisions, Approved by the Decree of the President of Ukraine No. 215/2001 dated March 27, 2001 “Issues of the Organization of Implementation of the LoU “On Citizenship of Ukraine”. URL: <https://zakon.rada.gov.ua/laws/show/215/2001>

<sup>70</sup> Paragraphs 43-44 of the Procedure for Registration, Issuance, Exchange, Forwarding, Withdrawal, Return to the State, Invalidation and Destruction of the Passport of a Citizen of Ukraine <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF#Text>

<sup>71</sup> Both cases are from the practice of the “Right to Protection”. It should be noted that when applying to the court to establish an identity in such a case, the judge may refuse to open the proceedings because he/she sees a dispute about the right, because, in accordance with Part 2 of Article 3 of the LoU “On Citizenship of Ukraine”, the applicants are the citizens of Ukraine since August 24, 1991.

<sup>72</sup> “#RomaBelong - Statelessness, Discrimination and Marginalisation of Roma in Ukraine” 10th April, ERRC, ENS, ISI, access address: <https://www.statelessness.eu/resources/romabelong-statelessness-discrimination-and-marginalisation-roma-ukraine>

<sup>73</sup> In February 2020, URL: <https://dmsu.gov.ua/diyalnist/konsultacij-z-gromadskistyuu/gromadske-obgovorennnya/6867.html>

and in April 2020, URL: <https://dmsu.gov.ua/diyalnist/konsultacij-z-gromadskistyuu/gromadske-obgovorennnya/7161.html>

<sup>74</sup> Negative decision of the Kyiv Court of Appeal, URL: <http://reyestr.court.gov.ua/Review/84273252>

<sup>75</sup> Letter of the MoJ to the “NEEKA” CF No. 612486 dated October 21, 2019

<sup>76</sup> Order No. 96/5 “On Approval of the Rules for Making Amendments to Civil Status Records, Their Renewal and Cancellation”, URL: <https://zakon.rada.gov.ua/laws/show/z0055-11>

<sup>77</sup> According to Article 289 of the Code of Administrative Judicial Procedure of Ukraine

<sup>78</sup> The LoU “On Amendments to the Commercial Procedural Code of Ukraine, the Code of Civil Procedural of Ukraine, the Code of Administrative Judicial Procedure of Ukraine and Other Legislative Acts”, URL: <https://zakon.rada.gov.ua/laws/show/2147-19>

<sup>79</sup> Code of Administrative Judicial Procedure

<sup>80</sup> See Court decision at: <http://reyestr.court.gov.ua/Review/89148018>

<sup>81</sup> Currently, the stateless person receives legal assistance from the “Right to Protection” CF.

<sup>82</sup> Decision at: <http://reyestr.court.gov.ua/Review/79479484>

<sup>83</sup> Decision at: <http://reyestr.court.gov.ua/Review/81089577>

<sup>84</sup> Court decision at: <http://reyestr.court.gov.ua/Review/86088222>

<sup>85</sup> Order No. 2690/5 “On Approval of Amendments to Certain Regulations on Activities in the Field of State Registration of Civil Status”, URL: <https://zakon.rada.gov.ua/laws/show/z0997-19> amended the Order “On Approval of the Rules of State Registration of Civil Status in Ukraine” No. 52/5, URL: <https://zakon.rada.gov.ua/laws/show/z0719-00>

<sup>86</sup> Approved by the Order of the MoJ dated July 24, 2008, No. 1269/5, registered in the MoJ on July 25, 2008 under No. 691/15382 (as amended), URL: <https://zakon.rada.gov.ua/laws/show/z0691-08>

<sup>87</sup> <https://zakon.rada.gov.ua/laws/show/2235-14>

<sup>88</sup> The LoU “On Free Legal Aid”, URL: <http://zakon5.rada.gov.ua/laws/show/3460-17/print1509544605884117>

<sup>89</sup> The persons, whose average monthly income does not exceed two subsistence minimums, calculated and approved in accordance with the law for persons belonging to the main social and demographic groups of the population, as well as persons with disabilities, who receive pension or assistance in lieu of a pension in the amount not exceeding two subsistence minimums for disabled persons, are entitled to all types of legal services provided for in Part two of Article 13 of this Law.

<sup>90</sup> In particular, it is necessary to provide a certificate from the social protection authorities on the receipt (non-receipt) of social assistance to confirm the fact that the person is (is not) registered in the Department of Labor and Social Protection, as well as the fact that such a person receives or does not receive social assistance as financially-disadvantaged person. In the absence of this certificate, such persons shall submit: a certificate of family composition and income references of each family member for the last 6 months; certificate on registration at the employment center and on the payments made; certificate of the submitted asset declaration, etc. However, if the person does not have a passport, he/she cannot obtain any of these documents and, respectively, cannot provide them to the FSLA center.

<sup>91</sup> CMU Resolution No. 1085-r dated November 07, 2014 approved the list of settlements, where public authorities temporarily do not exercise their powers. URL: <https://zakon.rada.gov.ua/laws/show/1085-2014-%D1%80>

<sup>92</sup> For more information on the conditions of passing the CP, see the monitoring report “Assessment of the conditions of crossing the collision line through the entry/exit checkpoints”, prepared by the “Right to Protection” CF, available at: <https://r2p.org.ua/zvit-oczinka-umov-peretynu-liniyi-zitknennya-cherez-kpvy/>

<sup>93</sup> It was revealed in the process of monitoring of the SMSU territorial units in Donetsk and Luhansk regions by the “Right to Protection” CF, URL: <https://r2p.org.ua/wp-content/uploads/2019/12/ukrainian-verstka-print.pdf>

<sup>94</sup> UNHCR: Statelessness Update. Ukraine. September 2018: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/10/2018-09-UNHCR-Ukraine-Statelessness-Update-FINAL-EN.pdf>

<sup>95</sup> According to Article 2 of the LoU “On Special Features of the State Policy for Ensuring State Sovereignty of Ukraine in the Temporarily Occupied Territories in Donetsk and Luhansk Regions” dated January 18, 2018, URL: <https://zakon.rada.gov.ua/laws/show/2268-19>

<sup>96</sup> The LoU “On Amendments to the Civil Procedural Code of Ukraine Concerning an Establishment of the Fact of Birth or Death of a Person in the Temporarily Occupied Territories of Ukraine” dated February 04, 2016, URL: <https://zakon.rada.gov.ua/laws/show/990-19>

<sup>97</sup> Read more in the report of the “Right to Protection” CF “Access of stateless persons to health care under conditions of COVID-19 and assessment of economic and social impacts of the quarantine”, URL: [https://r2p.org.ua/wp-content/uploads/2020/05/covid-19\\_report\\_ukr.pdf](https://r2p.org.ua/wp-content/uploads/2020/05/covid-19_report_ukr.pdf)



<sup>98</sup> R2P, DESYATE KVITNYA, the Institute on Statelessness and Inclusion, the European Network on Statelessness and the European Roma Rights Centre Joint Submission to the Human Rights Council at the 28th Session of the Universal Periodic Review (Third Cycle, 6-17 November 2017) Ukraine, URL: [https://www.upr-info.org/sites/default/files/document/ukraine/session\\_28\\_-\\_november\\_2017/js5\\_upr28\\_ukr\\_e\\_main.pdf](https://www.upr-info.org/sites/default/files/document/ukraine/session_28_-_november_2017/js5_upr28_ukr_e_main.pdf)