

ANALYTICAL NOTE

WHAT ARE THE POSSIBLE APPROACHES REGARDING DOCUMENTS ISSUED UNDER THE OCCUPATION?



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INTRODUCTION

Since the beginning of the occupation of part of the territory of Ukraine, the Russian Federation (hereinafter – the RF) has used different approaches to the extension of its legislation to the occupied territories: either immediately illegally extended its legislation to this territory, as happened with the temporarily occupied territory (hereinafter – TOT) of the Autonomous Republic of Crimea and the city of Sevastopol in 2014; or, as in the situation with the TOT of Donetsk and Luhansk regions, exercised control over these territories through its occupation administrations without incorporating these territories in its territory. However, since September 2022, following the unlawful incorporation of parts of Donetsk, Zaporizhzhia, Luhansk and Kherson regions into the RF and the adoption of these provisions into the RF Constitution, all legislation of the aggressor country has been applied equally to all TOT of Ukraine.

Russia's violation of key norms of international humanitarian law (hereinafter – IHL) is the root of all subsequent problems. Despite the fact that war is a prohibited instrument of international relations, wars do take place. According to IHL, military occupation as a consequence of war must be a temporary factual situation. Occupation cannot lead to a transfer of sovereignty from the state whose territory is occupied to the occupying state¹. For this reason, the occupying state is obliged to respect the legislation of the occupied state to the maximum extent possible. However, it seems that Russia did not initially consider the occupation of Ukrainian territories as temporary.

Therefore, all documents issued in the TOT of Ukraine – from child birth certificates to permits – are issued either in accordance with the legislation of the RF or in accordance with the “legislation” of the so-called DPR/LPR². Ukraine recognises such actions of the occupying power as unlawful. According to Article 9 of the Law of Ukraine “On Ensuring the Rights and Freedoms and Legal Regime in the Temporarily Occupied Territory of Ukraine”, any act (decision, document) issued by illegal authorities and/or persons in the TOT of Ukraine is invalid and does not create legal consequences. The only exceptions are documents confirming the fact of birth, death, marriage or divorce of a person in the TOT of Ukraine, but even these documents (specifically, only a part of them – birth and death certificates) are subject to a judicial procedure that precedes the issuance of Ukrainian state-issued documents.

Civil status acts are just one example of the state's approach to documents issued to Ukrainian citizens under the occupation. Over the years of occupation, millions of different

1 In particular, this is provided for in Article 43 of the Hague Regulations of 1907; Article 47 of the Fourth Geneva Convention of 1949 and Article 4 of Additional Protocol 1 to the Geneva Conventions

2 DPR – the so-called Donetsk People's Republic, i.e. the territory of the Donetsk region temporarily occupied by Russia; LPR – the so-called Luhansk People's Republic, i.e. the territory of the Luhansk region temporarily occupied by Russia



documents have been issued in the TOT of Ukraine, which are recognised as invalid by the state of Ukraine. However, the question arises as to what consequences this invalidity will have in the context of the reintegration of the deoccupied territories? What are the possible approaches to taking into account information from documents issued by the occupation authorities? Should approaches differ depending on the nature and type of documents and the legal consequences they entail? What documents can be subject to an exclusively judicial procedure due to the significance of the legal consequences or other reasons? And what documents can be issued by administrative procedure?

The issue of recognition of documents issued by the occupying power has been considered in other contexts, in particular, in the Advisory Opinion of the International Court of Justice in the case of *Legal Consequences for States of the Continuing Presence of South Africa in Namibia (1971)*. The Court enshrined the so-called “Namibian exceptions”³, which are referred to in their decisions by both the European Court of Human Rights (ECHR) and Ukrainian courts. According to the above-mentioned ICJ opinion, documents issued by the occupying authorities should be taken into account if their disregard entails serious violations or restrictions on the rights of citizens. **Recognition of these facts does not lead to recognition of the occupying authorities and the documents issued by them.** Instead, it helps to avoid situations of complete lawlessness for people living in the occupied territories and contributes to their protection in their own country and other countries of the world.

This analytical note is, in fact, the first attempt to define the list of documents issued by the occupation authorities, and the information from which can be used by the state authorities of Ukraine in a certain order to minimise the negative consequences of the occupation for a significant part of the population of Ukraine living under occupation. The document lists the key categories of documents issued by the occupation authorities in the TOT of Ukraine, which are critical for the exercise of the rights and freedoms of Ukrainian citizens, and for which it is possible to determine the mechanisms and procedures for taking them into account when issuing the relevant state-issued documents. This list is not exhaustive, but gives an idea of the scope of the problems faced by Ukrainian citizens living in the TOT of Ukraine and the tasks that the state faces.

We sincerely believe that the approach that imposes all the negative consequences of the occupation on the civilian population of the occupied territories is not fair. Therefore, the State of Ukraine should take part of the responsibility for the consequences of the occupation for its citizens and introduce mechanisms for using information from documents issued by the occupation authorities.

Working on these issues is extremely important today for at least two reasons. Firstly, the policy of the Russian Federation leads to serious negative consequences for the residents of the TOT of Ukraine, introducing a lot of uncertainty and fear in the relations between citizens living in the TOT and the state of Ukraine. Formulating and clarifying answers to complex questions about the perspective of documents issued by the occupation

³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*. URL: <https://www.icj-cij.org/case/53>



authorities can reduce this fear and uncertainty. Secondly, conceptual work on these issues today will facilitate the planning and implementation of measures to restore Ukrainian authority after deoccupation.

In developing certain sections of the analytical note, in particular, “Court decisions issued under the occupation” and “Legal transactions regarding property and documents confirming ownership of property”, the expert group at the Mission of the President of Ukraine in the AR Crimea and the analytical report “De-occupied Crimea: priority steps of the state” prepared in 2022 were used.⁴

The experts of the coalition of organisations dealing with the protection of the rights of victims of armed aggression against Ukraine, in particular, contributed to the drafting of the analytical note:

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⁴ Priority steps of the Ukrainian State after the de-occupation of Crimea / Mission of the President of Ukraine in the AR Crimea: <https://ppu.gov.ua/press-center/priorytetni-kroky-ukrayinskoyi-derzhavy-pislya-deokupatsiyi-krymu/>

⁵ The Coalition includes Human Rights Centre ZMINA, NGO Donbas SOS, NGO CrimeaSOS, CF Right to Protection, CF EAST SOS, NGO Civil Holding GROUP OF INFLUENCE, CF Stabilization Support Services, Crimean Human Rights Group.



LIST OF ABBREVIATIONS

AR Crimea – Autonomous Republic of Crimea

SC – Supreme Court

IHL – international humanitarian law

MES – Ministry of Education and Science of Ukraine

MSEC – Medical and Social Expert Commission

DRACS – bodies of state registration of acts of civil status

RF – Russian Federation

TOT – temporarily occupied territory

IDP – internally displaced person

PFU – Pension Fund of Ukraine

MoH – Ministry of Health of Ukraine



1. CIVIL STATUS ACTS: DOCUMENTS RELATED TO BIRTH, DEATH, MARRIAGE, AND DIVORCE RECORDS

According to the Law of Ukraine “On Ensuring Rights and Freedoms and Legal Regime in the Temporarily Occupied Territory of Ukraine”, any act (decision, document) issued by illegal authorities and/or persons in the TOT of Ukraine is invalid and does not create legal consequences, *except for documents confirming the fact of birth, death, marriage or divorce* in the TOT of Ukraine, which are attached to the application for state registration of the relevant act of civil status. However, as of 2025, there is an exclusively judicial procedure, albeit simplified in 2016, for establishing the facts of birth and death that occurred in the TOT of Ukraine. There is no court fee for submitting an application for establishing these facts (exemption from court fees is provided for in paragraph 21 of part 1 of Article 5 of the Law of Ukraine “On Court Fees”).

The legislation does not provide for a simplified court procedure for establishing the facts of marriage and divorce in the TOT of Ukraine, but it is also very problematic to establish the fact of marriage registration in the TOT of Ukraine in the ordinary court procedure. This, in turn, negatively affects the establishment of the fact of birth if a child was born in such a marriage. For example, if a marriage is concluded in the TOT of Ukraine, in which a woman changed her surname and gave birth to a child, establishing the fact of his or her birth may be significantly complicated due to the difference in the mother’s surname in the Ukrainian passport and the child’s birth certificate issued by the occupation authorities.

The decision of the legislator to distinguish these types of documents is based primarily on the fact that life goes on in the TOT of Ukraine throughout the occupation, and absolutely natural processes take place (people get married, are born and die). All facts of birth and death, as well as the registration of marriage and divorce, play a key role in the recognition of legal personality and the exercise of human rights and freedoms. The story of Hanna, a resident of the temporarily occupied Luhansk⁶, is very illustrative in this regard. When Hanna got married and changed her surname, a representative of the occupation authorities crossed out her maiden name in her Ukrainian passport-book with a ballpoint pen. This made it invalid. Later, Hanna gave birth to a child. She and her husband want their child to have Ukrainian documents. However, they cannot apply to a Ukrainian court because of Hanna’s invalid passport. She is forced to undergo an identification procedure and then apply for an ID card. This involves lengthy procedures and a long wait, which requires significant funds, which the family does not have even for rent and childcare.

6 Ukrainska Pravda: Ukrainian birth certificates for infants of Crimea and Donbas, 27.11.2019. URL: <https://www.pravda.com.ua/columns/2019/11/27/7233183/>



Unfortunately, despite the direct reference in the law to an extrajudicial procedure for recognising births and deaths that occurred during the occupation, Ukraine has only a judicial procedure provided for in Article 317 of the Civil Procedure Code of Ukraine (hereinafter – CPCU). It is necessarily preceded by the state registration of civil status acts that took place in the TOT of Ukraine and is a serious obstacle to obtaining Ukrainian-type documents.

According to international organisations, as of the end of 2021, more than 200,000 children born in the temporarily occupied territory of the Autonomous Republic of Crimea and the city of Sevastopol, Donetsk and Luhansk regions did not have Ukrainian birth certificates. At the same time, it should be taken into account that since the beginning of the full-scale invasion of Russia, on the one hand, the number of occupied territories in Ukraine has increased (currently, almost a quarter of Ukraine’s territory is occupied)⁷, and on the other hand, it has become much more difficult to leave the TOT of Ukraine to the territory controlled by the Government of Ukraine. And, as a result, the number of applications for civil status acts confirming the facts that took place in the TOT of Ukraine has significantly decreased.

TOT of Ukraine	Estimated number of births in the TOT of Ukraine ⁸ , per year			Number of registered births in the TOT of Ukraine based on decisions of Ukrainian courts ⁹ , per year		
	2022	2023	2024	2022	2023	2024
Autonomous Republic of Crimea and the city of Sevastopol	22465	22868 ¹⁰	18500	1131	3336	1025
Donetsk and Luhansk regions	12193	12487	13313	481	477	214
Zaporizhzhia region	-	-	1485 ¹¹	1919	1051	186
Kherson region	-	829	735			

This data indicates a deterioration in the situation with the issuance of Ukrainian birth certificates, as, for example, in 2019, the births of 11,359 children were registered (including the AR Crimea and Sevastopol (3,660), Donetsk (5,150) and Luhansk (2,549) regions). In general, during the period from 2016 to the end of 2022, more than 64,000 birth certificates and 101,000 death certificates were issued under the simplified court procedure, which took place under the occupation.

7 Zelensky: As for the war on the ground, there is stagnation, this is a fact. Ukrainska Pravda: <https://www.pravda.com.ua/news/2024/02/5/7440370/>

8 Estimated data based on information from the occupation authorities.

9 According to the Ministry of Justice of Ukraine.

10 For the year 2023 in Crimea registered the birth of more than 19 thousand children: <https://must.rk.gov.ru/articles/4f8d96f0-c186-4ad3-9f05-f031b3dddffc>; Birth rate continues to fall in Sevastopol: <https://sevastopol.su/news/v-sevastopole-prodolzhaet-padat-rozhdaemost>

11 Information for 9 months of 2024



However, the court practice is not homogeneous.

Thus, between 07.05.2022 and 29.06.2014, the Unified State Register of Court Decisions contained more than 600 court decisions on establishing the facts of birth, death, registration (dissolution) of marriage in the TOT of Ukraine, with refusals to open proceedings, leaving applications without motion, returning applications, and closing proceedings.

The main reason for refusing to open the proceedings is that the current legislation provides for an extrajudicial procedure for establishing legal facts (the courts refer to the provisions of parts two and three of Article 9 of the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” regarding the recognition of birth certificates issued in the TOT of Ukraine)¹². This is despite the fact that in practice there is no such extrajudicial procedure. As a result, citizens of Ukraine are forced to go back and forth between the DRACS and the court, receiving refusals and applying to the court repeatedly. This increases the level of tension and lengthens the duration of the procedure, and makes people believe that they will not be able to cope with this process on their own.

No less complicated is the judicial procedure for establishing the fact of a child's birth in the TOT of Ukraine, which, in addition to the need to engage professional legal assistance from a lawyer and go through the first, appellate and cassation instances, can take more than a year. No less complicated is the judicial procedure for establishing the fact of a child's birth in the TOT of Ukraine, which, in addition to the need to engage professional legal assistance from a lawyer and go through the first, appellate and cassation instances, can last more than a year, as it was in cases No. 761/13911/23 and No. 761/32986/23¹³. In case No. 752/2623/24, which is still pending, the Supreme Court stated that, by assessing the documents issued by the bodies and institutions of the self-proclaimed entities located in the occupied territory of Ukraine, such as the child's birth certificate and the applicants' marriage certificate, which confirmed the change of the mother's surname, the courts of previous instances made a premature conclusion that there was no evidence of the fact of the child's birth in the temporarily occupied territory of Ukraine, and the fact of the child's parentage from the applicants, since establishing the fact of the child's birth is essential for the exercise of human and civil rights in Ukraine¹⁴.

In addition, there is a tendency for courts to refuse to exempt from paying court fees in accordance with paragraph 21 of part 1 of Article 5 of the Law of Ukraine “On Court Fees”, namely for filing applications to establish facts of legal significance, in particular the death of a person in the TOT of Ukraine.

¹² Example, the decision of the judge of the Solomianskyi District Court of Kyiv in case No. 760/6159/22 dated 23.06.2022. URL: <https://reyestr.court.gov.ua/Review/105065886>; the decision of the Sviatoshynskyi District Court of Kyiv in case No. 759/7001/22 dated 28.06.2022.. URL: <https://reyestr.court.gov.ua/Review/104978841>

¹³ Decisions of the Supreme Court in cases No. 761/13911/23. URL: <https://reyestr.court.gov.ua/Review/118688756>; No.761/32986/23. URL: <https://reyestr.court.gov.ua/Review/120370611>;

¹⁴ Decision of the Supreme Court in case No. 752/2623/24. URL: <https://reyestr.court.gov.ua/Review/121204484>



This is due to the wording of the Law and the need to confirm the causation of a person's death and the armed aggression or temporary occupation. The Supreme Court's legal opinions provide similar conclusions and state that applications for establishing the facts of death are filed in connection with the need to register an unreceived pension and inheritance, and not in connection with armed aggression, armed conflict, or temporary occupation of the territory of Ukraine. For example, if the death of a person in the TOT of Ukraine occurred as a result of illness, and not as a result of armed aggression or temporary occupation. Therefore, such persons do not have any benefits for paying court fees in accordance with the current legislation¹⁵.

Thus, the wording of the provision of the Law of Ukraine "On Court Fee" causes applicants to be denied exemption from paying the court fee. This, in turn, creates an additional financial burden for applicants and has a discouraging effect on Ukrainian citizens from applying to the court to establish the facts of birth and death in the TOT of Ukraine.

At the same time, the most recent case law on the application of Article 317 of the CPCU shows a difficult retraumatising path for individual applicants who, after losing their loved ones in the TOT of Ukraine, have to go through the first, appellate and cassation instances to establish the fact of their relatives' death¹⁶.

Thus, in case No. 183/3496/24,¹⁷ the courts of first instance and appellate courts, refusing to establish the fact of death, noted that the copies of the applicant's husband's death certificate and a photo of the deceased's grave were not sufficient evidence to satisfy the application for establishing the fact of death in the TOT of Ukraine. The SC of Ukraine, by its decision dated September 11, 2024, cancelled these court decisions and returned the case for a new consideration.

These are not isolated cases that demonstrate the length of the procedure, the need to go through the death of relatives again and again, without being able to put an end to it, obtain a document, initiate an inheritance or resolve other issues. In addition, an unreasonably long and complicated procedure reduces confidence in the judicial system of Ukraine as a whole.

One of the ways to solve these problems is to introduce an extrajudicial procedure for establishing the facts of births, deaths, marriages and divorces that took place in the TOT of Ukraine.

In February 2023, the Government's Draft Law "On Amendments to Certain Legislative Acts of Ukraine on Peculiarities of State Registration of Civil Status Acts that Occurred in the Territory of Ukraine Temporarily Occupied by the Russian Federation and Outside of

15 Decisions of the Supreme Court in cases No. 243/12928/18. URL: <https://reyestr.court.gov.ua/Review/86162337>; No. 243/9106/18. URL: <https://reyestr.court.gov.ua/Review/79616135>; No. 759/17678/22. URL: <https://reyestr.court.gov.ua/Review/117340482>

16 Decisions of the Supreme Court in cases No. 334/7625/23. URL: <https://reyestr.court.gov.ua/Review/118892923>, No. 607/5528/23 URL: <https://reyestr.court.gov.ua/Review/114258955>, No. 337/3725/22. URL: <https://reyestr.court.gov.ua/Review/110515225>.

17 Decision of the Supreme Court in cases No. [№183/3496/24](https://reyestr.court.gov.ua/Review/121753753). URL: <https://reyestr.court.gov.ua/Review/121753753>



Ukraine” (Reg. No. 9069)¹⁸ was registered in the Verkhovna Rada of Ukraine. The draft law proposes a number of innovations that will significantly simplify the procedure for registering civil status acts that took place in the temporarily occupied territory of Ukraine and abroad. In particular, the draft law proposes to introduce:

1. extrajudicial procedure for establishing the facts of birth, death, marriage and divorce that took place in the TOT of Ukraine (administrative procedure);
2. simplified procedure for consideration of issues related to the establishment of the facts of marriage or divorce that took place in the TOT of Ukraine in a separate proceeding;
3. principle of extraterritoriality of submitting documents for registration of civil status acts;
4. conducting state registration of civil status acts performed on the territory of foreign countries in relation to Ukrainian citizens.

As of January 1, 2025, the draft law Reg. No. 9069 is being considered by the Committee on Legal Policy and is de facto blocked despite the position of the Ministry of Justice of Ukraine, which supports the adoption of the draft law.

The continuation of the situation of non-recognition of civil status acts issued to Ukrainian citizens in the TOT of Ukraine may have significant negative consequences, in particular:

- increased risk of statelessness for residents of the TOT of Ukraine, primarily children, due to the inability to prove their Ukrainian citizenship;
- significant complications for the reintegration of residents of the TOT of Ukraine after their departure or after the de-occupation of the TOT of Ukraine (difficulty in obtaining Ukrainian documents, and thus lack of access to work, housing, support, services, etc.);
- obstruction or lack of access to the exercise of rights and freedoms (the right to education, healthcare, social protection, family and inheritance rights, etc.) by Ukrainian citizens living in the TOT of Ukraine;
- excessive burden on the judicial system, especially after the de-occupation of the territories;
- migration abroad, including to the RF, where documents issued in the TOT of Ukraine would not require assessment, recognition or exchange.

It is worth noting that the lack of information on the number of children born in the TOT of Ukraine may lead to the fact that in the case of their deportation, forced displacement by the authorities of the aggressor country, placement in families, adoption, the Ukrainian authorities will not be able to take measures to return these children despite their citizenship of Ukraine by birth.

18 <https://itd.rada.gov.ua/billInfo/Bills/Card/41464>



Recommendations

Introduce an extrajudicial mechanism for implementing Article 9 of the Law of Ukraine “On Ensuring Rights and Freedoms and the Legal Regime in the Temporarily Occupied Territory of Ukraine”. This can be done through:

- adoption of the draft law Reg. No. 9069, or
- amendments to the Rules of State Registration of Civil Status Acts in Ukraine¹⁹, or
- introducing a pilot project of registration of civil status acts on the basis of documents issued during the occupation at the government level.



2.

DOCUMENTS ON EDUCATION

The educational sector in the TOT of Ukraine is one of the first to be targeted by the occupation authorities in the occupied territories of Ukraine: The RF is trying to resume the work of educational institutions at any cost, thus seemingly confirming that life in the occupied territories is normalising. However, the reopening of educational institutions is being carried out in accordance with Russian educational standards, contrary to IHL, which stipulates that the occupying authorities are obliged to facilitate the proper functioning of all educational and childcare facilities, including the obligation to avoid interference in their activities²⁰. Sometimes, the resumption of the educational process in the TOT of Ukraine is carried out with the use of direct coercion and intimidation of parents and teachers. Consequently, documents certifying that Ukrainian citizens in the TOT of Ukraine have received a particular level of education are issued in Russian form²¹. These documents, as well as other documents issued by the occupation authorities, are subject to the principle of complete non-recognition by the State of Ukraine.

In 2022, 282,200 children received secondary education in the AR Crimea and the city of Sevastopol.²² Another 10.4 thousand are enrolled in skilled worker training programmes, 30.8 thousand in mid-level specialist programmes (a close analogue of vocational education through specialised educational institutions), and 33.4 thousand in bachelor's, specialist and master's degree programmes.

More than 320,000 people study in schools in other TOT of Ukraine, including 29,500 first-graders²³. Statistical information about them was not included in the last published statistical report of the Russian Federation for 2023. Information for 2024 is not available as of January 1, 2025.

According to the occupation administration, more than 320,000 people study in schools in other TOT of Ukraine, of whom 29,500 are first-graders²⁴. Statistical information on them was not included in the latest published statistical report of the RF for 2023.

According to the occupation administration, 1250 general secondary education institutions, more than 700 kindergartens and 23 higher education institutions started operating in the TOT of Kherson, Zaporizhzhia, Donetsk and Luhansk regions on September 1, 2023²⁵. In 2024, this number of institutions did not change significantly.

20 Fourth Geneva Convention, art. 50; 1958 Commentary, p. 286.

21 At least until 2022, in the occupied territories of Donetsk and Luhansk regions, educational documents were issued by the occupation authorities of the so-called DPR/LPR

22 According to the Federal State Statistics Service of the RF for 2023

23 More than 320,000 pupils will go to school in new regions. URL: <https://www.vedomosti.ru/society/news/2023/08/29/992466-bolee-320-000-poidut-v-shkoli-v-novih>

24 More than 320,000 pupils will go to school in the new regions. URL: <https://www.vedomosti.ru/society/news/2023/08/29/992466-bolee-320-000-poidut-v-shkoli-v-novih>

25 More than 320,000 pupils will go to school in the new regions from September 1. URL: <https://www.vedomosti.ru/society/news/2023/08/29/992466-bolee-320-000-poidut-v-shkoli-v-novih>



Statistical information on the situation in the TOT of Ukraine in the field of education is not collected by the authorised bodies of the Ukrainian government. Over the more than ten years of armed aggression by the RF in the TOT of Ukraine, more than a million educational documents of various types could have been issued. Citizens of the RF are also students in the TOT of Ukraine, primarily in the AR Crimea and the city of Sevastopol. Their numbers cannot be determined at this time.

Although the Law of Ukraine “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine” does not provide for exceptions for educational documents from the general approach of non-recognition of documents issued in the TOT of Ukraine, Article 7 of this Law stipulates that Ukrainian citizens who resided in the TOT have the right to obtain or continue education of a certain level in other regions of Ukraine.

Since 2016, the confirmation of general secondary education obtained in the TOT of Ukraine has been carried out through the educational centres Crimea-Ukraine and Donbas-Ukraine for the purpose of further education (admission to higher education institutions), or through external education. Both options include annual assessments and state final exams. Only the Ukrainian language and history of Ukraine will be assessed through educational centres. Other subjects are credited without additional assessment. The procedure is carried out in certain periods during the period of operation of educational centres or assessment/attestation according to the general calendar plan. Applicants who wish to validate their educational qualifications are responsible for preparing for the Ukrainian studies component of the exam on their own. At the same time, there are no methodological materials for preparation, as well as no standardised assessment tasks. Authorised schools pointed to the lack of support from the Ministry of Education and Science in this regard.

Until 2022, there was a procedure for certification of students from the TOT of the Autonomous Republic of Crimea and the city of Sevastopol. It concerned only those students who had started their studies before 2014. According to the MES of Ukraine, 803 people used the attestation procedure in 2016, 836 people in 2017, 400 people in 2018, 51 people in 2019, 51 people in 2020, and 41 people in 2021. The attestation procedure has not been implemented for other TOT of Ukraine, despite the direct provision of the Law. It should be taken into account that attestation involves the creation of a Commission (at least three people) at the educational institution and places a financial burden on the applicant. The duration of the procedure itself was also uncertain.



In 2023, amendments to the Law²⁶ provided that citizens who resided in the TOT of Ukraine have the right to have their educational results recognised in the TOT of Ukraine in accordance with the established procedure.

Thus, without recognising educational documents, the legislator provides for the possibility of recognising learning outcomes.

Article 40-1 of the Law of Ukraine “On Education” stipulates that recognition of learning outcomes at the levels of complete general secondary education should be carried out in accordance with the procedure determined by the MES, by passing an annual assessment or state final certification for the purpose of continuing education or obtaining a relevant educational document; at the levels of vocational (vocational and technical) education, professional pre-higher education, higher education – in accordance with the procedure determined by the Cabinet of Ministers of Ukraine. The procedure for recognition of higher education results provides for certification and continuation of studies under an individual programme with no more than 75% of the total volume of the educational programme. There are also restrictions on the educational levels for which results can be recognised and a list of specialities for which learning outcomes are not recognised.

As of January 1, 2025, the procedure for recognition of learning outcomes at the levels of vocational (vocational and technical) education, professional pre-higher education, and higher education in accordance with the final provisions of Law of Ukraine No. 3482-IX has not been approved.

NGOs working on the protection of the rights of victims of the war have published a position on the need to approve these Procedures²⁷.

Recognition of educational results creates an opportunity for children from the TOT to receive Ukrainian education, and for young people, in addition to the possibility of continuing their education, it also provides access to the Ukrainian labour market, which is especially important in the context of a staff shortage. This opportunity gives children and young people from the TOT of Ukraine a chance to leave the Russian-occupied territories of Ukraine and to fulfil themselves in the government-controlled territory of Ukraine.

It is important to note that preparations for the future de-occupation of Ukrainian territories will require automation and digitalisation of the procedure for recognising knowledge gained in the TOT of Ukraine.

26 On Amendments to Certain Laws of Ukraine on Recognition of Educational Results of Persons Residing in the Temporarily Occupied Territory of Ukraine: Law of Ukraine dated 21.11.2023 No. 3482-IX. URL: <https://zakon.rada.gov.ua/laws/show/3482-20#Text>

27 Position on the need to approve the Procedures for the recognition of educational results obtained by children and youth displaced from the temporarily occupied territories. URL: <https://www.vplyv.org.ua/archives/9537>



Recommendations

To the Cabinet of Ministers of Ukraine:

- immediately approve the Procedure for Recognition of Learning Outcomes at the levels of vocational (vocational and technical) education, professional pre- higher education, and higher education in accordance with the final provisions of Law of Ukraine No. 3482-IX, which provides for the adoption of regulations within three months after the Law enters into force.

To the MES:

- ensure the proper implementation of procedures for the recognition of learning outcomes in TOT with a minimum of time, financial and human resources (for example, through the expansion of the network of Examination Centres);
- approve a single Procedure for the recognition of learning outcomes at the level of complete general secondary education, which provides for a procedure outside the educational centres Crimea-Ukraine and Donbas Ukraine, available throughout the year;
- ensure, together with educational institutions (upon agreement), an information campaign on the procedures for recognising learning outcomes in the TOT of Ukraine.



3. DOCUMENTS PROVING IDENTITY: PASSPORT OF A CITIZEN OF THE RF

After the start of the armed aggression against Ukraine in 2014, the RF began to apply the practice of imposing Russian citizenship on Ukrainian citizens who found themselves in the TOT of Ukraine. In fact, it is a form of coercion based on the gradual restriction of the spheres of life in which residents of the TOT of Ukraine can live without a Russian passport.

For example, this concerns access to social, medical and educational services; restrictions on the exercise of property rights, labour rights, restrictions on freedom of movement and freedom of commercial activity. Citizens of Ukraine are gradually finding themselves in a situation where they may be expelled from their place of residence because they have not obtained Russian citizenship. In addition, in the occupied territories, the RF has begun to conduct conscription campaigns and mobilisation, which is carried out in a forced manner.²⁸ In Zaporizhzhia region, residents without Russian passports were denied humanitarian aid from the Russian Federation. There is also more and more information about the poor treatment of citizens who show Ukrainian passports at checkpoints in the TOT of Ukraine.²⁹ Thus, **Russia's policy of imposing Russian citizenship on the occupied territories of Ukraine is aimed at creating conditions under which those who have not obtained Russian citizenship are restricted in their rights and access to basic services.**

The occupying state should not make irreversible changes, including by introducing the attributes of its own statehood, such as passports. In the same way, IHL prohibits the occupying state from requiring the civilian population of the occupied territory to swear allegiance³⁰. Compulsion to obtain a passport is an indirect compulsion to pledge allegiance to the occupying power. Procedures for prosecuting this form of violation are currently poorly defined, but should not be forgotten by international adjudication bodies.

As of the beginning of April 2024, according to Russian media, citing a speech by the President of the RF, more than 3.2 million residents of the “new regions of the RF” (temporarily occupied territories of Donetsk, Luhansk, Zaporizhzhia and Kherson regions) have received Russian passports.³¹

28 for more information on how Russian citizenship is being imposed on the TOT of Ukraine, see the analytical report “Imposing citizenship of the Russian Federation on the citizens of Ukraine in the occupied territory of Ukraine and in the Russian Federation”: <https://zmina.ua/publication/navyazuvannya-gromadyanam-ukrayiny-gromadyanstva-rf-na-okupovaniy-terytoriyi-ukrayiny-ta-v-rf/>

29 The human rights situation during the Russian occupation of the territory of Ukraine and its consequences, February 24, 2022 - December 31, 2023. Report of the Office of the United Nations High Commissioner for Human Rights (OHCHR): <https://ukraine.ohchr.org/uk/human-rights-situation-during-russian-occupation-territory-ukraine-and-its-aftermath-UA>

30 Article 45 of the 1907 Hague Regulations

31 More than 3.2 million residents of new regions received Russian passports / RIA NEWS, <https://ria.ru/20240402/pasport-1937340287.html>



According to part 6 of Article 5 of the Law of Ukraine “On Ensuring Rights and Freedoms and Legal Regime in the Temporarily Occupied Territory of Ukraine”, the forced automatic acquisition of Russian Federation citizenship by Ukrainian citizens residing in the TOT of Ukraine is not recognised by Ukraine and is not a ground for the loss of Ukrainian citizenship.

At the same time, for Ukrainian citizens who, for various reasons, do not have, and sometimes have never received, a passport of a citizen of Ukraine (for example, they reached the age of obtaining a passport after the beginning of the occupation of the territories, do not have parents or legal representatives who can apply for a passport of a citizen of Ukraine, etc.), a passport of a citizen of the RF may be used as one of the documents that helps to identify a person for the purposes of obtaining a passport of a citizen of Ukraine after leaving the TOT of Ukraine.

Since the start of the large-scale invasion, young people who have reached the age of 18 in the TOT of Ukraine have been returning to the government-controlled territory of Ukraine and applying for Ukrainian passports. In accordance with the Procedure³², if there are no documents with a photograph/digitised image of the person’s face obtained from state, unified registers, other information databases owned by the state or enterprises, institutions and organisations, and the results of the checks do not identify the person, the procedure for establishing the person’s identity is carried out by interviewing witnesses indicated by the applicant. Witnesses can be a legally capable member of the person’s family (including a former spouse), a close friend or neighbour who has reached the age of 14 and has identity documents that must be presented.

This procedure is quite complicated and can take up to six months, and depends on the availability of the parents’ documents and their willingness to confirm the applicant’s identity. The passport issued to the applicant in the TOT of Ukraine is not taken into account during the identification procedure. However, sometimes it is the only document with a photo that an applicant may have in addition to a Ukrainian birth certificate. The use of a passport issued by the occupation authorities as an additional document for identification may help, especially in the event of the de-occupation of the territories of Ukraine and the need to issue passports of a citizen of Ukraine to a significant number of people at the same time.

Currently, the passport issued by the occupation authorities is not used in any way in the identification procedure. Moreover, human rights organisations receive information about the practice of representatives of the state of Ukraine (probably the Security Service of Ukraine) forcing Ukrainian citizens who have received a Russian passport to hand it over after entering the territory of Ukraine without issuing any documents on its withdrawal.³³

32 paragraph 43 of the Procedure for registration, issuance, exchange, transfer, withdrawal, return to the state, invalidation and destruction of the passport of a citizen of Ukraine, approved by the Cabinet of Ministers of Ukraine on March 25, 2015, No. 302: <https://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF#Text>

33 Imposing Russian citizenship on Ukrainian citizens in the occupied territory of Ukraine and in the RF: <https://zmina.ua/publication/navyazuvannya-gromadyanam-ukrayiny-gromadyanstva-rf-na-okupovaniy-terytoriyi-ukrayiny-ta-v-rf/>



At the same time, these passports are important evidence of the policy of imposing Russian citizenship on residents of the TOT of Ukraine, despite the prohibition of forcing residents of the occupied territory to swear allegiance to the enemy state and changing the civil status of children, and are a crime under Article 438 of the Criminal Code of Ukraine (Violation of the laws and customs of war). In addition, it should be taken into account that property documents, birth certificates, employment records, etc. are all issued on the basis of Russian passports in the TOT of Ukraine. Therefore, the extra-procedural seizure and possible destruction of passports issued by the occupation authorities may further negatively affect the exercise of other rights by residents of the TOT of Ukraine.

Recommendations

- Stop the practice of confiscating passports of Russian citizens issued to Ukrainian citizens in the TOT of Ukraine. Instead, it is necessary to develop a state mechanism for dealing with passports of Russian citizens issued to residents of the TOT of Ukraine (e.g., voluntary surrender of these passports, etc.).
- Develop a mechanism for taking into account information from the passport of a Russian citizen issued in the TOT of Ukraine during the identification and establishment of identity for the purpose of issuing a passport of a citizen of Ukraine as additional evidence.
- Store and constantly update databases of Russian passports that can be used to identify individuals in the future.



4. MEDICAL DOCUMENTS

After the occupation of a part of the territory of Ukraine and the illegal extension of Russian legislation to this territory, residents of the TOT of Ukraine are forced to obtain medical documents in accordance with the requirements of the occupation authorities.

The system of compulsory health insurance in the TOT of the AR Crimea and the city of Sevastopol began operating on April 16, 2014, and in other TOT of Ukraine – on January 1, 2024. According to the occupation authorities, the number of people who have issued a compulsory health insurance policy (the so-called SNILS) in the TOT of Luhansk, Donetsk, Kherson, and Zaporizhzhia regions is 3.2 million, among them:

Kherson region – **231,158** people

Zaporizhzhia region – **395,309** people,

Donetsk region – **2,192,300** people

Luhansk region – **505,178** people.

The number of people who have taken out a policy in TOT of the AR Crimea – **1,884,166** people and in Sevastopol – **449,744** people.³⁴

In addition, according to data published on June 30, 2024 by the same Federal Fund for Mandatory Medical Insurance of the RF, more than 330,000 children have undergone preventive examinations in Luhansk, Donetsk, Kherson and Zaporizhzhia regions since November 2022. According to the results of the check-ups, 120 children were diagnosed with serious diseases, including leukaemia, blood diseases, consequences of trauma, neurotic syndromes, chronic kidney disease, benign tumours, metabolic disorders, central nervous system diseases, and spinal muscular atrophy (SMA). Currently, 38% of children are under dispensary observation based on the results of an in-depth preventive examination. According to the results of the examinations, more than 12.4 thousand children need inpatient treatment, including 7.6 thousand children who need surgical treatment.³⁵

In the context of the occupation of the territories of Ukraine, the issue of recognition of medical documents is quite acute, since, on the one hand, the state of Ukraine must ensure the protection of state interests to prevent the legitimisation of decisions of the occupation authorities and its quasi-entities, and on the other hand, it must ensure the observance of the rights and freedoms of citizens who remained in the TOT of Ukraine.

34 More than 3.2 million residents of new Russian regions have obtained mandatory health insurance policies URL: https://www.ffoms.gov.ru/news/ffoms/bolee-3-2-mln-zhiteley-novykh-rossiyskikh-regionov-oformili-polisy-oms/?sphrase_id=388766

35 More than 330,000 children have undergone preventive check-ups in new regions since November URL: https://www.ffoms.gov.ru/news/regionalnye-novosti/bolee-330-tys-detey-s-noyabrya-proshli-profilakticheskie-osmotry-v-novykh-regionakh/?sphrase_id=388770



The non-recognition of medical documents issued by the occupation authorities may have several negative consequences.

First, the lack of statistical data, as the non-recognition of medical documents makes it difficult to collect and analyse medical statistics, which is important for healthcare planning and epidemiological monitoring in the country.

Second, people living in the TOT of Ukraine and those who have moved from it may lose the opportunity to receive timely medical care in the government-controlled territory, as their medical documents will not be recognised. In order to receive medical care, such persons will have to undergo additional examinations, spending money and time to establish medical diagnoses, which may have a negative impact on the treatment process.

Third, medical professionals in the government-controlled area may not have access to the full medical history of patients, as well as the dynamics of the person's condition, which makes it difficult to diagnose and treat them effectively.

Fourth, patients may face difficulties in accessing state services, such as social benefits, social services or health insurance, due to the non-recognition of their medical documents. There may also be problems with access to medicines under state programmes (e.g., obtaining medicines for diabetes, HIV/AIDS, tuberculosis, etc.).

As a general rule, documents issued in the TOT of Ukraine are not recognised and do not create any legal consequences. At the same time, there is no mechanism for the “exchange” of medical documents issued in the occupation for similar documents of the Ukrainian standard.

Developing approaches to handling information contained in medical documents issued in the TOT of Ukraine is part of Ukraine's preparation for the de-occupation of its territories and support for those who remain or have left the TOT of Ukraine.

It is likely that some medical documents may be accepted without any additional verification by the Ukrainian authorities. First of all, we are talking about patients' medical records and extracts from medical institutions that contain detailed information about their health status, diagnoses and treatment, and examinations. These documents can be used without additional confirmation procedures. Doctors should be able to use these documents to provide patients with proper medical care without the need to duplicate examinations. This approach will ensure the continuity of treatment, especially for patients with chronic diseases and those who need long-term medical supervision.

Vaccination certificates, especially for childhood vaccinations, require a separate approach. Since vaccinations are mandatory for children to access educational and social services, medical protocols should be developed to confirm that a person has been vaccinated in the TOT of Ukraine, including through additional examinations. It is important to avoid repeated vaccinations unless there are grounds to doubt the reliability of the data and the quality of the vaccines.



The conclusions of the MSEC and documents confirming disability issued in the TOT of Ukraine should be carefully verified. It is important to define the approach of the State of Ukraine to persons with disabilities that were acquired as a result of the participation of persons who are citizens of Ukraine in hostilities against Ukraine, as well as to develop a mechanism for identifying such cases.

In April 2022, the National Classification of Functioning, Disability and Health was adopted, which is an adaptation of the International Classification of Functioning, Disability and Health (ICF). On November 15, 2024, the Government of Ukraine adopted the Resolution “On Some Issues of Implementation of the Assessment of Daily Functioning”, which changed the procedure for establishing disability by the medical and social expert commission and introduced a system for assessing a person’s daily functioning by expert teams of doctors at multidisciplinary hospitals starting from January 1, 2025. The same resolution approved new criteria for determining disability groups. At the same time, neither the draft law “On Amendments to Certain Legislative Acts of Ukraine on the Implementation of the Assessment of a Person’s Daily Functioning” (Reg. No. 12178) nor the above-mentioned resolution of the Government of Ukraine proposes approaches to confirmation of disability established in the TOT of Ukraine. As the criteria for assigning disability groups may differ under the RF legislation, it is necessary to analyse these approaches and develop procedures for reviewing and confirming the status of persons with disabilities after de-occupation.

Recommendations

To the MoH:

- create special commissions within the MoH involving medical experts, representatives of state bodies and NGOs to assess medical documents from the TOT of Ukraine and decide on the specifics of taking into account information from these documents and dividing them into those that can be used without additional verification and those that require additional verification;
- develop a protocol for the use of certain medical documents without additional confirmation (such as medical records, hospital discharges containing detailed information on health status, diagnoses, treatment and examinations);
- develop a vaccination verification protocol to avoid unnecessary repeated vaccinations and to prevent restrictions on rights and freedoms, in particular of children;
- analyse and create a protocol for confirming disability established in the TOT of Ukraine;
- within the framework of existing medical registers, develop a mechanism for integrating information from medical documents issued in the TOT of Ukraine into the electronic healthcare system.



5.

COURT DECISIONS ISSUED UNDER THE OCCUPATION

Immediately after the occupation of the territory of the AR Crimea and the city of Sevastopol in 2014, courts in Crimea began to issue decisions in the name of the RF. After the illegal annexation of other TOT of Ukraine in Donetsk, Zaporizhzhia, Luhansk and Kherson regions in 2022, all TOT of Ukraine have been adjudicated by courts in accordance with the laws of the RF. At the same time, there are no other instruments for protecting the rights of Ukrainian citizens in the TOT, except for the judicial instruments of the aggressor country. Therefore, residents of the TOT of Ukraine actively apply to the courts to protect their rights. Criminal justice institutions are also actively operating in the TOT of Ukraine, so a separate category of judicial decisions includes verdicts in criminal proceedings, procedural documents, etc.

We do not have sufficient information on the number of decisions issued by courts in the TOT of Ukraine. According to the Mission of the President of Ukraine in the Autonomous Republic of Crimea, as of September 13, 2022, 972,952 civil and 85,822 criminal cases were received by the “judicial authorities” in the so-called Republic of Crimea during the occupation. Along with this, 290,075 civil and administrative cases and 18,738 criminal cases were submitted to the “courts” in Sevastopol³⁶.

The European Court of Human Rights has recently formed a position on the courts in the TOT of the Autonomous Republic of Crimea and the city of Sevastopol. On June 25, 2024, the Grand Chamber of the European Court of Human Rights delivered its judgment (joint applications No. 20958/14 (merits) and 38334/18 (admissibility and merits)) in the inter-state case *Ukraine v. Russia (re Crimea)*³⁷. In this unanimous judgment, the Court found Russia liable for violating most of the substantive provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms in connection with its administrative practice in Crimea since 2014, including Article 6 of the Convention. With regard to the courts, the ECtHR concluded that the courts in the occupied Crimea cannot be considered as “established by law” within the meaning of Article 6 of the Convention.

At the same time, this position of the Court does not remove the question of what Ukraine should do when it comes to millions of court decisions rendered during the occupation. In most cases, residents of the TOT of Ukraine do not have and cannot obtain any “Ukrainian analogues” of these documents. The direct non-recognition of absolutely all court decisions issued during the occupation may lead to a situation of legal uncertainty and deterioration of the situation of Ukrainian citizens, especially if the court resolved issues related to the adoption of children, limitation or recognition of incapacity, appoint-

³⁶ According to the Federal Law No. 262-FZ dated 22.12.2008 “On Ensuring Access to Information on the Activities of Courts in the Russian Federation”, not all categories of cases are subject to publication and the number of cases to be verified will be even greater

³⁷ CASE OF UKRAINE v. RUSSIA (RE CRIMEA) (Applications nos. 20958/14 and 38334/18). URL: <https://hudoc.echr.coe.int/ukr?i=001-235139>



ment of a guardian or custodian, divorce, alimony, determination of the place of residence and ways of participating in the upbringing of a child, division of jointly owned property, etc. Therefore, it is important to develop a mechanism for using information from court decisions made in the TOT of Ukraine.

It is worth noting that when developing a mechanism for verifying court decisions, it is important to assess the capacity of the Ukrainian judicial system and the prospective burden in the event of the introduction of such a system for verifying court decisions of the occupation authorities.

First, all court decisions issued by the occupation courts in the TOT of Ukraine should be divided into separate categories. It would also be advisable to structure all decisions by jurisdiction (civil, administrative, criminal, commercial, and administrative offence cases).

Regarding decisions in **civil cases**, given the volume of court decisions issued during the period of occupation, which continues to this day, it seems inappropriate to automatically review all cases completed in civil proceedings. It may be appropriate to stipulate that if an interested person submits an application within a certain timeframe, the decision may be reviewed.

As for other jurisdictions, court decisions in **commercial cases** may not be reviewed as a general rule, including disputes between business entities that are not related to the aggressor state and disputes concerning the restoration of violated rights or compensation for damage in favour of Ukrainian citizens. Thus, court decisions in disputes involving business entities associated with the aggressor state and Russian, including occupation, state institutions, enterprises and authorities should be reviewed.

Court decisions in **administrative cases and cases on administrative offences** may not be reviewed if they were made to restore the violated rights of Ukrainian citizens and/or in favour of Ukrainian citizens.

Verdicts in **criminal cases** should be divided into two categories:

1. Verdicts passed as a result of the unlawful prosecution of Ukrainian citizens (e.g. cases of “political prisoners” or prisoners of war). Such verdicts should not be subject to review, the criminal prosecution should be declared illegal, and the persons serving their sentences should be immediately released from custody. This category may include certain categories of verdicts under articles of the Criminal Code of the RF defined as politically motivated, such as offences under Chapter XI “Crimes against military service”.
2. The verdicts are reviewed in a certain order, taking into account the priority, in particular, the verdicts that may have been passed with hidden political motives are reviewed first. Within the framework of verification of verdicts in criminal cases, the issue of detention of persons serving sentences in correctional institutions in accordance with the decisions issued in these cases is important. Russian citizens serving sentences in such institutions should be extradited to the RF. Ukrainian citizens who resided in the TOT of Ukraine and are serving their sentences in the ter-



ritory of the RF should be returned to the territory of Ukraine and their sentences reviewed or released, depending on the category of the case, if they were convicted by illegal courts in the TOT of Ukraine.

Also, persons who have been convicted or are under investigation for actions/inactions defined by the Criminal Code of the RF as crimes that are not crimes under the criminal legislation of Ukraine may be released from places of detention.

There should be separate approaches to court procedural documents and cases that are not completed but are still in the court process.

In 2024, a working group was established on the basis of the Ministry of Justice of Ukraine to develop a mechanism for verifying court decisions issued in the TOT of Ukraine. As of October 1, 2024, this group has not convened.

In addition, in 2024, the Prosecutor General's Office established a working group to develop a model for the return of criminal justice to the de-occupied territories. The group includes representatives of the Prosecutor General's Office, the Prosecutor's Office of the Autonomous Republic of Crimea and the city of Sevastopol, NGOs, lawyers, judges, and academics. One of the issues addressed by this working group is the approach to documents, including procedural ones, issued in the TOT of Ukraine.³⁸

Recommendations

- Update the activities of the working group established on the basis of the Ministry of Justice of Ukraine to develop approaches to verification of court decisions issued under the occupation;
- Develop and approve mechanisms for verification of individual court decisions issued in TOT of Ukraine.

³⁸ you can listen to more about the work of the working group under the PGO on decisions and evidence collected by the occupation authorities in the JustTalk podcast "(Non)recognition of the occupier's decisions and evidence: implications for the criminal justice of Ukraine" (June 18, 2024): <https://justtalkpodcast.buzzsprout.com/1166444/episodes/15268222-justtalk>



6.

LEGAL TRANSACTIONS REGARDING PROPERTY AND DOCUMENTS CONFIRMING PROPERTY OWNERSHIP

According to part 6 of Article 11 of the Law of Ukraine “On Ensuring Rights and Freedoms and Legal Regime in the Temporarily Occupied Territory of Ukraine”, in the TOT of Ukraine, any transaction with respect to real estate, including land plots, made in violation of the requirements of Ukrainian legislation is considered invalid from the moment of its execution and does not create legal consequences, except for those related to its invalidity. In other words, any transaction with respect to real estate made in the territory of the TOT of Ukraine is invalid, as Ukrainian legislation sets very clear requirements for the form of such transactions and for the state registration of such transactions. In addition, coercion to alienate property and re-register property under Russian law is a fairly common violation in the TOT of Ukraine.

However, according to the Mission of the President of Ukraine in the AR Crimea, 469,500 transactions were carried out in the TOT of Crimea in 2018-2022 according to occupation resources, and according to other occupation statistical data, more than 1.2 million transactions on residential premises (buying and selling, inheritance, gifting, privatisation, etc.) were carried out on the peninsula in 2014-2022. Failure to recognise all of these transactions (i.e., declaring them null and void) could lead to unpredictable consequences and a complete collapse of the real estate market on the peninsula after its de-occupation. This will be a significant challenge for the implementation of de-occupation measures in the area of restoration and protection of property rights of citizens, local communities and the State of Ukraine. Among other things, this includes the following transactions and actual acquisition of property rights: buying and selling real estate; gifting, inheriting property by will or by law; privatisation of real estate; acquisition of rights to unfinished construction, ownerless and newly created property; acquisition of rights to objects as a result of foreclosure, division or allocation of a share of joint property; acquisition of the right to use property, etc. It is also important that property ownership documents for property in the TOT of Ukraine are critical for accounting for damage and destruction that occurred as a result of the armed aggression against Ukraine since February 2014.

When developing approaches to the recognition of transactions made in the TOT of Ukraine, several important points should be taken into account, in particular:

1. significant number of transactions were made by Russian citizens who arrived in the TOT of Ukraine on their own or were relocated as a result of Russia’s targeted policy;



2. execution of real estate transactions and registration of ownership of “Russian” documents of owners;
3. widespread practice of nationalising property, declaring it ownerless and then expropriating it. These actions of the occupation authorities have been documented in criminal proceedings by Ukrainian law enforcement agencies, as well as in reports by the Office of the Prosecutor of the International Criminal Court;
4. risk of destroying the archives of the technical inventory bureau and limiting the possibility of confirming the existence of ownership before the occupation of the territories;
5. significant number of objects created by the occupation authorities in the TOT of Ukraine (for example, the “reconstruction” of Mariupol) and the subsequent recognition of ownership of them, including by Russian citizens resettled in the occupied territories as part of the aggressor state’s deliberate policy.

The state should develop a general approach to transactions made in the TOT of Ukraine. One of two approaches can be chosen: either full non-recognition of transactions or partial recognition. Both of these approaches should be supported by an analysis of the impact on further actions of the state and on the policy of reintegration of the liberated territories of Ukraine. In our opinion, it is advisable to choose the presumption of partial recognition of transactions. Thus, transactions involving natural persons - citizens of Ukraine, certain legal entities may be recognised as valid if none of the parties has declared otherwise within the prescribed period. In the event of a statement of disagreement with recognition within the prescribed period, the issue should probably be resolved in court.

At the same time, transactions that are not recognised in any case (for example, as a result of nationalisation of property) should be clearly defined.

This approach requires the development and adoption of appropriate legislation to protect and restore property rights in the context of de-occupation measures. The relevant legislation should be adopted before de-occupation and partially come into force after de-occupation.

To ensure the property rights of residents of the TOT of Ukraine and persons who have left the TOT, special mechanisms of restitution (restoration of violated rights) and vindication (reclamation of property from someone else’s illegal possession) may be introduced.

Recommendations

- develop and adopt appropriate legislation to protect and restore property rights in the context of de-occupation measures;



- ensure constant monitoring of violations of the property rights of residents of the TOT of Ukraine and persons who have left the TOT of Ukraine;
- enable natural and legal persons to notify the state of voluntary changes in property status during the occupation, and to provide the state with information and copies of relevant “documents” confirming changes in the status of property and property rights in the occupied territory.



7.

DOCUMENTS CONFIRMING INSURANCE (EMPLOYMENT) RECORD AND SALARY

The issue of the occupation authorities' involvement of the local population of the TOT of Ukraine in their work is one of the most controversial. After the start of the large-scale invasion of Russia in 2022, the Criminal Code of Ukraine was supplemented by Article 111-1 (Collaborative Activities), which provides for criminal punishment for holding any position in the occupation authorities, as well as educational activities, work in law enforcement, judicial bodies, and economic activities "in cooperation" with the aggressor state or the occupation administration.³⁹ However, this activity has been criminalised since March 2022. Before that period, there were no prohibitions on working in the TOT of Ukraine. This raises the following question: in the event of the de-occupation of the territories and the mass return of the population to Ukrainian control, what will be the State's response to the request for the prospects of taking into account the insurance record and salary received, in particular for the calculation of pensions for residents of the TOT of Ukraine? Can the recovery of taxes and fees by the occupation authorities from the population of the TOT of Ukraine be included in the total amount of damage caused to the State of Ukraine and its citizens as a result of armed aggression against Ukraine?

The term "insurance" experience was introduced by the Law of Ukraine "On Mandatory State Pension Insurance",⁴⁰ which came into force on January 1, 2004. The only way to acquire an insurance record is to pay insurance contributions. In cases of employment in another country, the pensionable service is credited on a territorial (the service acquired in another country is added to the service a person had in Ukraine) or proportional (the other country calculates the pension for the service acquired in another country, and Ukraine for the service acquired in Ukraine) basis.

On April 25, 2024, the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Amendments to Certain Laws of Ukraine Regarding the Settlement of the Calculation of Insurance Record and Pension Benefits",⁴¹ which:

- stipulates that all countries with which there are no bilateral agreements on pensions will be subject to the proportional principle of pension calculation;

39 On the practice of prosecution for collaboration, see: Survival or Crime: How Ukraine Punishes Collaborationism. Analytical report / Syniuk O., Deputat D., Vyshnevskaya I., Volkovynska V., Chervonna V., Yelihulashvili M.; ed. by Lunova A. - Kyiv, 2024. https://zmina.ua/wp-content/uploads/sites/2/2024/07/colaboratz_print_ukr.pdf

40 On Mandatory State Pension Insurance: Law of Ukraine of 09.07.2003 No. 1058-IV. URL: <https://zakon.rada.gov.ua/laws/show/1058-15#top>

41 On Amendments to Certain Laws of Ukraine Regarding the Settlement of the Calculation of Insurance Record and Pension Benefits: Law of Ukraine dated 25.04.2024 No. 3674-IX. URL: <https://zakon.rada.gov.ua/laws/show/3674-20#Text>



- stipulates that periods of employment are not included in the insurance record for individuals who, after February 19, 2014, served in the armed forces, internal affairs bodies, security services, police, or other military formations, held positions in state service or in local government bodies in the Russian Federation or in relevant bodies (formations), voluntarily held positions related to performing organisational, executive, or administrative functions in illegal authorities established in the temporarily occupied territories of Ukraine, including in the occupation administration of the aggressor state, in illegal judicial or law enforcement bodies, as well as voluntarily participated in illegal armed or paramilitary formations established in the temporarily occupied territories of Ukraine and/or in the armed formations of the aggressor state.

At the same time, the state should develop clear approaches to assessing the length of service gained by a person in other types of activity. At the very least, there should be an understanding of the possibility of taking into account work experience gained in the TOT of Ukraine to confirm work experience in a particular field or speciality. Such consideration may have its limitations or serve as an access to the procedure for confirming existing knowledge, given the difference in standards of work in different industries (especially in the context of European integration). It is necessary to define such a framework both in the context of access of persons leaving the TOT of Ukraine to the government-controlled territory of Ukraine, as well as businesses that hire such persons (avoiding risks associated with control measures, in particular in terms of preventing and countering money laundering and terrorist financing), and in the context of involving people in work after the deoccupation of the territories.

Non-recognition of work experience for certain types of activities may limit access to certifications and licences required for specialised work, and negatively impact the ability to upgrade skills and obtain higher categories. When displaced to government-controlled areas, such categories of people will be further vulnerable due to the lack of recognition of their actual work experience and, as a result, may only be able to apply for jobs with lower qualifications and income. During deoccupation, there is a risk that highly qualified personnel will move to the Russian Federation in order to maintain their existing levels of qualifications and income.

Separate consideration should be given to the issue of the so-called purchase of insurance record in the amount required for a pension. For example, if a person purchases an insurance record for the period from February 2014 (the beginning of the occupation of Crimea) to December 2024 at his or her own expense, the cost of such an insurance record will be UAH 228,800. This amount is significant given the size of the minimum wage and pension in Ukraine. Therefore, it is unlikely that most people will be able to afford this method of obtaining the required insurance record. Therefore, it is advisable to consider the possibility of accounting for insurance contributions paid by persons in the TOT of Ukraine as a type of damage caused by armed aggression against Ukraine. It is worth considering the possibility of recovering this damage from the Russian Federation and introducing the possibility of purchasing an insurance record by a person at the expense of these recoveries.



Recommendations

- assess the list of professions in which the level of qualification is linked to the length and experience of work, with a view to further developing a mechanism for confirming existing qualifications;
- develop and approve a procedure for crediting insurance record gained in the TOT of Ukraine other than that which is not included in the employment record in accordance with Article 24 of the Law of Ukraine “On Mandatory State Pension Insurance”;
- determine the methodology for accounting the paid insurance contributions paid by persons in the TOT of Ukraine to the budget of the aggressor state as one of the types of damage to be recovered from the RF for the purpose of further implementation of the procedure for purchasing additional insurance record for such persons.

