

Current challenges faced by residents of non-government-controlled areas when applying for Ukrainian passports

New challenges in the context of the simplified procedure for citizens of Ukraine to receive Russian citizenship

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The Conflict Mapping subproject aims to identify actors and groups involved in the conflict in Donbas on different levels, and their influence, interconnected relations, interests, concerns and expectations. This analytical work is expected to help with determining possible ways to influence different stakeholders with the ultimate goal of conflict resolution.

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Introduction

Passport distribution among Ukrainian citizens who stayed in the temporarily occupied and non-government-controlled territories of Ukraine (hereinafter referred to as ORDLO) was and remains a pressing issue. The availability or absence of a passport is a significant factor that influences the legal capacities of a Ukrainian citizen to take advantage of his/her rights and freedoms. Moreover, a person without papers automatically becomes limited in terms of access to services, be it administrative, social, banking or any other. In a broader sense, the failure to get a passport – i.e. a document that apart from serving as an identification tool, also serves as proof of the holder's citizenship, – can result in the person in question becoming stateless.

The armed conflict that started as long as seven years ago revealed the weaknesses of the then Ukrainian system of passport registration and issuance, namely the de facto absence of a unified e-register of information about Ukrainian citizens who had received their passports. In practice, all the required information was in paper catalogs left in the non-government-controlled territories. This resulted in a surge of complicated situations connected with the lost documents of ORDLO residents. And the issue is still pressing considering that often these documents could have been destroyed in the hostilities or were lost during relocation.

However, notwithstanding the grave importance of the issuing of passports to Ukrainian citizens, especially to ORDLO residents, where the state authorities have not functioned since 2014, the process of passport distribution among Ukrainian citizens is still rather cumbersome involving a number of challenges and issues faced by residents of Donetsk and Luhansk regions. This stands true for both the reissue of a lost (stolen) passport and for the issue of a first passport. Yet another issue is residence registration in the ORDLO territories.

The way for an ORDLO resident to receive a passport of a Ukrainian citizen

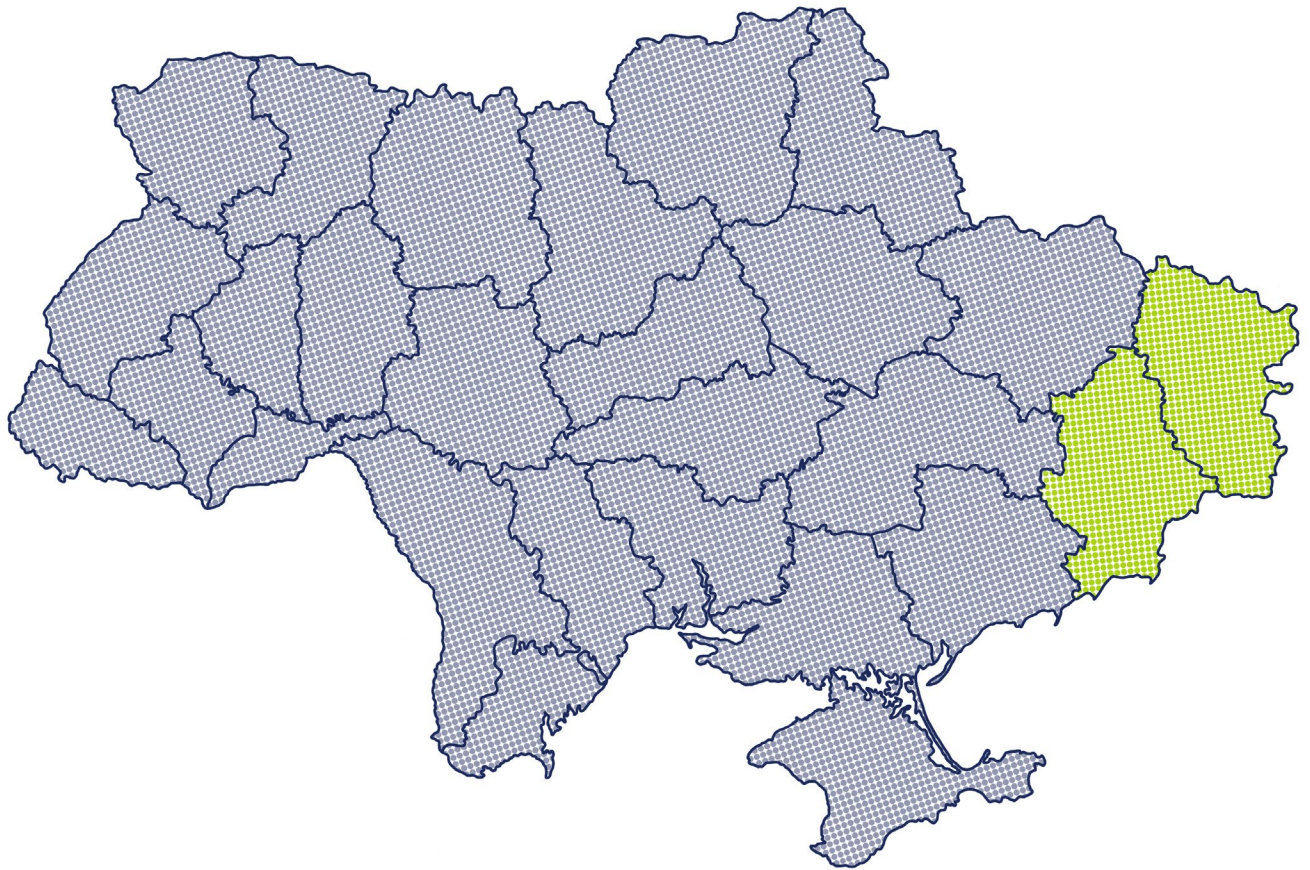


The passport of the citizen of Ukraine is issued to persons over 14 years old

According to the Law,¹ every citizen of Ukraine over 14 years old must receive a passport of a Ukrainian citizen. However, the armed conflict, the discontinued operation of the territorial subdivisions of the State Migration Service (SMS) in ORDLO and not least the existence of the contact line itself, have all led to the complicated process of passport distribution among those who remained in the non-government controlled territories. In particular, there is a separate procedure for issuing passports to ORDLO residents that differs from the standard one. This procedure is not documented on any legislative level, but rather exists in the form of SMS clarification notes.

Where to apply? According to the Instruction,² to receive a passport of a Ukrainian citizen, a person of age (over 14 years old) should personally hand in an application form to the territorial SMS subdivision or to other authorized offices.³ However, this application should be filed only at the person's official registered address. A child who is 14 years old and has no residence registration needs to hand in his/her application at the place of current residence in Ukraine, though this place of residence should be confirmed as well. The Instruction also contains a separate clause on the point of application for passports for internally displaced persons (IDPs): they should apply at their current place of residence that should be confirmed by a respective certificate of IDP registration.

At the same time the Instructions do not mention the point of application for ORDLO residents to receive a passport. However, according to the information from the official SMS website,⁴ the persons residing and registered in the locations where state authorities temporarily cannot operate, and in the settlements at the contact line (of Donetsk and Luhansk oblasts), as well as individuals with no IDP status, should turn to the territorial subdivisions of the SMS State Department in Donetsk oblast and respectively to similar subdivisions of the SMS State Department in Luhansk oblast. The Law,⁵ stipulating this practice of identification of the point of application to receive passports for ORDLO residents, was amended in December 2019, making it a legal requirement.



Thus, ORDLO residents can get Ukrainian passports solely in Donetsk and Luhansk oblasts. It is worth noting that residents of the Autonomous Republic of Crimea and the city of Sevastopol – a territory which according to the Ukrainian legislation is temporarily occupied, – have a right to turn to any territorial SMS subdivision to apply for a passport.⁶

The existing limitations imposed with regards to the point of application for a Ukrainian passport to only Donetsk and Luhansk oblasts result in significant overload of the structural subdivisions of SMS in these regions. This, in turn, leads to long lines, increased time needed to produce a passport and to a price increase for these services for ORDLO residents (considering the costs for travel, accommodation for the waiting time, etc.) and significant corruption risks.



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Identification procedure

When a Ukrainian passport is issued for the first time,⁷ the SMS adds the information about the person in question to the Unified State Demographic Register (USDR) – an electronic information and telecommunication system for the maintaining, protection, processing, use and dissemination of information about a person and his/her documents registered with the use of this Register. Namely, such documents include a Ukrainian passport in the form of an ID-card, a passport for overseas travel and other documents.

If the information about a person is introduced to the USDR for the first time, a so-called 'identification' process takes place. The person is identified by cross-checking the provided data, including biometrics, with existing information on the person in other registers, registries, databases, etc.

Unfortunately, the identification procedure for ORDLO residents is more complicated because of the lack of physical access to the databases and registries left behind in the non-government-controlled territory. As a result, when turning to the SMS subdivisions, applicants shall be requested to provide additional documents to support the identification of the applicant. There is no clear and exhaustive list of such documents, however the SMS official website offers the option to download a "questionnaire used for the identification procedure". It is advised by the SMS to fill it in carefully and take with you all the documents or copies of the documents listed therein.⁸ Driving license, military book, pension certificate, documents that can certify the place of study or work, banking documents, proving the existence of a bank account, etc. are among the documents that can help with a person's identification.

It often happens that an applicant cannot provide any of the aforementioned documents or the ones provided are not sufficient for proper identification (it is worth noting that not a single piece of legislation provides a clear framework on when the provided scope of documents can be considered sufficient for identification and when not).

If this identification phase is not successful, then a person's identity can be established through interviews with his or her relatives or neighbors. If an individual resides in ORDLO, this means that his/her relatives and neighbors most likely live there, too, and their travel to the Ukrainian government-controlled territories could be problematic and trigger significant financial implications.



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If it is impossible to identify a person through interviews, it is necessary to turn to the court with the appeal to identify facts that would provide legal grounds for the issue of the documents that certify person's identity and his/her Ukrainian citizenship. Until the identification procedure is complete and the respective decision by the court is made, the documents certifying a person's identity and Ukrainian citizenship are not issued.⁹ Thus, if an ORDLO resident fails to pass the identification procedure, he/she will not get a Ukrainian passport and will be de facto stripped of the opportunity to enjoy his/her rights and legal interests. Moreover, if returned to the ORDLO territory such a person will not be able to travel to the Ukrainian government-controlled territory.

Residence registration in ORDLO



If an ORDLO resident fails to pass the identification procedure, he/she will not get a Ukrainian passport and will be de facto stripped of the opportunity to enjoy his/her rights and legal interests. If returned to the ORDLO territory such a person will not be able to travel to the Ukrainian government-controlled territory.

Yet another problem faced by ORDLO residents is the impossibility of registering their residence in these areas. In 2016, amendments were introduced to the legislation of Ukraine envisaging the transfer of a right to register residence location from the SMS to the local self-government bodies. According to the Rules on residence registration,¹⁰ the registration/revoking of residence registration is done by the executive body of a village, settlement or city council, by the village head in the respective administrative territory under the authority of the village, settlement or city council. Since there are no legitimized local authorities in ORDLO that are recognized by the Ukrainian Government, it is impossible to register one's residence there. The only exception from this rule is the so-called "transfer", when the place of residence was registered in ORDLO prior to the conflict, and can be renewed in the new passport, in case supportive confirmation documents are available. However, this procedure is not envisaged by any normative and legal acts, but rather exists only in the form of SMS clarifications. Moreover, the 'transfer' procedure does not allow the registration of a child's place of residence in ORDLO when a child receives his or her first passport.

Thus, even with successful identification, ORDLO residents receive their passports without the stamps of their residence registration. According to the Law,¹¹ residence registration or the lack thereof cannot be the precondition for upholding the rights and freedoms envisaged by the Constitution of Ukraine, laws or international agreements, or the reason for their limitation. In practice, though, when a person does not have his/her residence registration, he/she faces significant limitations in exercising their rights or accessing services. For example, persons with no residence registration cannot participate in elections of all levels.



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Specifics of receiving a passport of a Ukrainian citizen for children residing in ORDLO

As mentioned above, every citizen of Ukraine upon reaching the age of 14 should receive a passport. However, for a child residing in ORDLO to be able to personally go to a territorial SMS subdivision in Donetsk or Luhansk oblast, as required by the procedure, he/she should cross the contact line,¹² accompanied by an adult family member. In this case, the entry (return) to ORDLO of children under 16 years of age is in accordance with the conditions defined in the general rules on crossing the state border of Ukraine. Under the general rules, a child must be accompanied by both parents or by one parent with the notarized copy of the other's consent.¹³ Apparently, when one of or both parents cannot travel to the Ukrainian government-controlled territory, their child is automatically deprived of the opportunity to get his/her passport on time. What is more, ORDLO residents often wait for their children to turn 16 which would allow them to cross to the government-controlled territory on their own and to return without the necessity to be chaperoned by their parents or to get their notarized permissions. Such delays in issuing passports could have negative implications, especially in a situation when a child becomes an IDP, as he/she will not be able to receive that status without having their passport first. As a result, he/she will not be able to receive state benefits envisaged for IDPs or to benefit from educational benefits that exist for IDPs.



In practice when a person does not have his/her residence registration, he/she faces significant limitations in exercising their rights or accessing services. For example, persons with no residence registration cannot participate in elections of all levels.



Delays in issuing passports could have negative implications, especially in a situation when a child becomes an IDP, as he/she will not be able to receive that status without having their passport first. As a result, he/she will not be able to receive state benefits envisaged for IDPs or to benefit from educational benefits that exist for IDPs.

The bottom line is that presently ORDLO residents face real challenges when applying for Ukrainian passports. A certain share of these challenges is directly connected with the consequences of the conflict, for instance limited access to information (documents) which prior to the conflict were stored with the local authorities on the ORDLO territory. On the other hand, some of these problematic issues derive from the lack of transparency of the existing procedures, discrepancies between the requirements of different legislative acts and their practical application. All of this can lead to an increased number of ORDLO residents without Ukrainian passports, which in turn will prove to have negative implications, such as depriving them of the opportunity to enjoy their rights, receive state services, travel to government-controlled territory and, more broadly, to maintain ties with the state.



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New challenges in the context of the simplified procedure for the citizens of Ukraine to receive Russian citizenship

Against this background of challenges with Ukrainian passport distribution among ORDLO residents, the information about the President of the Russian Federation signing the Decree¹⁴ on the simplified procedure of getting Russian citizenship for ORDLO residents, has stirred up heated discussions in Ukrainian society. Under the aforementioned Decree, persons permanently residing in certain regions of Donetsk and Luhansk oblasts of Ukraine have the right to apply for Russian citizenship, without fulfilling the obligatory requirements of five years residency in Russia, confirmation of legal sources of income, renunciation of their existing citizenship and proof of Russian language skills. A week later, there was yet another Decree with which the procedure to receive Russian citizenship for ORDLO residents and their relatives was simplified even further.¹⁵

Formally, Russia has not expanded its citizenship to certain parts of Donetsk and Luhansk oblasts as it did in Crimea in 2014.¹⁶ It has rather introduced a simplified procedure to get Russian



Ukraine does not acknowledge and does not register passports of another foreign state if they are issued in violation of the norms of international law and/or harm the sovereignty, independence and territorial integrity of Ukraine.

citizenship for ORDLO residents with an aim "to protect human and citizen rights and freedoms based on the universally accepted principles and norms of the international law".¹⁷

Not dwelling on the foreign policy aspects of the issue and on the fact that the Russian Federation has allegedly violated international law, one should better analyze the influence of the aforementioned RF Presidential Decree on the internal policy of Ukraine towards ORDLO residents.

For instance, immediately after the news about the Decree on the simplified procedure to get Russian citizenship, several public figures, including members of Parliament and representatives of state authorities started making statements calling to strip (by "automatic loss") ORDLO residents with Russian passports of Ukrainian citizenship. Moreover, a draft law was registered in the Verkhovna Rada (National Parliament of Ukraine) on civilian confiscation of property of those Ukrainian citizens who voluntarily received the citizenship of the Russian Federation in certain areas of Donetsk and Luhansk oblasts (registered under # 10363).

However, such "punitive" rhetoric has no legal grounds whatsoever from the perspective of the national legal framework. Firstly, according to Article 25 of the Ukrainian Constitution, a citizen of Ukraine cannot be stripped of citizenship. This means that any talk of the automatic stripping of citizenship of Ukrainian citizens goes against the Constitution and cannot be enforceable. Secondly, Ukrainian citizens accepting any other citizenship does not violate Ukrainian legislation. Furthermore, according to the Law of Ukraine "On Ukrainian Citizenship",¹⁸ if a Ukrainian citizen gets citizenship of another state or states, then in the legal field of Ukraine, he/she is only recognized as a Ukrainian citizen.

As early as on 8 May 2019, the Ukrainian government approved two decisions: Order #444¹⁹ and Instruction #362-p.²⁰ Basically, the Order gives the Cabinet of Ministers of Ukraine the right not to acknowledge and not to register passports of another foreign state if they are issued in violation of the norms of international law and/or harm the sovereignty, independence and territorial integrity of Ukraine. As a result, with these kind of passports, foreigners will not be able to enter the territory of Ukraine. The Instruction, meanwhile, provides a list of the passport issuing bodies of the Russian Federation that are not recognized by Ukraine. The International department of the Federal Migration Service of Russia in Rostov oblast, the village of Pokrovske and the department of the Federal Migration Service of Russia in Rostov oblast, the town of Novoshakhtynsk are among them. Ukraine does not recognize the passports they issue since 29 April 2019 and 30 April 2019 respectively. According to official data from the Ministry of Interior of the Russian Federation, these departments deal with issuing Russian passports to the residents of non-government-controlled parts of Donbas.

It is extremely difficult to estimate the number of Russian passports issued to ORDLO residents during the year since the simplified procedure to receive a Russian passport was introduced (the same goes for the verification of the statistics released regularly by the Russian Federation as to the number of issued passports). Russian media released information in March 2020 stating that over 225,000 residents of Donetsk and Luhansk oblasts had already received Russian citizenship through this simplified procedure and that by the end of the year the total number of ORDLO residents with Russian passports will have allegedly reached 600–800 thousand people.²¹ While one could quite critically look at such predictions, Russia indeed does a lot to keep this “passport conveyor” up and running: even despite the general quarantine measures applied due to the COVID-19 pandemic, the Russian border remains open for organized groups from ORDLO, that, according to the Russian media, make regular visits to receive Russian passports.²²

If one considers that according to expert estimates there are over 3.8m people living in ORDLO territories,²³ the number of issued Russian passports (even if we believe that more than 200,000 people have them) still does not seem to be huge. However, it is difficult to assess, for example, the number of children who have received Russian citizenship through the simplified procedure for Russian passport distribution for their parents.



According to Russian media over 225,000 residents of Donetsk and Luhansk oblasts had received Russian citizenship through the simplified procedure.



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By recognizing the right and obligation of Ukraine to react to external challenges, it is important to ensure that any reaction to the actions of the Russian Federation authorities does not lead to a disproportional limitation of the rights of people living in ORDLO. Such limitations can have long-term consequences, even after Ukraine regains control over these territories and reinstates all state functions there. Instead of all the talks about punishing ORDLO residents for receiving Russian citizenship, the Ukrainian state should pursue a policy that would simplify access of people living in non-government-controlled territory to its administrative services and procedures. In particular, access to services of birth and death registration, obtaining a passport, access to the right to education (obtaining graduation certificates and entering higher education institutions). Furthermore, a procedure for crossing the contact line should be simplified (namely, the system of issuing permissions must be revoked) and all necessary conditions should be created for the safe and dignified crossing of people to/from ORDLO.

Endnotes

- 1 Paragraph 2 Article 21 of the Law of Ukraine "On the Unified State Demographic Register and documents which confirm Ukrainian citizenship, certify person's identity or its special status" (#5492-VI dd. 20 November 2012)
- 2 The processes of registration, issuance, exchange, transfer, extraction, reinstatement, acknowledgment of insolvency or destruction of a Ukrainian passport are prescribed by the Order of Cabinet of Ministers of Ukraine #302 as of 25 March 2015.
- 3 The authorized offices include Centres for Administrative Services (CASS), state enterprise under the SMS management and its separate subdivisions.
- 4 <https://dmsu.gov.ua/vazhlyvo/informacziya-dlya-pereselencziv-iz-zoni-ato.html>
- 5 Article 9-3 of the Law of Ukraine "On temporary measures for the duration of the Anti-terrorist operation" (#1669-VII as of 2 September 2014)
- 6 The application procedure to receive a document that certifies Ukrainian citizenship, serves as an identification document or proves his/her special status, for the residents of temporarily occupied territories of Ukraine are stipulated in the Order of the Cabinet of Ministers of Ukraine #289 as of 4 June 2014.
- 7 It is a Ukrainian passport produced in the form of a card with an embedded contactless chip.
- 8 <https://dmsu.gov.ua/faq/documentuvannia-ordlo-krim.html>
- 9 Article 10 of the Law of Ukraine "On the Unified State Demographic Register and documents which confirm Ukrainian citizenship, certify person's identity or its special status" (#5492-VI dd. 20 November 2012)
- 10 The residence registration rules are prescribed by the Order of the Cabinet of Ministers of Ukraine #207 as of 2 March 2016.
- 11 Part 2 Article 2 of the Law of Ukraine "On the freedom of movement and the choice of place of residence in Ukraine" (#382-IV as of 11 December 2003)
- 12 Contact line stands for the identification line between temporarily non-controlled and controlled territories within Donetsk and Luhansk oblasts
- 13 Approved by CMU Order #57 as of 27 January 1995.
- 14 Decree "On the simplified procedure for the identification humanitarian purposes of categories of people who have the right to apply for Russian citizenship" #183 as of 24 April 2019
- 15 Decree "On the simplified procedure for certain categories of foreigners and stateless persons who have the right to apply for Russian citizenship" #187 as of 1 May 2019/
- 16 According to paragraph 4 Article 5 of the Law of Ukraine "On the protection of human and civic rights and freedoms and ensuring the existence of a legal field in the temporarily occupied territories of Ukraine" (#Nº 1207-VII as of 15 April 2014), forced automatic acquisition of Russian citizenship of those Ukrainian citizens who live in the temporary occupied territories is not acknowledged by Ukraine and is no reason for a loss of Ukrainian citizenship.
- 17 Decree on simplified procedure for the identification humanitarian purposes of categories of people who have the right to apply for Russian citizenship #183 as of 24 April 2019
- 18 Subclause 1 Part 1 Article 2 of the Law of Ukraine "On Ukrainian Citizenship" (#2235-III as of 18 January 2001)
- 19 CMU Order #444 as of 8 May 2019 "On the introduction of amendments to the Registration procedure for passports of foreign citizens at the national border crossing points"
- 20 CMU Instruction #362-p as of 8 May 2019 "On passports issued by foreign states and not acknowledged by Ukraine"
- 21 <https://tass.ru/politika/8011011>
- 22 <https://novayagazeta.ru/articles/2020/04/08/84790-rassadnik-novyh-grazhdan>
- 23 <http://www.dsnews.ua/static/longread/donbas-ukr/demographiya-ordlo.html>



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