

THE WHITE PAPER

on the domicile
registration system
in Ukraine

*proposed
reform paths
for the government*

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Preface

Issues related to fully safeguarding people's rights to freedom of movement and free choice of their place of residence are becoming increasingly relevant in the context of globalization and the high level of people's mobility, both inside Ukraine and abroad. In Ukraine, however, the exercising of this constitutional right, and other human rights and freedoms, is limited. This is due to the specifics of the domicile registration system. Reforming this system is not only an imperative of our time, but also a precondition for successfully implementing other important reforms, such as decentralization.

Migration processes across Ukraine must be properly documented. Ukrainian legislation sets out a clear-cut requirement, which stipulates that a person must register their new place of residence within 30 calendar days after moving to that place of residence¹. In actual fact, however, this requirement is impossible to comply with, as most people who move to a new place of residence are unable to register their new place of residence. Although there are multiple reasons² for this, one important reason lies in the imperfections of the existing domicile registration system, and the failure of this system to address today's challenges.

As early as 2003, Ukraine adopted a law on freedom of movement and free choice of a place of residence. This law was reasonably

progressive, especially when compared to the USSR's «proryksa» system (a Soviet-era system for registering a place of residence). The «proryksa» served as a residence permit and was regarded as the sole grounds for a person to be a resident of a particular area.

In spite of its democratic nature, the new system for registering a place of residence has the characteristics of the Soviet-era system that served as a residence permit. More specifically, the existing system requires people to have documents that prove their right to live in a certain place (flat, house and so on) to be able to register their residence there. Those who are affected the most are those who rent housing, as landlords (owners) are far from always being willing to enter into residential property rental agreements, and letting their tenants disclose the address of their rented housing at all times. In addition, registering third parties could adversely affect residential property owners, due to, among other things, complicated deregistering procedures.

In this light, most Ukrainian citizens continue to regard the existing domicile register system as the Soviet-era «proryksa» system – an inconvenient and burdensome practice that makes them look for ways around the problems it creates. As a result, at least 6.8 million people in Ukraine live in places other than their registered place of residence³.

²

¹ Article 3 of the Ukrainian Law on freedom of movement and free choice of a place of residence in Ukraine.

² The influence of the domicile registration system in Ukraine on the exercising of human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. [Electronic source]. — Link to the source: <http://bit.ly/ZvitRMP>

³ The same source.



These people are subject to additional restrictions, because in many spheres of life the exercising of rights and legitimate interests depends on the place of a person's registration. For instance, some administrative services (such as obtaining a Ukrainian internal passport (in the form of an ID card), applying for pensions and subsidies, and having one's marriage dissolved) are provided only or mostly in the area where a person is registered. These restrictions also apply to voting in local elections, getting medical services, sending your child to a nursery or primary school, and so on.

Apart from causing inconvenience and limiting people in the exercising of their human rights, the existing system for registering a place of residence also adversely affects state policy, as this system effectively fails to provide the state with reliable information about how people are distributed across Ukraine and about the number of internal migrants. Local governments, which are still in the process of decentralization reform, also have no reliable information about the number of people who live in certain communities. This makes it much more difficult for communities to amalgamate, plan their further development, draw up their budgets, and so on.

In view of the above, the domicile registration system requires sweeping change, which will make people's lives easier by letting them register at their actual place of residence. Another

important function the system has to perform is registering the number of residents in certain territorial units, providing the state and local governments with reliable information about the number of people in communities, and the composition of these communities.

This paper contains not only detailed proposals for creating a new model of the domicile registration system, but also proposals for change in other areas in which registration is used, and which could be significantly affected by changes to the registration system. It should be noted that reform is already underway in some areas. These reforms – such as medical reform and new approaches to registering people for military service – should naturally change approaches to the use of a residence registration.

This White Paper is yet another step in creating a new system for registering a place of residence in Ukraine. It draws on the findings of a national sociological study into the impact of registration on the exercising of human rights and the pursuit of vital interests⁴. This paper also relies on the results of a detailed study into the influence of the registration of a place of residence on various spheres of public administration, and on some categories of people, as set forth in the Green Paper on the Domicile Registration System for the Government of Ukraine⁵. This paper aims to further discuss the model and paths for reforming the domicile registration system in Ukraine.

⁵



⁴ The same source.

⁵ The Green Paper on the Domicile Registration System for the Government of Ukraine. — K., 2019. — 125 p. [Electronic source]. — Link to the source: <https://bit.ly/2NEUjY3>

List of abbreviations:

IDP	internally displaced person
SMSU	The State Migration Service of Ukraine
USDR	The Unified State Demographic Register
CMU	The Cabinet of Ministers of Ukraine
UCAO	The Ukrainian Code of Administrative Offences
MIU	The Ministry of Interior of Ukraine
LR	laws and regulations
TCR	territorial community register
TOT	temporarily occupied territories of Ukraine ⁶
UNHCR	The United Nations High Commissioner for Refugees
URN	unique registration number
CCU	The Civil Code of Ukraine
ASC	administrative service centre
CEB	central executive body

⁶ Temporarily occupied territories of Ukraine are defined in the Ukrainian Law No. 1207VII, dated 15 April 2014, on safeguarding rights and freedoms and the legal regime in Ukraine's temporary occupied territories, and the Ukrainian Law No. 2268VIII, dated 18 January 2018, on the special nature of state policy for safeguarding Ukraine's sovereignty in the temporary occupied territories of Donetsk and Luhansk oblasts.

Summary

The domicile registration system that replaced the Soviet-era «prorykska» system in 2003 is a common tool of state administration. Information about a person's registered place of residence is used in various areas of state administration, such as the allocation of budget funds, planning territorial development, and organizing elections. In addition, the registration of a place of residence has a significant impact on the exercising of human rights and the pursuit of vital interests. Registration affects a person's access to medical services (apart from emergency medical aid and getting medical treatment from a general practitioner, provided a person has signed the respective agreement). It also has a bearing on the exercising of one's right to social protection, education, administrative services, access to courts of law, and so on. In some cases, registration can have a bearing on the establishment of one's ownership rights (for instance, when a person privatizes or inherits residential property), and on the limitation of one's ownership rights (for instance, in order to protect the rights of children). Official letters are also sent to a person's registered address.

But the widespread use of a registered place of residence by government bodies does not automatically mean that the registration of a place of residence provides reliable information about the number and composition of the population. A national study conducted in 2018 revealed that at least 6.8 million people in Ukraine were living in places other than their registered place of residence. People can have subjective and objective reasons for not registering their current place of residence. Whatever their nature, these reasons all result in the fact that, after moving to a new place of residence, people do not register it, depriving the

state of reliable information about their place of residence.

That said, information about one's registered place of residence is widely used by all government authorities. The use ranges from sending official letters to a person, to confirming various facts and circumstances about a person (such as their place of residence, the fact of co-residence, the right to use housing, legal address, and the fact of internal displacement). All this, together with insufficient interaction between various registers, such as territorial community registers and the Unified State Demographic Register, makes the domicile registration system rather ineffective and incapable of performing its functions.

One way to restore the functionality of the domicile registration system would be to introduce a so-called notification-based or declaration-based model, whereby a person informs local authorities of their current place of residence. While registering their place of residence, people would not be required to prove their right to live at their registered address. This model simplifies the procedure for registering a place of residence, while also providing additional protection to housing owners, who are currently very limited in their choice of out-of-court tools for deregistering people who are registered at the housing they own. Notification-based models have been successfully introduced in Estonia, Lithuania, Latvia, Sweden, Norway, the Netherlands, and in some other countries.

With the registration of a place of residence being used in many areas, changes to the registration system could have profound implications. For some areas, this reform will have

positive implications: Formally, these areas currently rely on the number of people who are registered in a given territory (for instance, in budgeting matters), and once the system is changed, this information will be more accurate. For other areas, reform of the registration system will more likely than not be a natural process. This process will harmoniously synchronise with internal changes in the area itself (such as medical reform and administrative services). For some areas, however, changes to the domicile registration system could have profound implications. That is why the influence of the new system on these areas has to be modelled.

Local governance. Currently, the registration of a place of residence determines a person's membership of a territorial community, granting that person the right to participate in local elections. The new Ukrainian Electoral Code adopted in December 2019 allows persons who have not been registered in a community to take part in local elections, provided that they have documents that prove that they are residents of that community. In this light, reform of the domicile registration system will decrease the workload of the departments that keep the State Register of Voters by allowing people to register where they live without having to provide additional documents to prove that they are indeed resident there. This, however, does not address issues related to people (such as internally displaced persons) who may not want to register in the communities in which they currently live. This issue could be resolved by acknowledging that the registration of a person's place of residence is not the only criterion for membership of a territorial community, and that if that person can provide documents that prove that they are resident there, they should be considered a member of that community (and be recorded there as one).

Property rights. Respecting and protecting the rights of residential property owners is a priority issue. Registering a place of residence according to the new notification-based system will not establish a person's right to use the residential property where they are registered. The main risk arising from the proposed model is that of misuse, i.e. that a person will register their residence at a place where they are not in fact resident. As registration under the new

model will be done on the basis of notifications, one way to address the above problem could be through notifying the owner/co-owners that third parties have been registered in the residential property they own. The new model envisages precisely that.

One should bear in mind that in some cases (such as privatization or some inheritance cases) the registration of a place of residence plays an important role in establishing ownership rights. Therefore, with a view to avoiding risks that could arise during privatization, one should put in place a system for accounting for people who have been issued permits to move in, or for those of their relatives who have obtained new permits. It is these people who should be given the right to deregister people who have no right to use their housing. Since non-privatized housing also has owners (a territorial community or the state, represented by the relevant government authorities), such real estate should be entered into the State Register of Property Rights to Real Estate. The state should also set a deadline for the privatization of housing (five years).

In addition, the registration of a place of residence plays a role in calculating utility bills when flats or houses have no meters installed in them. The number of consumers of gas and water supply and sewerage services who have no meters installed in their flats or houses remains high. Although the state has developed an action plan for providing households with individual meters, for those households that have no individual meters installed, the cost of services related to gas supply and distribution, hot water supply, and centralized water supply at present directly depends on the number of people registered in a flat or a house. The installation of meters in accordance with state programmes will prevent households from running up utility bills that exceed the amount of actually consumed utilities. That said, the cost of waste disposal services will still be determined on the basis of the number of people who live in a flat or house.

Social protection. Reform of the domicile registration system will have no significant influence on the social protection of the population, as many regulations that govern issues related to social payments, social services, the gran-

ting of subsidies, and so on refer to an applicant's place of residence rather than the place of their registration. In actual fact, however, applicants are required to provide documents that prove their place of residence (usually a passport with a registration recorded in it). The reform of the registration system should change that. In addition, the launch of the E-SOCIAL system will improve interaction between various structural units involved in social protection, which will prevent people from receiving social payments in two different places at the same time. A number of laws that require one to obtain a family composition certificate, which was abolished in the summer of 2019, need to be amended.

Protection of children's rights. The abolishing of the old permit-based system and the introduction of a simplified procedure for registering a child's place of residence should eliminate the discrepancy between the actual and registered place of residence. The simplified rules for registering a child's place of residence should aim to register the child's actual place of residence, and to remove existing artificial obstacles, such as the requirement that a child be registered at the address where one of its parents is registered. There is no reason that the requirements applied to the registration of a child's place of residence be any different from those applied to the registration of an adult's place of residence. This mainly refers to obtaining the consent of the other parent, and the requirement that a child be registered together with one of its parents. In contrast, these simplified rules would help identify such cases, which is difficult to do at the moment as such cases go unrecorded.

Regarding the property rights of children, when granting a child the status of an orphan, of a child deprived of parental care, or of a child in difficult domestic circumstances, one has to require a guardianship and trusteeship authority to establish the legal grounds for the child using certain housing. The State Register of Property Rights and Encumbered Property should have a special record that would guarantee that such housing would not be alienated without the consent of the relevant guardianship and trusteeship authority. While making a child's parents responsible for ensuring that the child has an appropriate standard of living, the state should

not disproportionately (unduly) interfere in their family life. Neither should the state limit a child's parents or the third parties in whose housing a child that has no such status is registered in exercising their ownership rights.

Internally displaced persons and people who live in temporarily occupied territories. Applying the notification-based model to temporarily occupied territories is currently a controversial issue. A way to resolve this issue was proposed in a draft law amending some Ukrainian laws that govern the record-keeping and registration of a place of residence of those Ukrainian citizens who live in temporarily occupied territories in Donetsk and Luhansk oblasts and in Crimea. This draft law was registered by the Ukrainian parliament of the 8th convocation as No. 8432. Once the notification-based system for registering a place of residence has been introduced, the state should allow internally displaced persons not to register their actual place of residence in an area controlled by the Ukrainian government. The state should maintain the status quo, i.e. the permanent registration of a place of residence in temporarily occupied territories, and the temporary registration of a place of residence in the community where an internally displaced person is currently living. That said, internally displaced persons should be allowed, without prejudice to their rights, to use the new system for registering a place of residence, by notifying the state of their new place of residence, of which a respective entry should be made in the relevant territorial community register.

Refugees, people in need of additional protection, people who seek asylum in Ukraine, and stateless persons. The main problem in registering the place of residence of asylum seekers and stateless persons in Ukraine is that these people have no documents that prove their ID or their special status, as required by the applicable laws. Before a person can register their place of residence, they have to be identified by government authorities, and information about that person has to be entered into respective state databases and registers. The notification-based system for registering a place of residence could make the lives of refugees, people in need of additional protection, and stateless people much easier – provided that these people can produce proof of their identity.

Turning the domicile registration system from a mechanism that limits human rights into an additional tool for formulating state policy at all levels, requires taking further steps, such as:

- Holding extensive consultations with all stakeholders;
- Drawing up and registering the respective draft law;
- Discussing and carrying out an advocacy campaign for the draft law;
- Conducting a communications and educational campaign across the whole of Ukraine;
- Monitoring the implementation of the law.

Changes to the domicile registration system, coupled with a strong communications and educational campaign that aims to explain the value of registering a place of residence for state policy, the importance of entering into housing rental agreements, and the advantages of registering one's place of residence, will help turn the system of registration into an effective tool for keeping public records. This will also provide local governments with reliable information about the number of their community members, while also enabling Ukrainians to exercise their rights in full and to use services in the areas where they actually live.

THE DOMICILE REGISTRATION SYSTEM IN UKRAINE: MAIN PROBLEMS AND THEIR CONSEQUENCES



Overall, the domicile registration system, when properly established and functioning, could be a source of reliable information about migration processes in the country, and about the territorial distribution of the population. This, in turn, could be used when planning community development, assessing community needs, and calculating the appropriate level of funding for the social, medical, educational and other spheres. In addition, official letters could also be sent to a person's registered address. However, when ineffective, this system is not only incapable of performing its functions, but could also cause complications and difficulties, and in some cases even significantly limit a person's ability to exercise their rights.

1.1

The current state of the domicile registration system in Ukraine

The existing domicile registration system cannot provide accurate information about the territorial distribution of the Ukrainian population. Neither can it be a source of reliable information about the number of people who live in a certain populated area. By looking at the number of people who live in a place other than their registered place of residence, one can clearly see that the registration of a place of residence cannot be used as an address to which official letters can be sent⁷.

The domicile registration system that replaced the Soviet-era "propyska" system in 2003 is a common tool of state administration, as information about a registered place of residence is, to a greater or lesser degree, used in various areas of state administration. More specifically, the financial stability of local budgets hinges on the tax potential of respective communities. At the national level, the current model for distributing funds among local budgets takes into

account the number of people who are registered in communities.

Information about a registered place of residence is very important for decentralization processes. It was local government that in April 2016 was charged with registering people's place of residence, and maintaining relevant territorial community registers. In addition, it is a person's registered place of residence that currently determines that person's membership of a certain territorial community and proves that that person lives there⁸. However, the existing system for registering a place of residence prevents registration authorities from keeping territorial community registers in a way that shows the actual number of people who live in a given community.

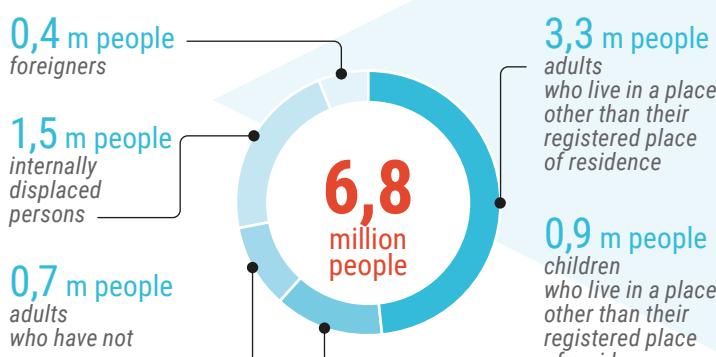
The domicile registration system has a significant influence on people's lives. Registration affects a person's access to medical services (apart from emergency medical aid and getting medical treatment from a general practitioner, provided a person has signed the respective agreement). It also has a bearing on the exercising of one's right to social protection, education, administrative services, access to courts of law, and so on.

In some cases, registration can have a bearing on the establishment of one's ownership rights (for instance, when a person privatizes or inherits residential property), and on the limitation of one's ownership rights (for instance, in order to protect the rights of children). Official letters are also sent to a person's registered address.

That said, such extensive use of a registered place of residence across various levels of

Figure 1

Total number of Ukrainian residents who live in a place other than their registered place of residence, or have considerable difficulties registering their place of residence



⁷ For a more detailed analysis of the problems in the domicile registration system in Ukraine, see the Green Paper on the Domicile Registration System for the Government of Ukraine. This paper is available at the following link: <https://org.zmina.info/content/uploads/sites/2/2019/12/ZMINAGreenPaperUKRforweb.pdf>

⁸ Article 3 of Ukrainian Law No. 280/97BP, dated 21 May 1997, on local governance in Ukraine.



THE DOMICILE REGISTRATION SYSTEM IN UKRAINE: MAIN PROBLEMS AND THEIR CONSEQUENCES

state administration does not mean that the registration of a place of residence provides reliable and correct information about the current state of affairs, i.e. the actual place of people's residence.

A national study conducted in 2018 studied the influence of the domicile registration system on the exercising of human rights and the pursuit of vital interests⁹. This study revealed that at least 6.8 million people were living in places other than their registered place of residence. The percentage of people aged 18 to 44 who were living in a place other than their registered place of residence, at 17%, was higher compared to other age groups (e.g. that of older people was only 7%). What is more, half of the people who were living in a place other than their registered place of residence had children under 18¹⁰ (Figure 1).

Living in a place other than one's registered place of residence makes that person "invisible" to the state and the community where that person actually lives. This prevents such persons from exercising a number of rights and pursuing some vital interests in the area where they currently live. Therefore, they will either have to go to the place of their official registration, or look for ways to gain access to services in the area where they actually live (such as paying unofficial extra charges or making charitable contributions) (Figure 2).

There are a number of reasons for people living in a place other than their registered place of residence. A total of 85% of people cited moving to a different place as the reason for not living in their registered place of residence¹¹.

However, often people feel no need to register their place of residence.

Conversely, one out of five people living in a place other than their registered place of residence said they understood the need to register in their actual place of residence. The exis-

Figure 2

Estimated expenses incurred by people who have to obtain services where they are officially registered, rather than where they actually live



32%

of city residents who were living in a place other than their PR had to go to the place where they are registered to obtain services



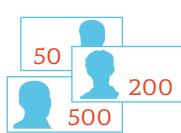
22%

of city residents who were living in a place other than their PR had to take days off work to obtain registration-dependent services



UAH 352,4

average daily wage according to Ukraine's State Statistical Service



~ UAH 750

was spent by one person on such trips (round trip tickets and, when required, accommodation)



4,4

working days

on average were spent on such trips by one person

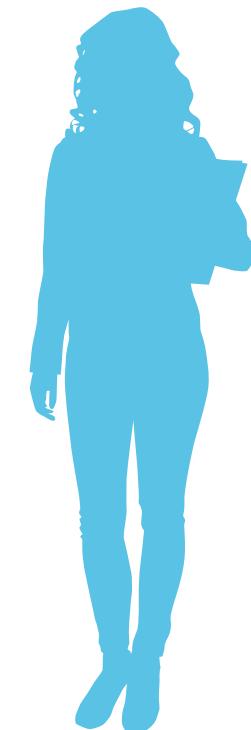


Figure 3

Housing owners' refusal to register as reason for people not living in their registered place of residence

The owner of housing where I live won't register me

● yes ● rather yes ● rather no ● no ● can't say

15% 15% 28% 34% 8%

housing of close relatives

22% 19% 22% 25% 12%

housing of other relatives or acquaintances

37% 17% 16% 16% 14%

rented housing

ting registration procedure envisages different conditions for people who live in their own

⁹ *The influence of the domicile registration system in Ukraine on the exercising of human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. [Electronic source]. – Link to the source: <http://bit.ly/ZvitRMP>*

¹⁰ *The same source.*

¹¹ *The same source.*



housing, and those who live in housing owned by other people (Figure 3).

It should be noted that in general housing owners are not inclined to register people they barely know (such as tenants) in the housing they own.

Sometimes people refuse to register their place of residence for personal motives (profit), so as to obtain subsidies or avoid increases in the cost of communal utilities, and so on.

1.2

Reasons behind the ineffective functioning of the domicile registration system

The ineffective functioning of the domicile registration system is caused by the current registration model, which creates additional difficulties for people who register in housing owned by other people. Other reasons include the widespread use of registration to confirm various facts and circumstances, which is not in line with the purpose of registration, as well as insufficient coordination between registers.

It is safe to say that, despite undergoing significant changes over the past 20 years, the existing system for registering a place of residence in Ukraine is still incapable of functioning properly and providing correct information about the territorial distribution of the population. This has a number of adverse implications not only for the state, but also for people, as registration is used as a precondition for exercising certain rights and freedoms. In particular, registration plays an important role in obtaining documents, exercising one's right to vote, and obtaining education, medical care and social protection. It also has a bearing on taxation, budgeting, keeping public records, and so on.

There are several main interconnected reasons behind the ineffective functioning of the domicile registration system in Ukraine

1. The registration procedure is complicated by the requirement that a person provide proof of their right to live in respective housing. Although current registration rules differ from those of the Soviet-era «prorykska» system, some of them still have the characteristics of the old permit-based system. The idea that registration, which is based on ownership rights to residential property, has some spe-

cial value, is becoming increasingly ingrained in people's minds.

The general rule requires a person who wants to register their place of residence to provide documents that prove their right to live in the respective housing, documents that prove that that person is or has been registered by a specialized social institution, a welfare office, or that they are doing military service in a military base. People must indicate the address of these institutions while registering their place of residence¹².

Documents that confirm one's right to live in housing are:

- A permit to move in;
- An ownership certificate;
- A lease (sub-lease or rental) agreement; and
- A valid court ruling that grants a person the right to move into housing, acknowledges a person's right to use housing, acknowledges a person's ownership right to housing, acknowledges a person's right to register their place of residence, or some other documents.

If a person cannot produce the above documents, in order to be registered they have to obtain the consent of the housing owner/co-owners, tenant and their family members. An exception is made only for children who are registered at the address where their parent(s)/legal representative(s) is/are registered¹³.

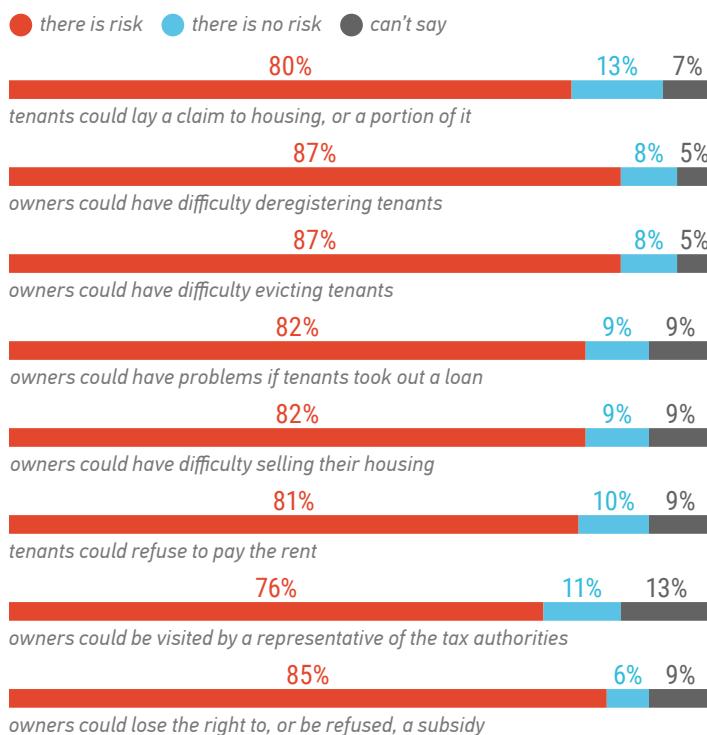
One can clearly see that housing owners have no difficulties registering their place of residence in the housing they own. Non-owners, however,

¹² Article 6 of the Ukrainian law on freedom of movement and free choice of a place of residence in Ukraine.

¹³ Ministerial Decree No. 207, dated 2 March 2016, approving the rules for registering a place of residence, and the procedure for registration authorities sending information to the Unified State Demographic Register.

Figure 4

Perceptions of risks that could arise from the registration of tenants



who cannot produce documentary evidence or obtain consent from the housing owner, cannot register their place of residence in the housing where they actually live. According to official estimates, about 90% of the housing rental market in Ukraine is in the shadow economy¹⁴. This means that housing owners are very likely to refuse to enter into housing lease or rental agreements. On the other hand, a national survey of the population¹⁵ showed that there are many misconceptions about risks arising from registering tenants, while some of these apprehensions are well-grounded (Figure 4).

In particular, this refers to the complicated procedure for deregistering people, and potential

difficulties in selling residential property (especially in cases where a child is registered there).

As a result, 95% of respondents said they would not register tenants in their flats, if they rented their flats out¹⁶.

2. The registration of a place of residence is used in state administration for purposes for which it was not intended.

The only statutory purpose for registering a place of residence is for sending official letters to a person.

In practice, however, registration is used to confirm a wide variety of facts and circumstances, such as:

- A person's place of residence (at a given address);
- The fact of co-residence;
- The right to use certain housing;
- Limiting one's ownership right to housing;
- One's right to privatize state and communal housing;
- One's membership of a territorial community;
- One's family relations;
- The area where a person can obtain administrative services;
- The right to, and the area for, obtaining privileges;
- The area where one can obtain medical services from medical specialists;
- The number of utility services consumers;
- The area where one is registered for military service;
- One's tax address;
- The fact of internal displacement;
- One's court jurisdiction.

Such extensive use of the information, which according to its nature should only confirm the address a person has chosen for receiving official letters (as the applicable law does not envisage any other purpose of registration),

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¹⁴ Lev Partshaladze: At present, about 90% of the Ukrainian rental housing market is in the shadow economy // The Ministry for Community and Territorial Development [Electronic source]. — The source is available at: <https://www.minregion.gov.ua/press/news/partshaladze-zaraz-blizko-90-rinku-orendnogo-zhitla-v-ukrayini-znahoditsya-v-tini>

¹⁵ The influence of the domicile registration system in Ukraine on exercising human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. — C. 40 [Electronic source]. — Link to the source: <http://bit.ly/ZvitRMP>

¹⁶ The same source.

results in the fact that, contrary to the law, a person's ability or restrictions of the ability to exercise their rights and freedoms, depends on whether or not that person has a registered place of residence.

Although the applicable law¹⁷ stipulates that a person can have several places of residence, they can be registered at one address only. Official letters and other official mail will be sent to that address. If a person has two or more places of residence, they can choose the address at which they will be registered. Not living in the place where one is registered or living in a place where one is not registered are not in breach of any law, and are not punishable by law.

In this light, having one's place of residence registered at a given address provides no proof that that person actually lives there, or that that place is that person's only place of residence. That said, it is the registration of a person's place of residence that is used by government authorities to establish that person's place of residence, and, as a result, that person's ability to exercise their rights, and the area where they obtain services. One's membership of a community is also determined on the basis of one's registered, rather than actual, address. For children, the registration of a place of residence proves their right to use the housing in which they are registered.

3. The imperfection of, and insufficient coordination between, registers that should effectively exchange information about people's registered place of residence. Although information about people's registered place of residence is currently kept in various registers, the two main ones are territorial community registers and the Unified State Demographic Register.

The relevant registration authorities have been charged with creating and maintaining

territorial community registers¹⁸. The applicable law sets forth that registration authorities exchange information between various territorial community registers. This is done to register and deregister a person when that person leaves one administrative division for another. At present, however, there is no automatic exchange of information between the registers.

All territorial community registers should send information to the USDR. In practice, however, this does not happen. First, not all registration authorities transfer information to the USDR, due to, among other things, not keeping their territorial community registers in the required form. Second, before information about a person's place of residence (deregistration of a place of residence) can be sent from a territorial community register to the USDR, that person has to obtain a unique registration number (URN) (this number is assigned when a person is issued an internal passport in the form of an ID card, or is issued a biometric international passport). No information about the registration/deregistration of those persons who have not been assigned unique registration numbers is shown in the USDR.

As a result, a lot of information about people's registered place of residence is kept in separate territorial community registers, and is absent from the USDR. Additional difficulties arise from the fact that there is no unified address classifier, meaning that the same address can be written in different ways.

This complicated and imperfect interaction between registers makes the introduction of an online service for registering a place of residence more difficult. It also creates obstacles to obtaining the administrative service of registering a place of residence at the appropriate level.

¹⁷ Article 6 of Ukrainian law No. 1382IV, dated 11 December 2003, on freedom of movement and free choice of a place of residence in Ukraine.

¹⁸ The same source, Article 11-2.

1.3

Ways to address the ineffective functioning of the domicile registration system

The existing system for registering a place of residence requires sweeping change in order to meet the requirements of a modern European state. The effective use of registration as a state administration tool requires changing approaches to the system of registration.

The current model for registering a place of residence in Ukraine is not only incapable of performing its functions, but also creates obstacles to fundamental reform. Preserving the existing system will only worsen the discrepancy between persons' actual and registered place of residence, while also increasing the number of people who live in a place other than their registered place of residence, and of those who do not register at all. As a result, government authorities will have absolutely no idea about the number and composition of the population in certain territories, and about the amount of social, administrative and other services these people need. With regard to ownership relations, the current discrepancy increases the workload of the judicial system, as the courts have to deal with cases related to the establishment of the fact of residence in a given place.

There are several ways to address the ineffective functioning of the domicile registration system.

1. Applying the extraterritoriality principle to the provision of all state and communal services and the exercising of rights. This means enabling people to send their children to kindergartens or schools, and obtain medical and social protection services and so on in any place, regardless of where they are registered or actually live.

This approach has already been applied rather extensively to the provision of administrative services. One of the well known reforms to rely

on the extraterritoriality principle is the reform of medical treatment from general practitioners. The introduction of the money-follows-the-patient principle for the first time enabled people who have signed respective agreements with general practitioners to obtain medical services in any place, regardless of their registered place of residence. Obtaining international passports or driving licenses, registering a marriage or the birth of a child, and so on, also no longer depend on one's place of residence. One can clearly see that changes are underway to enable a person to obtain state services in the area where that person applied for them, or where that person actually lives.

Some services, however, cannot be provided extraterritorially, due to the way in which they are financed. These include social services that are financed from local budgets. And a person's right to use local democracy tools should still be established by the fact that that person is a resident of a given community.

2. Introducing a new model for registering a place of residence would cancel the requirement that a person provide documents that prove that person's right to live in the respective housing, while also limiting the functions of the registration of a place of residence to serving as the address to which official letters are sent.

One way to reform the domicile registration system would be to introduce a so-called notification-based or declaration-based model, whereby a person informs local authorities of their current place of residence. This transition from the old permit-based system to simplified rules for registering a place of residence would set clear rules of the game, which would, to the greatest possible extent, eliminate the discrepancy between people's registered and actual place of residence.

These new rules would be more transparent, and would also remove the current obstacles to being registered (the absence of consent from the housing owner, or the unavailability of a housing co-owner who is located elsewhere).

Chapter 2

A VISION OF A NEW NOTIFICATION-BASED MODEL OF THE DOMICILE REGISTRATION SYSTEM



Notification-based (declaration-based) models for registering a place of residence differ across those countries in which they are in place. In particular, the models differ in terms of bodies that have been authorized to maintain records of residence address notifications (e.g. fiscal authorities in Norway¹⁹ and municipal authorities in France²⁰). There are also distinctions in whether or not models envisage compulsory registration (registration is compulsory in Lithuania, Latvia and Norway, but voluntary in France), and in whether or not providing incorrect (false) information about one's address is punishable by law (there is no punishment in France, but a large fine in Latvia).

Nevertheless, the essence of the notification-based system for registering a place of residence remains unchanged: people notify the state of their address without having to prove that fact. Usually, people are registered or deregistered on the basis of the information they provide in a standardised application form, and after proving their identity with an ID card or a physical passport). This system does not pose any threat that the ownership rights to the housing in which people register will be infringed, as the declaration of a place of residence only proves that a person indeed lives at a given address. The procedure for deregistering people should be as easy as registering them, both for the person who is registering their place of residence and for the housing owner in whose housing that person will be registered. Housing owners should be able to deregister people without any problems or legal recourse.



If a person regularly lives at several addresses in one or more communities, that person can notify the relevant registration authority of two of

¹⁹ Moving Home // Norge.no [Electronic source]. — This source is available at: https://www.norge.no/en/life_situation/movinghome

²⁰ Residence Registration System in France: Main Points // Centre of Policy and Legal Reform [Electronic source]. — This source is available at: <https://www.pravo.org.ua/en/news/20872986-residence-registration-system-in-france-main-points>

them, indicating which of the two is their main address. The registration authority would enter the two addresses into the respective territorial community register, indicating which of these addresses is the main one. All official mail would be sent to the main address. The second address would be used, if required (e.g. when the state is particularly interested in contacting that person), and for special purposes only (e.g. to participate in local elections). Looking ahead, one can consider how having two registered places of residence could affect paying local taxes and one's participation in local community politics (such as voting in local referendums, for or against petitions, and so on).

Under the new system, local governments would continue to play the role of registration

authorities. It should be noted that as early as 2016, the State Migration Service of Ukraine transferred its powers to register a place of residence to the executive bodies of village, populated area, or town councils. Village heads can also register a place of residence if no executive body of the village council has been established, as set forth in the applicable law²¹. These positive changes were part of state policy on decentralizing powers to provide administrative services. They made it easier for consumers of this administrative service to obtain it in the area where they actually live, and became more widely available from Administrative Services Centres (ASCs). In this light, the authorities charged with providing this administrative service are not required to change. It is the procedure for registering a place of residence that needs change.

²¹ Ukrainian Law No. 888VIII, dated 10 December 2015, amending some Ukrainian laws that expand the powers of local governments and optimize the provision of administrative services.

2.1

The rules and terms for registering and deregistering a place of residence under the new model

The new model would noticeably simplify the registration procedure, while also requiring registration authority officers to follow certain steps.

Among other things, the procedure for notifying the authorities of one's place of residence foresees the following stages:

1. A person (applicant) would go to the relevant registration authority (the ASC that provides such services). The applicant would have to confirm their identity by showing their national identification document (an internal passport in the form of an ID card or a physical passport) to the centre's authorized officer. The applicant would not be required to produce any other documents.
2. After verifying the applicant's identity, the officer would fill out an electronic application form on the basis of the personal information provided by the applicant orally (including the address at which the applicant wants to be registered). Then the officer would print out the form and give it to the applicant so they could check that the information was correct and sign the form. Under this model, applicants would also be able to authenticate themselves and fill out an application form online, using their Smart-ID, Mobile-ID, Bank-ID or electronic signature (ES).
3. Once identity validation has been completed, administrative charges for the service paid, and the application form filled out (offline or online), an authorized officer of the relevant registration authority would register the applicant at the address they provided, while also entering this information into the respective territorial community register.
4. If an applicant had a physical passport, they could request that the registration authority put a stamp in their passport, indicating their registered address. Holders of physical passports could also request an excerpt from the relevant territorial community register that contains information about their registered address. Holders of internal passports in the form of a ID card could also request such excerpts, including electronic excerpts, provided that the registration authority has electronic means of communication.
5. If an applicant does not own the housing in which they register, the relevant registration authority would be required to inform the owner of the housing in which the applicant was registered. Registration authority officers would obtain information about housing owners from the State Register of Property Rights to Real Estate. Until the register contains the contact details of housing owners (if this reform is introduced, this will be mandatory), registration authorities would notify housing owners by ordinary mail. Over time, owners could be notified via other means of communication, such as email and other modern means of communication. If the State Register of Property Rights to Real Estate contains no information about a particular housing owner, this information would be obtained from an address register, which would have to be created before the reform could be implemented in full.

The housing owner would be notified by mail, or via some other means of communication, that a certain person has been registered in their housing (the full name of that person will be indicated). The owner would also be informed that the registration would in no way affect their property right to that housing. The housing owner would also be given the opportunity

to challenge the information that the person who registered at their address actually lives there, and submit an application for deregistration (either online using their Smart-ID, Mobile-ID, Bank-ID or electronic signature, or by going to the relevant registration authority).

The cost of the administrative service of registering one's place of residence would have to be increased to cover all expenses related to the provision of this service (such as those related to the notification of housing owners).

6. If a housing owner submits an application to deregister a person who registered in their housing, the registration authority officer would deregister that person by making a respective entry in the relevant territorial community register. The registration authority would notify the person who has been deregistered of that fact, using the contact details that the person provided while registering. In this case, the legal address of the local government (registration authority) in the administrative division of which that person was registered, will be regarded as that person's registered place of residence.
7. After registering a person's place of residence, the registration authority would be required to transfer information about that person's registered place of residence from the territorial community register to the Unified State Demographic Register.
8. Housing owners, at their own initiative, would be able to deregister people (includ-

ing children) who are registered in their housing. To do that, they would have to submit an application to the relevant registration authority (either online by authenticating themselves electronically, or by visiting the registration authority in person). Housing owners would no longer have to recourse to the courts to deregister a person who is registered in their housing.

It should be noted that the proposed model would have its limitations. More specifically, it would not apply to temporarily occupied territories until the Ukrainian government regains control over them. It is also worthy of note that a special registration procedure would be applied to certain categories of people – these people would be registered and deregistered on the basis of application forms submitted by the authorized officers of respective institutions. These categories would include:

- Homeless people who live or are registered in specialized social institutions or welfare offices;
- Persons who temporarily or permanently live in nursing homes and other social care homes;
- Servicepersons (apart from those who are performing compulsory military service) and those of their family members who live with them, if these people have chosen to be registered in the military bases where they are serving;
- People who live in hostels and those of their family members who live with them, if these people have chosen to be registered in the hostel where they live.

2.2

The influence of the notification-based domicile registration system on the ownership rights and other property rights of housing owners

As mentioned before, housing owners fear that giving their consent to other people registering in their housing will give those people certain rights to their housing. These fears are unfounded, as the applicable laws do not stipulate that a person can acquire ownership rights to housing only by virtue of being registered there. Meanwhile, under the existing registration system, the procedure for deregistering people at the owner's initiative is rather bureaucratic. If a registered person gives no consent, the owner has to deregister that person through a court order. Moreover, if children are registered in a given housing, the housing owner is not able to dispose of the property freely, because of restrictions that provide additional protections for children.

Under the new notification-based system, as under the old one, no person would be able to acquire ownership, or any other property rights, to housing only by virtue of being registered there. What is more, it would be much easier for housing owners to deregister people who declared a false address while registering.

In view of the above, under the new system, the mere fact of registering or deregistering would not:

- Prove the legal right to live in, or to use, housing;
- Establish the fact that a person lives or does not live in a given residence;
- Provide the grounds for that address to be used as the tax address of the registered person;
- Establish the fact of leasing/renting residential property;
- Provide the grounds for moving into, or being evicted from, housing;
- Provide the grounds for requiring the registered person to pay the rent or utility bills for that housing;
- Provide the grounds for establishing or cancelling any rights or duties of other people who live in the same housing.

In this light, despite being simple, the new notification-based system would provide effective protection of the rights and legal interests of housing owners.

2.3

The role of a domicile registration system, and the functioning and interaction of registers

Under the new registration system, territorial community registers (TCRs), which are maintained by local governments, would remain the main registers for registering a place of residence. The Unified State Demographic Register (USDR) would play an additional role in keeping information and quickly looking for people in the public interest. It is important, however, to ensure that territorial community registers interact electronically, both with the USDR and other information and telecommunications systems of those government authorities and local governments that use information about people's registered place of residence.

It is also important to ensure there is information exchange between the information and telecommunications systems of those government authorities and local governments

that use information about people's registered place of residence. The Ukrainian Law on the protection of information in information and telecommunications systems sets forth that information exchanges be performed in real time mode, using an applied program interface (API) and means of technical and cryptographic information security.

The State Register of Property Rights to Real Estate would play an important role in registering a place of residence. Registration authority officers would rely on this register to find information about the owner in whose housing a place of residence is being registered, so as to notify the owner of that fact. Once the notification-based system is introduced, contact details of housing owners (such as their phone number and email address), would be entered into that register.

2.4

Legal penalties for providing false information when registering a place of residence under the new model

Under the new notification-based model, people would be registered on the basis of their declarations that they live at a given address. No documentary evidence would be required to prove that information. That is why there would be a risk of applicants providing false information. In this case, applicants who provided false (incorrect) information should be punished by law. The issue of punishing the submission of false registration information could be resolved in two ways.

Option 1

As the new notification-based model would significantly simplify the procedure for registering a place of residence, people may be tempted to provide false information about their current address. Therefore, at the early stages of the reform, the state could impose administrative liability, whereby applicants who provided a false address to the registration authority when registering their place of residence would be issued with an official warning. If the housing owner or the state suffer financial losses due to a registration being performed on the basis of

false information, heavy fines or some other penalties envisaged by the applicable administrative or criminal law should be imposed on the applicants who provided that information.

Option 2

As the notification-based registration system cannot have any adverse implications for either people or the state, the state could impose no administrative liability for a person declaring a false address when registering a place of residence. Offences (including crimes) related to the registration of a place of residence on the basis of false information are already punishable by other Ukrainian laws, in particular the Criminal Code of Ukraine.

Laws should envisage no punishment for those people who have no registered place of residence, and those who have failed to register their place of residence in due time. Each person should have the right to decide whether or not to declare their address. Those persons who feel no need to declare their address should have the right not to declare it.

PROPOSALS TO INTRODUCE THE NOTIFICATION-BASED MODEL OF THE DOMICILE REGISTRATION SYSTEM AND WAYS TO MINIMIZE RISKS (IN EACH AREA)



The introduction of the new notification-based system would affect a wide range of areas in which registration is currently used to prove certain facts, circumstances, and even rights. That is why an assessment of the impact of the new system on these areas is an important element in creating a notification-based model of the registration system. Accounting for this impact should minimize any risks that could arise when the system is changed.

3.1

Local governance

The findings of a national study²², together with the analysis of current problems presented in the Green Paper²³, show that the existing system for registering a place of residence needs to be changed. This change would, among other things, provide government authorities with up-to-date and accurate information about the level of people's mobility and the number of people who live in a given area. The transition from the existing registration system to a notification-based one would have a profound influence on a whole range of processes in territorial communities.

The Constitution of Ukraine recognizes and guarantees local governance²⁴ and also establishes that local governance is the right of a territorial community – the residents of a village, or a voluntary association in a rural community of residents of several villages, settlements and towns – to independently resolve issues of local importance, as permitted under the Constitution and Ukrainian laws²⁵. The Ukrainian Law on local governance in Ukraine²⁶ defines a territorial community as residents²⁷ who live permanently in one village, settlement, or town that are separate administrative divisions, or a voluntary union of the residents of several villages that have one administrative

centre. This law also sets forth that Ukrainian citizens exercise their right to participate in local governance by virtue of being members of particular territorial communities²⁸.

That said, no Ukrainian law defines the notion of a "member" (resident, inhabitant) of a territorial community. A person's membership of a certain territorial community and the fact that that person actually lives there are determined by that person's registered place of residence²⁹. The new Ukrainian Electoral Code, which came into effect on 1 January 2020, determines a person's membership of a territorial community, and establishes the fact that that person actually lives there, on the basis of their electoral address³⁰, which is defined as a voter's³¹ registered place of residence.

Continuing this logic, the registration of a place of residence is defined as entering information in a territorial community register and submitting documents that contain information about one's registered place of permanent/temporary residence, including the address of one's permanent/temporary residence³². In this light, a person's membership of a territorial community is determined on the basis of that person's registration in that community, rather than by

²² The influence of the domicile registration system in Ukraine on exercising human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. [Electronic source]. — Link to the source: <http://bit.ly/ZvitRMP>

²³ The Green Paper on the Domicile Registration System for the Government of Ukraine. — K., 2019. — 125 p. [Electronic source]. — Link to the source: <https://bit.ly/2NEUjY3>

²⁴ Article 7 of the Constitution of Ukraine No. 254к/96BP, dated 28 June 1996.

²⁵ The same source, Article 140.

²⁶ Article 1 of Ukrainian Law No. 280/97BP, dated 21 May 1997, on local governance in Ukraine.

²⁷ The literal, grammatical, logical and specific ways of interpreting the term «resident» do not contradict one another. Even the 1971 edition of the Explanatory Dictionary of the Ukrainian Language defines the word «resident» as «one who lives somewhere», without narrowing it down to the fact of having a residence. Therefore, in accordance with the principles of interpretation and logic, the term «resident» means a certain person who lives in a certain place (territory) for a certain period of time.

²⁸ Article 3 of Ukrainian Law No. 280/97BP, dated 21 May 1997, on local governance in Ukraine.

²⁹ Part 3, Article 3 of Ukrainian Law No. 595VIII, dated 14 July 2015, on local elections.

³⁰ Part 6, Article 7 of the Ukrainian Electoral Code No. 396IX, dated 19 December 2019.

³¹ Part 2, Article 8 of Ukrainian Law No. 698V, dated 22 February 2007, on the state register of voters.

³² Article 3 of Ukrainian Law No. 1382IV, dated 11 December 2003, on freedom of movement and free choice of a place of residence in Ukraine.



virtue of living in that community. This significantly trims down the list of community members.

It is important that a person's living in a given territorial community is the main precondition for exercising their right to self-governance. Article 140 of the Ukrainian Constitution stipulates that living in a certain area is a fact. The state can record this fact so as to ensure that one can exercise one's constitutional right to self-governance in full and properly (in relation to a certain place/area). The procedure for recording the fact that a person lives in a certain area (such as a village, settlement, or town), which is to enable that person to exercise this right, cannot contain any discriminatory provisions, such as a person having to have property rights. This statement is in line with Article 3 of the Ukrainian Law on local governance in Ukraine. This article prohibits any limitations of the right of Ukrainian citizens to participate in local governance, irrespective of their race, colour, political, religious and other beliefs, gender, ethnic and social background, property holdings, how long a person has lived in a particular area, language, and other reasons.

In view of the above, the reliance of the current procedure for registering a place of residence on a person's property holdings limits and infringes that person's right to self-governance. The adoption of a notification-based system of registration should eliminate this reliance, while also complying with the constitutional requirement that only community residents participate in local governance.

The Ukrainian Electoral Code, which was adopted in December 2019 and came into force on 1 January 2020, was designed to resolve the issue of people's rights to vote being limited by their registered place of residence. The code contains provisions that allow for a voter's electoral address to be determined regardless of their registered place of residence. To register their electoral address, a voter must contact the authority charged with maintaining the State Register of Voters at their new electoral address no later than the fifth day after the start of an election or referendum process.

The voter will be required to attach a copy of a document that confirms their current place of residence to their application for changing their electoral address. These documents include:

1. A housing rental agreement for the address the voter wants to register as their new electoral address;
2. A document issued by a state or local government authority certifying that the voter conducts entrepreneurial activity at the address that the voter wants to register as their new electoral address;
3. A document confirming the voter's property rights to the housing, the address of which the voter wants to register as their new electoral address;
4. A document confirming that the name of an internally displaced person has been entered into public records;
5. A document certifying that the voter is caring for a person whose place of residence has been registered under the Ukrainian Law on freedom of movement and free choice of residence in Ukraine at the address which the voter wants to register as their new electoral address;
6. A document certifying that the voter is married to, or has familial relations with, a person whose place of residence has been registered under the Ukrainian Law on freedom of movement and free choice of residence in Ukraine at the address that the voter wants to register as their new electoral address.

In this light, the provisions of the Electoral Code have addressed the needs of mobile population groups by enabling them to participate in local elections regardless of their registered place of residence. These changes have enabled people who live in a particular community and who want to exercise their right to local governance in full to confirm the fact that they live in the community by submitting one document from the above list of documents.

However, this solution occurs in the context of the existing complicated system for registering a place of residence. Changes to this system

could result in there being new approaches to establishing one's membership of a given territorial community.

Proposed models for resolving this problem and minimizing risks

Extensive change to the domicile registration system could affect the establishment of one's membership of a territorial community in two divergent ways.

Option 1 envisages that this membership would continue to be determined by one's registered place of residence. Despite that, the reform of the registration system would make more people visible to communities by enabling them to register their place of residence where they actually live. In this case, those people who for various reasons do not want to register their place of residence would be able to register their electoral address and to exercise their right to vote in local elections by using this provision of the Electoral Code. They would remain invisible to the community between elections.

Option 2 is related to the further development of the idea of separating the registration of one's place of residence and one's membership of a territorial community. As registration is derived from the fact of a person's residence in a community, it could be one, but not the only, proof of that person's membership of a given community. Therefore, one should consider a situation in which a person who lives in a community without registering their place of residence there for multiple reasons (as IDPs often do) can register their membership of the community (e.g. by registering as a resident of that community). This would make persons who actually live in certain communities visible to local government authorities.

The rules for establishing a person's membership of a territorial community should:

- Be based on the fact that that person actually lives in that community;
- Be accessible, flexible and contain no discriminatory limitations;
- Provide several ways to confirm the fact of residence.

Those persons who live in a territorial community without registering their place of residence there could confirm their membership of that community by having their names entered into the public records of that community. The grounds for having one's name entered into the public records of a community should be the fact that a person actually lives in that community, for which documentary evidence needs to be provided.

Regardless of the option chosen, reform of the registration system and the introduction of several ways to confirm one's membership of a community would inevitably change the composition of communities. Territorial communities would become more inclusive, as the potential number of people who could freely participate in local governance would be increased. Improving community inclusion would raise the degree of accuracy in representing the opinions and views of community residents during local elections, referendums, general meetings, public hearings, and other forms of local governance participation. The possibility of registering people in a territorial community regardless of their property holdings would make information about the number of community residents more accurate. This is an important factor for informing local government decisions. More accurate information, in turn, would allow for more accurate calculations of budget funds for administrative divisions and the amount of services required in a given area.

A distinction should be made between exercising one's right to participate in local governance and obtaining social guarantees, privileges, and so on. Local governance focuses on addressing issues of local importance, as permitted under the Constitution and Ukrainian law. The exercising of one's right to local governance involves the use of the following tools: local referendums, general meetings of citizens, local initiatives and local elections. In contrast, granting social guarantees and privileges/ subsidies/compensation at the local level and designating eligible categories of people are a separate issue. Although this issue falls within the mandate of local governments, it cannot be equated with participation in local governance. Accordingly, when implementing the proposed model, local governments would be able to set additional criteria and require-

ments for the participation of territorial community residents in local social and economic programmes as these programmes are developed.

The financial capability of local budgets primarily depends on the resources available to territorial communities, such as labour, and natural and financial resources. Financial resources are mainly generated by taxes paid by businesses and private individuals who carry out economic activity in a community and pay taxes to the respective budgets.

Ukraine's Budget Code stipulates that budget revenues are composed of tax, non-tax and other non-recoverable revenues that are collected in accordance with Ukrainian laws (including transfers, payments for administrative services, budgetary institutions' own revenues, and so on)³³. The revenue composition of local budgets at different levels and the rules for allocating revenues to respective budgets are laid down in the Budget Code.

Individual income tax revenues account for 60 percent of the general fund revenues of the budgets of cities of republican significance in Crimea, cities of regional significance, districts, and amalgamated territorial communities – except for the budgets of the cities of Kyiv and Sevastopol which receive 40 percent of their revenues from the individual income tax³⁴. Although private entrepreneurs can conduct business activities in several administrative divisions, they pay taxes to local budgets (the unified tax) at the tax address that corresponds to their registered place of residence.

Local financial authorities make annual budget estimates (medium-term budget planning documents), as set forth in the Ukrainian Budget

Code³⁵. Estimates are made jointly with other main allocators of budget funds, in accordance with the goals and priorities of the economic and social development of Ukraine and respective areas, and taking into account the relevant budget declaration. These estimates constitute the basis for drafting local budgets. Ukraine's Finance Ministry³⁶ develops the methodology for making such estimates. This methodology recommends that when making local budget estimates for financing priority development areas, authorities should also provide information about the number of the consumers (residents, schoolchildren, children, nursery school children, and persons under care) for whom public services are planned, together with changes in the number of such services. It is obvious that the number of consumers is mainly derived from the information contained in territorial community registers. Accordingly, a simplified procedure for entering information into territorial community registers would facilitate the making of local budget estimates, while also enabling authorities to factor in the actual amounts needed.

Reliable information about the number of people who live in given communities would help authorities send the appropriate amounts of healthcare subventions to local budgets. Additional subsidies paid from the state budget to educational and healthcare institutions are also calculated on the basis of the number of residents in communities.

List of laws that need to be amended:

- ▲ *The Ukrainian Law on local governance in Ukraine*
- ▲ *The Ukrainian law on freedom of movement and free choice of a place of residence in Ukraine*

³³ Article 1 of the Ukrainian Budget Code No. 2456VI, dated 8 July 2010.

³⁴ The same source, Article 64.

³⁵ The same source, Article 751.

³⁶ The latest regulation on making estimates is Ministry of Finance order No. 130, dated 29 March 2019, approving methodological recommendations for drawing up medium-term local budgets in 2019.

3.2 Housing issues

Respecting and protecting the rights of residential property owners remains a priority issue. Registering a place of residence according to the new notification-based system would not establish a person's right to use the residential property where they are registered.

The ease of registering one's place of residence by notifying the relevant registration authority would be counterbalanced first by notifying the housing owner of the fact that a person has been registered at the address of the housing they own, and second, by a simplified procedure for deregistering people. Deregistration would also be done on the basis of notifications, which would provide protection for housing owners, as they would no longer have to deregister people through court orders.

The main risk arising from the proposed model is that it could be misused, i.e. a person registered their residence at a place where they are not in fact resident. As registration under the new model will be done on the basis of notifications, one way to address the above problem could be through notifying the owner/co-owners that third parties have been registered in the residential property they own. Owners who have provided their email address or phone number could be notified via these means of communication. In other cases, notifications would be sent via ordinary mail. This would enable owners to deregister such people. However, the most effective way to prevent misuse is to make people realize that any misuse will be quickly discovered, stopped and entail negative consequences.

Currently there are several cases in which the registration of a place of residence can affect property rights.

Privatization. According to the applicable law, a residence is privatized when it is transferred

to joint ownership (with or without assigning shares of that residence to all co-owners) upon the written consent of all adults who permanently live in that residence. In practice, the fact that a person permanently lives in a residence is confirmed by a certificate on their registered place of residence³⁷.

Inheritance. Another case in which the registration of a place of residence has a significant impact on the establishment of property rights is the inheritance of property. First, Part 3, Article 1268 of the Civil Code of Ukraine³⁸ sets forth that an heir who had been permanently living with a testator when the inheritance case was opened is deemed to have accepted the inheritance if the heir did not waive their right to the inheritance during a specified period of time. Second, Article 1264 of the CCU³⁹ stipulates that persons who had been living in one family with a testator for no less than five years before the inheritance case was opened (upon the death of the testator) are fourth in line of inheritance. The fact that an heir was registered together with a testator is rather often decisive for the notary who registers the inheritance or for the court that hears the case on the acceptance of inheritance. Unclaimed property is declared an escheat and is transferred to the ownership of the relevant territorial community.

When changing the residence registration system to a notification-based one, another important issue, apart from protecting ownership rights, is that of calculating utility bills for those households who have no meters installed in their houses/flats, or when the cost of a service (such as solid waste management) is calculated on the basis of the number of users. In this case, the cost of consumed services will be calculated on the basis of an agreement and information about the number of people registered in that house/flat.

³⁷ Article 8 of Ukrainian Law No. 2482XII, dated 19 June 1992, on the privatization of state housing.

³⁸ The Civil Code of Ukraine No. 435IV, dated 16 January 2003.

³⁹ The same source.

It should be noted that almost one out of two people who live in a city/town in a place other than their registered place of residence said that one of the reasons for their unwillingness to register their place of residence was that it could increase their utility bills⁴⁰. It is the connection between the number of people registered in a house or flat and the amount of utility bills that poses the risk of a housing owner running up larger utility bills if an applicant provides a false address when registering their place of residence.

Proposed models for resolving this problem and minimizing risks

The transition from the old registration system to a notification-based one would set clear rules of the game, which would eliminate the discrepancy between people's registered and actual place of residence. These new rules should be more transparent and should remove the current obstacles to being registered (such as the absence of consent from the housing owner, or the unavailability of a housing co-owner who is located elsewhere).

In addition to the proposed measures, the state should also take steps to give people a clear understanding that the registration of a place of residence only confirms the fact of residence, does not confer any rights on a registered person, and can be quickly cancelled by the owner.

Privatization. Setting a deadline for the privatization of state housing (e.g. five years) should also help change people's perception that registration has some special value.

The introduction of the notification-based system for registering a place of residence could create some room for misuse of non-privatized flats. That said, since privatization is carried out only with the consent of all residents of a non-privatized flat, registering in that flat other people (who have no right to privatize that flat) would not provide them with an unconditional opportunity to privatize the flat. That could

only create difficulties for other users, as they might have to dispute the right of those people to use the flat.

Granting the user who has been issued a permit to move in the right to deregister such people seems to be an effective safeguard against such developments. Therefore, one should put in place a system for accounting for people who have been issued permits to move in, or for those of their relatives who replaced those people. It is these people who should be given the right to deregister people who have no right to use their housing.

Since non-privatized housing also has owners (a territorial community or the state, represented by the relevant government authorities), such real estate should be entered into the State Register of Property Rights to Real Estate. This approach would identify and account for all non-privatized housing, while also significantly narrowing opportunities for abuses.

The state should create a separate section for non-privatized housing in the State Register of Property Rights to Real Estate in which information about the users who have been issued permits to move in, or about those of their relatives who replaced those persons, would be entered.

This would ensure that a uniform approach is applied to privately owned housing and communal or state housing. Local governments should be charged with registering ownership rights to non-privatized communal housing, while the state authorities that own non-privatized housing should be made responsible for registering the housing they own.

The deadline for registering communal and state-owned housing should coincide with the deadline for the privatization of housing.

As the applicable law⁴¹ stipulates that the purpose of privatization of state housing is to enable people to exercise their right to freely

⁴⁰ The influence of the domicile registration system in Ukraine on exercising human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. – C. 40 [Electronic source]. — Link to the source: <http://bit.ly/ZvitRMP>

⁴¹ Ukrainian Law No. 2482XII, dated 19 June 1992, on the privatization of state housing.



choose a way of meeting their housing needs, involve people in maintaining and preserving existing housing, and establish market relations, there should be a strict deadline for the privatization of housing. As most⁴² state and communal housing has already been privatized, the state could set a deadline for the privatization of state housing (e.g. five years).

Inheritance. Given the current state of affairs with registering one's rights to inherited property, especially in rural areas and in dysfunctional families, cancelling the provision for «automatic» inheritance by an heir (Part 3, Article 1268 of the CCU) who had been living with a testator when the inheritance case was opened, seems inappropriate. Part 3, Article 1268 of the CCU guarantees that the rights of such people will be protected, without these people having to take any action on their part. The cancellation of this provision would transfer inheritable property to communal ownership, while also requiring people to provide the legal grounds for living in that housing. This would exacerbate relations between those parties.

It should be noted that the introduction of the notification-based system for registering a place of residence would simplify the judicial consideration of inheritance cases by giving a greater probative value to the fact of registration.

Paying for utilities. The number of consumers of gas and water supply and sewerage services who have no meters installed in their flats or houses remains high. Although the state has developed an action plan for providing households with individual meters, for those households who have no individual meters installed the cost of services related to gas supply and distribution, hot water supply, and centralized water supply at present directly depends on the number of people registered in a flat or a house. The installation of meters in accordance

with state programmes will prevent households from running up utility bills that exceed the amount of actually consumed utilities.

With regard to waste management services, a model agreement on the provision of waste management services requires consumers to inform the provider (the economic entity providing the service) in writing of any change in ownership of the housing (or other piece of real estate), and of the actual number of people who permanently live in their housing, within 30 calendar days of this happening. This means that formally there is already a mechanism in place to avoid the risk of running up large bills for waste management services, which could be used once the system is changed.

List of laws and regulations that need to be amended:

- ▶ *The Civil Code of Ukraine*
- ▶ *The Ukrainian law on freedom of movement and free choice of a place of residence in Ukraine*
- ▶ *The Ukrainian Law on the privatization of state housing*
- ▶ *The Ukrainian Law on the state registration of property rights and encumbered property*
- ▶ *The rules for registering a place of residence approved by Ministerial Decree No. 207, dated 2 March 2016*
- ▶ *The procedure for the state registering property rights and encumbered property approved by Ministerial Decree No. 1127, dated 25 December 2015*
- ▶ *The procedure for maintaining the State Register of Property Rights to Real Estate approved by Ministerial Decree No. 1141, dated 26 October 2011*
- ▶ *The procedure for Ukrainian notaries performing notarizations approved by Order of Ukraine's Ministry of Justice No. 296/5, dated 22 February 2012*

⁴² Experts estimate that up to 97% of housing in Ukraine has been privatized.

3.3

Social protection of the population

Although most laws that govern the exercising of one's right to social protection refer to exercising this right at one's place of residence (although pensions are awarded at an applicant's registered place of residence), the registration of a place of residence of persons who receive social benefits (services, privileges and so on) has a significant impact on the exercising of their right to social protection. Therefore, in practice, a person usually has to provide documentary evidence of their place of residence. Apart from the registration of a place of residence, other documents, such as attestations about a family's living conditions and financial standing can be used for this purpose.

In some cases, people are required to provide a family composition certificate or a certificate showing how many people are registered in their flat/house (although this certificate was abolished in the summer of 2019, some laws, such as Article 4 of the Ukrainian Law on state assistance for needy families, still require people to provide this certificate).

As a change in the number of people who live in given housing can affect one's eligibility for a housing subsidy, the most controversial issue is the potential impact of the new system for registering a place of residence on subsidy payments to compensate one for the cost of utilities, and the purchase of liquefied gas and solid and liquid heating fuels for domestic use.

Proposed models for resolving this problem and minimizing risks

Overall, the transition from the old residence registration system to a notification-based one would not have any negative implications

for the social protection of the population, since it is already undergoing change that will minimize the risks of the notification-based model.

The state should also consider allowing people to exercise their right to social protection regardless of their registered place of residence by submitting an application, either where they actually live (without having to prove that fact) or in any area where they apply for such protection. The granting of all social benefits should not depend on an applicant's registered place of residence.

The Unified Information and Analytical System for Social Support Management (E-SOCIAL)⁴³, which is slated to be launched on 1 October 2020, should facilitate the extraterritorial granting of social payments. This system does not rely on the registration of a place of residence to identify persons in the register (tax IDs or the series (if any) and number of one's passport, or one's unique number in the Unified State Demographic Register are used for that purpose).

As court rulings⁴⁴ show that a person's right to draw a pension cannot depend on where that person actually lives, pensions should be awarded and drawn regardless of where a retired person is registered. Retired people should be able to apply for a pension at any office of the Pension Fund of Ukraine, regardless of where they actually live, and draw pensions where they actually live, without having to prove that fact.

Social services provided in territorial communities should be provided to members of territorial communities.

⁴³ Ministerial Decree No. 676, dated 17 July 2019, on the Unified Information and Analytical System for Social Support Management (E-SOCIAL).

⁴⁴ The Green Paper on the Domicile Registration System for the Government of Ukraine — K., 2019. — 125 p. C. 38 [Electronic source]. — Link to the source: <https://bit.ly/2NEUjY3>



If a social service is provided to a person in a territorial community of which that person is not a member, the cost of that service is paid by the applicant's community, as set forth in Article 93 of Ukraine's Budget Code, i.e. as a transfer between the respective budgets.

Now that the decree of Ukraine's Ministry of Social Policy that established the form of a family composition certificate⁴⁵ has been cancelled, the next natural step is to amend Ukrainian laws and regulations and to replace the certificate with a respective declaration. This certificate is currently used to prove quite a number of facts. First of all, this certificate proves a person's actual place of residence when it is different from that person's registered place of residence. The requirement to provide this certificate should be addressed through changing approaches to the registration of one's place of residence. With regard to proving one's family composition, the certificate itself, and the way it is issued, does not confirm the family relations of people who obtain such certificates. At present, the certificate only shows that people who apply for it live at the same address, rather than proving that they are part of one family. In this light, the state should allow people to submit declarations that family members are co-residents, while also providing access to territorial community registers for employees of social protection offices. There should also be a mechanism in place for inspecting an applicant's place of residence when there is reason to suspect that they may have provided false information.

Most issues related to possible abuses of privileges should be resolved through the proper

functioning of the Unified State Automated Register of Persons Eligible for Privileges. With regard to local privileges, the territorial communities that provide these privileges, if there is reason for doubt, should have the right to request proof that a person is indeed a resident of a given territorial community.

List of laws and regulations that need to be amended:

- *The Ukrainian Law on pension coverage*
- *The Ukrainian Law on the status of war veterans and guarantees for their social protection*
- *The Ukrainian Law on state social assistance for needy families*
- *The procedure for making one-off payments to women who have been conferred the honorary titles of Heroine Mothers in Ukraine, approved by Ministerial Decree No. 268, dated 28 February 2011*
- *Ministerial Decree No. 682, dated 23 July 2008, on some issues related to the implementation of the Ukrainian Law on social housing*
- *Ministerial Decree No. 426, dated 31 March 2003, approving the procedure for granting privileges, compensation and guarantees to public sector employees, servicepersons, private soldiers and commanders*
- *The Decree of the Ukrainian Pension Fund Board approving the procedure for submitting and processing documents for awarding (recalculating) pensions, as set forth in Ukrainian Law No. 221, dated 25 November 2005, on compulsory state pension insurance*

⁴⁵ Order of Ukraine's Social Policy Ministry No. 1106, dated 17 July 2019, declared Order No. 204 null and void.

3.4

Healthcare

Ukrainian law does not envisage that medical assistance of any kind can be refused on the grounds that a person applied to a healthcare facility in an area where they are not registered. That said, in practice it is a person's registered place of residence that determines that person's right to seek medical assistance from a particular healthcare facility, and to obtain required services without having to make additional, often unofficial, payments.

Before the launch of medical reform, medical treatment from a general practitioner was only available on a territorial basis, i.e. in the area where a patient was registered. Since 1 April 2018, people in Ukraine have been able to choose a general practitioner regardless of their registered place of residence. In addition, healthcare facilities have been prohibited from refusing a person's agreement with a general practitioner they want to obtain medical treatment from, on the basis of that person's registered place of residence. Nevertheless, the place of residence continues to play an important role in obtaining medical treatment from medical specialists and highly qualified experts, and other kinds of medical assistance.

The applicable law stipulates that, within certain limits, the state guarantees to pay, in full, the medical bills of Ukrainian citizens, foreigners, stateless persons who permanently live in Ukraine, refugees, and persons in need of additional protection. These payments, which will cover all kinds of medical assistance related to medical treatment⁴⁶ and the purchase of medicines, will be made from Ukraine's state budget. The introduction of a state guaranteed package of medical care would completely eliminate the relevance of a person's place of residence⁴⁷.

Proposed models for resolving this problem and minimizing risks

Continued reform of the healthcare system that would make a patient's registered place of residence completely irrelevant for receiving all kinds of medical care would enable people to obtain medical services regardless of what model for registering a place of residence is currently in effect.

Changes to the healthcare system, which started with treatment from general practitioners, have already proved to be effective. The next stage of the reform will introduce the money-follows-the-patient principle for medical treatment from medical specialists and highly qualified experts (these changes were slated to take place on 1 April 2020).

The new model for financing the healthcare system, which would eliminate the relevance of one's place of residence, makes the transition from financing healthcare facilities to paying for the actual amount of medical services they provided to patients. This approach has already been applied to treatment from general practitioners. Various methods are used to pay for the activities (compensate for the expenses incurred by) medical specialists and highly qualified medical experts.

Payments for outpatient medical treatment from medical specialists and highly qualified medical experts depend on the type of service provided – for some services, a certain amount of money is paid for each patient; for other services, payments are made for each service; while for the remaining services, payments are made for each case treated (outpatient services provided by hospitals, such as same-day surgery).

⁴⁶ Part 1, Article 4 of the Ukrainian Law on state financial guarantees for people's medical treatment.

⁴⁷ Ministerial Order No. 1013p, dated 30 November 2016, approving reform of financing the healthcare system.

Payments for in-patient medical services will be made for each case treated. This method is currently very complicated, and its introduction requires a lot of time and for medical workers to be given special training.

The main risk that could arise here is the lack of a strict timeframe for the reform, which could take years to implement. It is also unclear whether there will be the political will and funds required to complete the reform. It is safe to say, however, that when introduced, this approach will make one's registered place of residence irrelevant.

3.5

Administrative services

As mentioned before, living in a place other than one's registered place of residence could also have negative consequences for the provision of administrative services.

At present, a number of services are available mostly or exclusively in the area where a person is registered. These include:

- Passport services (obtaining an internal passport in the form of an ID card or a physical passport, and exchanging an internal physical passport);
- Services related to making records in civil registers (such as dissolutions of marriage and changes of name)⁴⁸;
- Services related to social protection (awarding housing subsidies, old age pensions, disability pensions, survivor pensions, and years-of-service pensions; awarding state social benefits to people with lifelong disabilities and children with disabilities);
- Obtaining permits to purchase hunting plain-barrel and rifled-barrel guns, pneumatic guns, edged weapons and blank-firing guns.

Proposed models for resolving this problem and minimizing risks

In general, reform of the residence registration system could eliminate the present difficulties that persons who live in a place other than their registered place of residence have in obtaining administrative services that are currently not provided extraterritorially. If all people were given the opportunity to simply and conveniently declare their actual address to the relevant registration authority, they would be able to apply for any administrative service in the place where their everyday in-

terests were centred. This would automatically make one's registered place of residence irrelevant for obtaining administrative services in Ukraine.

The issue of providing all basic administrative services extraterritorially remains a pressing one in Ukraine. It seems illogical that the administrative service of registering a marriage with the state is provided extraterritorially, while the service of registering a divorce with the state is only provided in the area where one is registered. This administrative service could easily be provided regardless of where spouses, or one of the spouses, is registered. Since the state registration of a divorce does not require direct proof a person's identity, it does not pose any serious risk of abuse, or an increase in abuses of the registration system.

Whether or not the other said administrative services should be provided extraterritorially is debatable. Most of those services entail the process of identifying a person (issuing and exchanging an internal passport), while some services are also related to the allocation of budget funds (awarding all types of pensions and benefits for people with lifelong disabilities and children with disabilities). That said, a number of similar administrative services are already provided extraterritorially. These include issuing international passports and awarding all types of state benefits to families with children.

More specifically, persons, their legal representative or their authorized person are allowed to submit documents for issuing or exchanging an international passport (including a lost or stolen one) to the SCSU's territorial bodies/divisions, authorized entities (administrative service centres) or offices of a state com-

⁴⁸ In certain cases, deaths can also be registered only in the area where an applicant (a person applying for a death record) is registered. More specifically, the state registration of a death is conducted in the area where an applicant actually lives if: 1) if the application is received once one year from the date of death has elapsed; 2) the fact of death has been established by a court ruling; 3) the applicant requests that the death of a person who has been declared dead by a court be registered.

pany that is managed by the SCSU in any area where they choose to apply for such a service⁴⁹.

This means that a person can apply for an international passport in any administrative division of Ukraine where such services are provided, regardless of their registered place of residence. What is more, internal passports in the form of an ID card can be exchanged or replaced (if an old one has been lost or stolen) extraterritorially⁵⁰. In this light, there is reason to assume that the administrative service of issuing an internal passport in the form of an ID card for the first time could also be provided extraterritorially.

Some social benefits are also awarded regardless of a person's registered place of residence. These include state benefits for families with children (pregnancy and childbirth benefits, new-born child support, child support for single mothers, and so on)⁵¹. These benefits are awarded in the area where a person actually lives, provided that they have not already been awarded in the area where that person is officially registered. Social protection authorities rely on information systems to confirm that an applicant has not been awarded such benefits elsewhere. The same principle can be applied to the administrative services of awarding pensions and state social benefits to persons with lifelong disabilities, and to children with disabilities. Information about the awarding of such payments would be entered in the relevant state registers, which would prevent

people from abusing the registration system by applying for such payments several times.

Housing subsidies should be awarded on a case-by-case basis, i.e. on the basis of attestations made by the relevant authorities about a family's living conditions and financial standing. It should be noted that, while varying significantly from region to region, this approach is already applied in Ukraine.

Obtaining permits to purchase hunting plain-barrel and rifled-barrel guns, pneumatic guns, edged weapons and blank-firing guns is also related to national security issues (the need to prevent threats to people's life and health and threats to public order). More specifically, police have been charged with monitoring how people store their guns, pneumatic guns, edged weapons, blank-firing guns and other weapons, as set forth in the applicable laws⁵². Local police officers must inspect how people store their weapons at least once every three years. These officers are required to make reports based on the results of these inspections, and attach them to the personal records of the weapon owners. That provision also sets forth that people who change their place of residence, purchase weapons and reregister weapons must be checked at their actual place of residence. In view of the above, providing this service extraterritorially does not seem reasonable, as the new residence registration system poses no risk to state controls over weapons in circulation.

⁴⁹ Paragraph 19 of the procedure for processing, issuing, exchanging, sending, withdrawing, returning to the state, and declaring invalid and destroying international passports in Ukraine, approved by Ministerial Decree No. 152, dated 7 May 2014.

⁵⁰ Paragraph 20 of the procedure for processing, issuing, exchanging, sending, withdrawing, returning to the state, and declaring invalid and destroying internal passports in Ukraine, approved by Ministerial Decree No. 302, dated 25 March 2015.

⁵¹ Paragraph 2 of the procedure for awarding and paying state benefits to families with children approved by Ministerial Decree No. 1751, dated 27 December 2001.

⁵² Paragraph 7.7 of the instruction on the procedure for making, acquiring, keeping, tracking, transporting and using guns, pneumatic guns, edged weapons, and blank-firing weapons, domestically made devices that shoot cartridges equipped with non-lethal rubber or similar non-lethal metallic projectiles, and ammunition, as well as ammunition for weapons, basic weapon components, and explosive materials approved by Interior Ministry Order No. 622, dated 21 August 1998.

3.6 Justice

Having a registered place of residence is important for one's access to justice. As a general rule, when taking legal recourse in civil or administrative matters, a plaintiff's or defendant's registered place of residence determines their territorial jurisdiction, i.e. which court will be authorized to take up the case. In this case, the relevant court sends a request to the respective registration authority or the SCSU that they verify information about that person's place of residence on the basis of the publicly accessible information in the Unified State Register of Legal Entities, Private Entrepreneurs, and Public Associations.

Although respective registration authorities are required to provide courts with verified information about a person's permanent (temporary) place of residence within five days of receiving such requests, in practice it can take them much longer to produce a response. If a person's place of official permanent (temporary) residence cannot be established on the basis of the information a court receives, the court will decide whether or not to open the case. Defendants will be summoned to court via an announcement on the official portal of the Ukrainian judiciary⁵³. This means that a person who lives in a place other than their registered place of residence may not even know that there is a lawsuit to which that person is a party.

If the location of the defendant in a case involving the collection of alimony, compensation of damages resulting from permanent injury, other harm to a person's health or a person's death is unknown, the court officially declares the defendant wanted. Searching for persons that are parties to lawsuits, checking/confirming their registered place of residence, together with the time required for sending official letters to the parties, make the administration of justice within a reasonable timeframe practically impossible. In some cases, people learn

about a court ruling only when its execution begins, their bank cards get frozen and they are banned from travelling abroad.

In addition to a person's registered place of residence, their actual place of residence also plays an important role in sending letters to parties to a lawsuit. In order to make sure that the defendant, third parties and witnesses can attend proceedings, the court must confirm their place of residence, so as to be able to send letters to their actual address.

With regard to criminal proceedings, one's registered place of residence does not affect pre-trial investigation and the selection of pre-trial restrictions. When a jail sentence comes into effect, the convict serves time in a prison located in the area where that person lived before being convicted. In some cases, however, a person can submit a reasoned request that they be sent to jail in another area (e.g. when they have close relatives, family members and children in that area).

The execution of a court ruling and the opening of enforcement proceedings in a given area do not prevent enforcement proceedings from being executed across the whole of Ukraine. If a bailiff needs to verify information about the location of a debtor, their property, or about their place of employment in an area over which the bailiff has no mandate, the bailiff can request that the relevant state bailiff service authority verify this information, or make an inventory of, and attach, the debtor's property.

Parties to enforcement proceedings can access the materials of the proceedings online, using the identifier (access) code to the materials in the Automated Enforcement Proceedings System⁵⁴.

In this light, a debtor's registered place of residence, or the absence of such a place, has no

⁵³ Part 10, Article 187 of the Ukrainian Rules of Civil Procedure No. 1618IV, dated 18 March 2004.

⁵⁴ The Automated Enforcement Proceedings System [Electronic source]. — Link to the source: <https://asvpweb.minjust.gov.ua>



bearing on the opening and execution of enforcement proceedings, because enforcement proceedings, actions related to such proceedings, and consequently the execution of a court ruling, are conducted at the debtor's actual place of residence, temporary place of residence, place of employment, or where their property is located.

Proposed models for resolving this problem and minimizing risks

Changing the domicile registration system and enabling people to notify the state of their actual address would allow the judicial system to quickly contact a person who is a party to a lawsuit, proceedings, and so on. This would significantly speed up the administration of justice and help increase the number of cases heard, while also ensuring that people's rights are protected and court rulings are executed in good time. That said, the new system for regis-

tering a place of residence could make it easier for people to evade court hearings. Nevertheless, since the evasion of court hearings does not prevent courts from hearing cases, we believe that these consequences of the new registration system will be minimal.

In the case of pre-trial criminal proceedings, the notification-based system could provide an additional guarantee that a person has the place of residence they themselves confirmed, where that person can stay, e.g. under house arrest.

In addition, with a view to sending letters to parties to court hearings, the state has launched an electronic court system⁵⁵. All people who have obtained electronic signatures can communicate with local courts and courts of appeal via this system. In the future, the Supreme Court will also become a participant in this system.

⁵⁵ This system has been operating in test mode since 1 January 2019.

3.7

Military service duty

Russia's armed aggression, the anti-terrorist operation and the emergency mobilization in 2014 – 2016 have revealed many problems with the system for drafting military personnel. One of these is the flawed mechanism for keeping records of draftable citizens on the basis of their place of residence, which in practice is equated with their registered place of residence. According to a national sociological study, 32 percent of the men who live in cities in a place other than their registered place of residence said that they did not want to register their place of residence because they did not want to be contacted by a recruitment office⁵⁶. This, together with the widespread practice of people living in places other than their registered place of residence, makes registration for military service less effective. In addition, Ukraine's Defence Ministry is currently unable to recover the physical personal files of draftable persons whose place of residence is registered in temporarily occupied areas in Ukraine.

Moreover, practically all ways that are used to ensure the accuracy of information about the location of conscripts and draftable persons, as set forth in the applicable law⁵⁷, are ineffective – they fail to account for current migration trends, making it practically impossible to maintain proper records of conscripts and draftable persons, and creating obstacles for those who want to perform their duties⁵⁸.

In this light, the absence of profound change in accounting for draftable persons could entrench the discrepancy between records and the current state of affairs, making it impossible to quickly mobilize draftable persons if martial law were to be declared, while also continuing to result in the prosecution of conscription-age Ukrainian citizens.

Proposed models for resolving this problem and minimizing risks

Considering the results of the study, one can reasonably assume that the introduction of a simplified residence registration system would provide no significant incentive for conscription-age men to register. One can also conclude that keeping records of conscripts and draftable persons based on their registered place of residence is not commensurate with existing migration trends and challenges.

Ukraine needs a modern electronic system for keeping records of draftable persons, a system that is not based on one's registered place of residence and that would make it possible to quickly track down a person, if required. The establishment of a unified register of draftable persons would resolve this problem, among other things, by improving the state registration of reservists so that the Armed Forces of Ukraine and other military formations could call on them during special periods, and so that these people could do what is required of them to defend the country. The main requirement for maintaining records of conscripts and draftable persons is that the information is complete and reliable at all times. The register database should be updated on the basis of the information submitted by draftable persons (conscripts) to the authorities charged with maintaining the register, and from other sources, such as the State Border Guard Service, the State Fiscal Service, and the Administrative Service Centre. This means that the register of draftable persons would contain information about such persons crossing the border, registering/deregistering, as well as information provided by the State Fiscal and Migration Services. The register could also contain information (if available) about a conscript's (draftable person's) place of employment, location, and so on.

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⁵⁶ *The influence of the domicile registration system in Ukraine on exercising human rights and the pursuit of vital interests. Findings of a sociological study. K.: The Analytical Centre CEDOS, 2018. – 100 p. [Electronic source].* — Link to the source: <http://bit.ly/ZvitRMP>

⁵⁷ *The Ukrainian Law on military duty and military service.*

⁵⁸ *The Green Paper on the Domicile Registration System for the Government of Ukraine.* — K., 2019. — 125 p. [Electronic source]. — Link to the source: <https://bit.ly/2NEUjY3>

THE INFLUENCE OF THE NOTIFICATION-BASED MODEL OF THE DOMICILE REGISTRATION SYSTEM ON SOME CATEGORIES OF PEOPLE



The residence registration system could have a differing, and sometimes disproportional, effect on certain categories of people who have been made vulnerable by their age, internal displacement, or travelling abroad. That is why one should separately analyse the impact of the new model on the lives and rights of these people, and develop strategies for minimizing risks that could arise from a change in the system.

4.1 Children

At present, the system for registering a child's place of residence differs from the general registration rules that are applied to adults. Sometimes these rules are simplified, while sometimes the rules can create additional difficulties. In particular, a child's place of residence can only be registered with the consent of both parents if they are registered at different addresses. In contrast, if both parents are registered at the same address, the consent of the other parent is not required. The consent of the other parent is not required when a court or a guardianship and trusteeship authority has ruled that the child should live with the other parent, when one of the parents was stripped of their parental rights, declared missing, and so on.

National law stipulates that a child's right to use housing is usually derived from that of the child's parents. An exception is only made in cases in which a child owns housing. Article 29 of the CCU⁵⁹ sets forth that the place of residence of a child under 14 years old is that of its parents. The fact that a child's right to use housing is derived from that of its parents has resulted in the current approach to registering a child's place of residence only together with one of its parents. This limits the ability of a child's parents to change their place of residence, leaving their child to live with its relatives (e.g. the child's grandmother). This also has negative implications and helps entrench the existing discrepancy between a person's registered and actual place of residence.

The idea that the consent of both parents is required for registering a child's place of residence was enshrined in Ukrainian law in the summer of 2012 when reform of the residence registration system was carried out. This was done in order to apply the principle of the equality of parent's rights envisaged in Article

141 of the Ukrainian Family Code⁶⁰ to the registration of a child's place of residence. Prior to these changes, the consent of both parents was not required to register a child's place of residence (at least, Ukrainian law did not explicitly require that).

At present, any deals that involve a child's property or a child's right to use property must be approved by the relevant guardianship and trusteeship authority. It is believed that the state protects a child's rights to housing in this way. That said, when a child's parents want to sell the housing where their child is registered they bypass these controls by changing the child's registered place of residence. It should be noted that courts refuse to declare agreements that were concluded in this way invalid, placing the responsibility on the child's parents. This means that these controls by guardianship and trusteeship authorities are declarative to some extent, as they can be easily bypassed by those people who want to do so, and these controls are not upheld by courts.

One should also examine the state of affairs with registering the place of residence of children (orphans and children deprived of parental care) who live in family-type orphanages, with adoptive families, or in boarding houses. Such children continue to be registered at their previous place of residence rather than being registered in their new homes. Obviously, this is a vestige of the Soviet past when all housing was state-owned. This was done to reserve a child's right to use the respective housing. Today, however, this is only actually of importance in the case of non-privatized flats.

It is also worth noting that orphans and children deprived of parental care can only be deregistered with the consent of a guardianship and trusteeship authority⁶¹.

⁵⁹ The Civil Code of Ukraine No. 435IV, dated 16 January 2003.

⁶⁰ The Ukrainian Family Code No. 2947III, dated 10 January 2002.

⁶¹ Article 7 of the Ukrainian Law on freedom of movement and free choice of a place of residence in Ukraine.

Proposed models for resolving this problem and minimizing risks

The abolishing of the old permit-based system and the introduction of a simplified (notification-based) procedure for registering a child's place of residence should eliminate the discrepancy between the actual and registered place of residence. The simplified rules for registering a child's place of residence should aim to register the child's actual place of residence, and to remove existing artificial obstacles, such as the requirement that a child be registered at the address where one of their parents is registered.

There is no reason that the requirements applied to the registration of a child's place of residence be any different from those applied to the registration of an adult's place of residence. This mainly refers to obtaining the consent of the other parent, and the requirement that a child be registered together with one of their parents. In contrast, these simplified rules would help identify such cases, which is difficult to do at the moment as such cases go unrecorded.

A clear and transparent system for registering a child's place of residence would give guardianship and trusteeship authorities a better understanding of the actual number of children under their jurisdiction. This would decrease the number of cases in which these authorities have no information about a child who lives in an area over which they have jurisdiction. Moreover, it seems reasonable to require the relevant registration authority to automatically notify guardianship and trusteeship authorities of cases in which a child's parents change their place of residence and their child remains registered at the old address, so as to enable these authorities to carry out an inspection or give support to the child. In this light, the Ukrainian Family Code should also clearly envisage the possibility of a child's parents transferring the child to the care of certain relatives (mainly the child's grandparents) for long periods of time.

That said, when reforming the domicile registration system, the state should take certain measures to improve the protection of children's rights to housing. More specifically, when granting a child the status of an orphan, of a child deprived of parental care, or of a child in difficult domestic circumstances, one has to require a guardianship and trusteeship authority to establish the legal grounds for the child using certain housing. When such rights are formalized (e.g. when a child owns housing, a child uses a non-privatized flat, a child's right to housing is derived from the ownership right to housing one of its parents has), the relevant guardianship and trusteeship authority should notify the respective state registrar of this fact. The State Register of Property Rights and Encumbered Property should have a special record that would guarantee that such housing would not be alienated without the consent of the relevant guardianship and trusteeship authority.

While making a child's parents responsible for ensuring that the child has an appropriate standard of living, the state should not disproportionately interfere in their family life. Neither should the state limit a child's parents or the third parties in whose housing a child is registered in exercising their ownership rights. At present, the applicable law requires that any deals involving real estate to which children have ownership rights or which children have the right to use, be approved by the relevant guardianship and trusteeship authority⁶².

The registration of a child's place of residence is currently used to confirm the child's right to use housing, which is not in line with the purpose of registration. Once the reform is implemented, the state should limit the cases in which real estate deals require the consent of guardianship and trusteeship authorities to cases involving the property of orphans and children deprived of parental care.

The procedure for housing owners' deregistration of children should definitely be simplified, regardless of the grounds for the registration.

⁶² Part 4, Article 12 of Ukrainian Law No. 2623IV, dated 2 June 2005, on social protection for homeless persons and uncared-for children.

List of laws and regulations that need to be amended:

- ▲ *The Civil Code of Ukraine*
- ▲ *The Ukrainian Family Code*
- ▲ *The Ukrainian Law on freedom of movement and free choice of a place of residence in Ukraine*
- ▲ *The Ukrainian Law on social protection for homeless persons and uncared-for children*
- ▲ *The Ukrainian Law on the privatization of state housing*
- ▲ *The Ukrainian Law on the state registration of property rights and encumbered property*
- ▲ *The rules for registering a place of residence approved by Ministerial Decree No. 207, dated 2 March 2016*
- ▲ *The procedure for maintaining the Unified State Demographic Register, providing information from this register, authorized entities communicating with one another, and identifying and verifying persons' identities approved by Ministerial Decree No. 784, dated 18 October 2017*
- ▲ *The procedure for the state registration of property rights and encumbered property approved by Ministerial Decree No. 1127, dated 25 December 2015 (as amended by Ministerial Decree No. 553, dated 23 August 2016)*
- ▲ *The procedure for maintaining the State Register of Property Rights to Real Estate approved by Ministerial Decree No. 1141, dated 26 October 2011 (as amended by Ministerial Decree No. 484, dated 6 June 2018)*
- ▲ *The procedure for Ukrainian notaries performing notarisations approved by Order of Ukraine's Ministry of Justice No. 296/5, dated 22 February 2012*

4.2

Internally displaced persons and people who live in temporarily occupied territories

In 2014, parts of Ukraine's territory – Crimea and the city of Sevastopol – were temporarily occupied as a result of Russian armed aggression. Later on, conflict broke out in some areas in Donetsk and Luhansk oblasts, which in early 2018 were also declared areas that were temporarily occupied by Russia⁶³.

Apart from having part of its territory occupied by another country, Ukraine also faced mass internal displacement – an unprecedented event for it. Official data alone said that as of 23 December 2019 there were 1.432 million migrants from temporarily occupied territories in Donetsk and Luhansk oblasts and Crimea⁶⁴. Although the number of people who continued to live in these areas is difficult to calculate, it is estimated that about 4.5 million people live there.

After the rules for registering a place of residence were changed in 2016, a significant problem arose due to the absence of authorities that had a mandate to register the place of residence of those people who live in TOAs – the newly created registration authorities only provided registration services in those administrative divisions over which respective village, populated area, or town councils have jurisdiction⁶⁵.

Since there are no local governments that can register a place of residence in TOAs, people who continued to live in these areas or who left these areas but continue to be registered there (such as internally displaced persons) cannot register their place of residence in TOAs. In practice, this results in the fact that when children from TOAs are issued their first passports,

or in some cases when people are issued new passports to replace a lost or damaged one, or due to a change in their family name, these people cannot register their place of residence in TOAs and effectively remain unregistered.

There has currently been an increase in the number of people who have no registered place of residence. This means that these people are limited in their rights (to obtain social protections, to vote, and so on). With regard to children, this also affects their ability to obtain additional educational benefits and guarantees, and to use additional social protection mechanisms (social scholarships). In addition, information about persons with no registered place of residence is not sent to the State Register of Voters when they turn 18.

What is more, persons who have no registered place of residence in TOAs will also have difficulty being registered as IDPs. The applicable law sets forth that it is the registration of one's place of residence in areas affected by an armed conflict, occupation, widespread violence or threat of violence that provides the grounds for being registered as an IDP and obtaining a respective certificate. Those persons who have no registration in TOAs will have to provide additional proof that they indeed lived in and then left those areas.

Since it is one's registration in a given populated area that currently proves one's membership of that territorial community and gives one the right to participate in local elections, additional difficulties could arise if local elections were to be held in temporarily occupied territories.

⁶³ Ukrainian Law No. 2268VIII, dated 18 January 2018, on the special nature of state policy for safeguarding Ukraine's sovereignty in the temporarily occupied territories of Donetsk and Luhansk oblasts.

⁶⁴ 1,432,290 internally displaced persons have been registered / Ukraine's Social Policy Ministry [Electronic source]. — Link to the source: <https://www.msp.gov.ua/news/18074.html>

⁶⁵ Paragraph 3 of the rules for registering a place of residence approved by Ministerial Decree No. 207, dated 2 March 2016.

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Proposed models for resolving this problem and minimizing risks

Applying the notification-based model to the temporarily occupied areas is currently a controversial issue. On the one hand, under the current circumstances it is impossible to verify whether or not a person who says they live at a given address in a temporarily occupied territory actually lives there. In addition, there is ample evidence that people's flats and houses in TOAs are effectively being seized by the current de-facto powers. On the other hand, those persons who actually live in TOAs should be able to register that address with the state. In this case, the state is interested in obtaining information about current migration trends, even though it has temporarily lost control over parts of its territory.

A way to resolve this issue was proposed in a draft law amending some Ukrainian laws that govern the record-keeping and registration of a place of residence of those Ukrainian citizens who live in temporarily occupied territories in Donetsk and Luhansk oblasts and in Crimea. This draft law was registered by the Ukrainian parliament of the 8th convocation as No. 8432⁶⁶.

More specifically, this draft law specifies which authorities will be responsible for registering a place of residence in TOAs. People who live in Crimea and the city of Sevastopol will be registered by Kherson Oblast State Administration, which would be charged with maintaining and administering the databases of people who register their place of residence in a temporarily occupied area, while residents of TOAs in Donetsk and Luhansk oblasts will be registered by Donetsk and Luhansk civil and military administrations respectively. In order to register a place of residence, these authorities would establish, maintain and administer the databases of people who register their place of residence in temporarily occupied areas. The final provisions of this draft law stipulate that this law also applies to registering the place of residence of children in TOAs, both of whose pa-

rents, or one of them, or some other representative are/is registered in temporarily occupied territories in Donetsk Oblast, Luhansk Oblast, Crimea or the city of Sevastopol.

Since Ukraine has effectively lost control over the temporarily occupied territories, this model for registering a place of residence in those areas seems optimal under the current circumstances. This model should also be applied to adults – if the possibility of registering a child in TOAs depends on the registration of one of its parents in those areas, the state should also put in place a mechanism for adults to register their residence in TOAs. In this light, it would be reasonable to continue to apply the old permit-based system when registering one's place of residence in TOAs using a separate procedure that would require people who want to register their place of residence in those areas to provide documents that prove their right to live there. In such cases, children should be registered in TOAs on the basis of the registration of one of their parents.

With regard to IDPs, the applicable law sets forth that a certificate showing that a person has been registered as an IDP confirms the place of residence of such a person, as long as there are circumstances that forced them to leave their place of permanent residence⁶⁷.

This means that this certificate and the address in it, which is provided by an IDP and cannot be verified, confirms the place of that person's residence. This approach is effectively a notification-based system for registering a place of residence, which is already being applied to a reasonably large group of people. If the new notification-based system for registering a place of residence is introduced, the state would have to decide whether or not to require IDPs to give up their registered place of residence in TOAs. After all, internally displaced persons have the right to retain ties with the place of residence they have abandoned. In this case, having their place of residence registered in TOAs helps them retain those ties.

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⁶⁶ The draft law, which failed to be adopted at first reading, was withdrawn on 29 August 2019 and removed from consideration. The text of the draft law is available at the following link: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64152

⁶⁷ Article 5 of Ukrainian Law No. 1706 VII, dated 20 October 2014, on safeguarding the rights and freedoms of internally displaced persons.



Once the notification-based system for registering a place of residence has been introduced, the state should allow internally displaced persons not to register their actual place of residence in an area controlled by the Ukrainian government. The state should maintain the status quo, i.e. the permanent registration of a place of residence in a temporarily occupied territories, and the temporary registration of a place of residence in the community where an internally displaced person is currently living. That said, internally displaced persons should be allowed, without prejudice to their rights, to use the new system for registering a place of residence by notifying the state of their new place of residence, of which a respective entry should be made in the relevant territorial community register.

It is important that the names of IDPs be entered into the respective territorial community registers to make sure that they are fully integrated into community life. One way to do so would be to integrate the information from the uniform database of internally displaced persons into territorial community registers so as to provide the respective communities with information about the number of IDPs. This would enable the communities to plan their territorial development, while also taking into account the needs of IDPs.

In actual fact, the risks that could arise from this model are minimal, as the state would continue, to some extent, to apply the existing permit-based model to residents of TOAs, rather than permitting them to register their place of residence in these areas through notifications.

The notification-based model is in fact already being applied to IDPs. However, rather than being entered into territorial community registers, information about their place of residence is contained in the unified database of

internally displaced persons, which is maintained by Ukraine's Social Policy Ministry. It is important that information about the place of residence of IDPs be transferred from that database to territorial community registers, and that IDPs be allowed to have a double registration – in TOAs, and in the community where they currently live. This would require the development of software to synchronize the uniform database of internally displaced persons with territorial community registers, which are maintained in various forms, and not always electronically.

List of laws and regulations that need to be amended:

- *The Ukrainian Law on freedom of movement and free choice of a place of residence*
- *The Ukrainian Law on safeguarding the rights and freedoms of internally displaced persons*
- *The Ukrainian Law on local governance in Ukraine*
- *The Ukrainian Law on safeguarding rights and freedoms and the legal regime in Ukraine's temporary occupied territories*
- *The Ukrainian Law on the special nature of state policy for safeguarding Ukraine's sovereignty in the temporarily occupied territories of Donetsk and Luhansk oblasts*
- *The Ukrainian Law on civil and military administrations*
- *The Ukrainian Law on the state register of voters*
- *Ministerial Decree No. 207, dated 2 March 2016, approving the rules for registering a place of residence, and the procedure for registration authorities sending information to the Unified State Demographic Register*

4.3

Refugees, people in need of additional protection, asylum seekers in Ukraine, and stateless persons

The applicable laws (the Ukrainian Constitution and the Ukrainian Law on refugees and people in need of additional protection) stipulate that persons that have been granted the status of refugees or people in need of additional protection in Ukraine enjoy, with certain limitations, the same rights as Ukrainian citizens (e.g. these people have no right to vote and cannot be civil servants). According to UNHCR data, as of 1 January 2019 there were 2,620 refugees and people in need of additional protection in Ukraine⁶⁸.

Apart from refugees and people in need of additional protection, there are at least two other categories of people who have a special status in Ukraine. These are:

- Foreigners who, although staying in Ukraine legally, have neither a temporary nor permanent residency permit, nor work visas, nor the status of a refugee nor that of a person in need of additional protection. These persons are asylum seekers in Ukraine. According to UNHCR information, as of July 2018 there were about 5,500 asylum seekers in Ukraine;
- Stateless persons. Currently, there is no official statistical information about the number of stateless persons in Ukraine. According to UNHCR data, in 2019 there were over 35,600 stateless persons and persons at risk of becoming stateless⁶⁹. Most of those people had no documents to verify their identity. With the armed conf-

lict in eastern Ukraine and the annexation of Crimea, the number of people who have no IDs is constantly on the rise, which puts these people at risk of statelessness in the long run.

The category of stateless persons can be broken down into the following subcategories:

- Persons who have been declared stateless by other countries and issued respective certificates, and who are currently legally staying in Ukraine;
- Stateless persons who, although having spent most of their lives in Ukraine, have neither Ukrainian citizenship nor documents confirming their status of stateless persons;
- Persons at risk of becoming stateless (persons who live in the temporarily occupied territories of Donetsk and Luhansk oblasts) who due to the conflict have lost or failed to obtain documents confirming their citizenship.

The main problem in registering the place of residence of asylum seekers and stateless persons in Ukraine is that these people have no documents that prove their ID or their special status, as required by the applicable law⁷⁰.

Before a person can register their place of residence, they have to be identified by government authorities, and information about that person has to be entered into respective state

⁶⁸ UNHCR Thematic Review on Refugees and Asylum Seekers in Ukraine [Electronic source] — Link to the source: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/06/2019-06-UNHCR-UKRAINE-Refugee-and-Asylum-Seekers-Update-FINAL_UKR.pdf

⁶⁹ There are over 35,000 stateless persons in Ukraine — UN // Ukrinform [Electronic source]. — Link to the source: <https://www.ukrinform.ua/rubric-society/2813659-v-ukraini-prozivaut-ponad-35-tisac-osib-bez-gromadanstva-oon.html>

⁷⁰ Article 13 of the Ukrainian Law on the Unified State Demographic Register and documents that confirm Ukrainian citizenship, and validate a person's identity or their special status.



databases and registers. With no IDs, stateless persons are not only limited in the exercising of some rights, they are also unable to perform their statutory duties, such as registering their place of residence. Despite that, the state envisages administrative penalties (fines) for failure to comply with registration rules, both for asylum seekers and stateless persons in Ukraine and for those persons in whose house/flat they live⁷¹.

The lack of changes to the legislation that would ensure that it is actually possible to register the place of residence of asylum seekers in Ukraine and stateless persons reduces the possibility that such persons could indeed be registered, increasing the number of persons who are illegally staying in Ukraine and not being provided access to their medical, educational, and social rights. The absence of a functional mechanism for registering a place of residence for such persons, together with legal provisions that envisage penalties against them for non-compliance with registration requirements, could encourage corruption among state migration service officers and law-enforcement authorities.

If the current link between one's registered place of residence and the need to apply to the relevant territorial subdivision of the State Migration Service is not removed, a significant number of persons at risk of becoming stateless would remain unable to obtain an ID. The absence of a law and a statutory procedure allowing stateless persons and persons at risk of becoming stateless to register their place of residence through notifying the state would increase the number of people staying in Ukraine illegally, making it impossible to keep records of them, or to integrate them. This, in turn, raises issues of security.

Proposed models for resolving this problem and minimizing risks

A notification-based system for registering a place of residence could make the lives of

refugees, people in need of additional protection, and stateless people much easier. That said, amendments to a number of laws would be required to produce a comprehensive solution to the problems with registering that these people face.

A joint effort by the State Migration Service, the Ukrainian parliament and representatives of the organizations that provide legal support for asylum seekers in Ukraine, refugees and stateless persons has produced two draft laws that aim to improve the protection of rights of stateless persons, asylum seekers in Ukraine, refugees, and persons in need of temporary or additional protection.

The draft law on granting protection to foreigners and stateless persons, which is pending the approval of the Central Executive Body, envisages the inclusion of asylum seeker certificates in the list of documents that can be used as IDs. Since asylum seekers' lack of IDs was one of the main impediments to being registered, these amendments would, among other things, resolve issues related to the registration of their place of residence.

In addition, the Ukrainian parliament registered a draft law amending some Ukrainian laws on conferring the status of a stateless person, which was registered as No. 2335⁷². On 5 December 2019, this draft law was considered and approved as the basis of a new law.

This draft law puts in place the procedure for declaring a person stateless. If a person is declared stateless on the basis of this procedure, they will be issued a new ID and a residency permit in Ukraine. This draft law contains no separate provisions regarding the registration of a place of residence of persons who were declared stateless and issued residency permits. The absence of an approved procedure for conferring the status of a stateless person and issuing residency permits to such persons makes it impossible to predict whether or not the requirement to register a place of residence would prevent

⁷¹ Articles 203 and 205 of the Ukrainian Code of Administrative Offences.

⁷² The draft law amending some Ukrainian laws on conferring the status of a stateless person // The Ukrainian parliament [Electronic source]. — Link to the source: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67217



stateless persons from obtaining residency permits in Ukraine. That said, like foreigners, stateless persons who were able to obtain permanent or temporary residency permits would be required to register their place of residence. Since stateless persons would still have obtain the consent of the housing owner and all other adults who live in that housing in order to get registered, doing so could be difficult.

With a view to improving the protection of the rights of the above categories of persons, the Ukrainian parliament should cancel the provisions of the Ukrainian Code of Administrative Offences that envisage penalties for persons who in actual fact are unable to comply with those provisions due to the current legal environment. More specifically, the Ukrainian parliament should invalidate the provisions of Part 2, Article 203 of the UCAO that relate to the liability of asylum seekers for failing to comply with the procedures for registering or staying in Ukraine. In addition, parliament should also amend Article 6 of the Ukrainian Law on freedom of movement and free choice of a place of residence, through indicating that the provisions of that article do not apply to those asylum seekers in Ukraine who have no IDs to verify their identity, as set forth by the applicable law.

With regard to refugees and persons in need of additional protection, parliament should amend Article 203 of the UCAO by cancelling penalties envisaged for these persons for failing to comply with registration rules. In addition, it should also amend Part 1, Article 16 of the Ukrainian Law on refugees and persons in need of additional or temporary protection, through extending from 10 to 30 days the term

for notifying the respective authorities of a change of a place of residence and registering at a new place. Since the state itself failed to provide stateless persons with the opportunity to validate their identity and to obtain Ukrainian passports, it should cancel for such persons the administrative penalties envisaged by Articles 197 and 203 of the UCAO. Taking into account the fact that the number of stateless persons in Ukraine who have IDs issued by other countries is significantly smaller compared to the number of stateless persons and persons at risk of becoming stateless who have no IDs, Ukrainian laws should be adapted so as to protect those stateless persons who have no IDs issued by other countries.

List of laws and regulations that need to be amended:

- *Articles 197, 203 and 204 of the Ukrainian Code of Administrative Offences*
- *Ukrainian Law on freedom of movement and free choice of a place of residence*
- *The Ukrainian Law on the Unified State Demographic Register*
- *The Ukrainian Law on refugees and persons in need of additional or temporary protection*
- *The procedure for processing, issuing, exchanging, sending, withdrawing, returning to the state, and declaring invalid and destroying internal passports in Ukraine, approved by Ministerial Decree No. 302, dated 25 March 2015*
- *The procedure for registration authorities sending information to the Unified State Demographic Register, approved by Ministerial Decree No. 207, dated 2 March 2017*

Further steps

A national study into the influence of the registration system on the exercising of human rights and the pursuit of vital interests, an in-depth analysis of the problems with the existing system for registering a place of residence in Ukraine, the preparation of a green paper on the existing system, modelling a new registration system and its implications, and the preparation of this White Paper – all of these constitute only a part of the policy cycle, conditions, and the theoretical basis for the reform of the domicile registration system in Ukraine.

However, turning the domicile registration system from a mechanism that limits human rights into an additional tool for formulating state policy at all levels requires taking further steps, such as:

Holding broad consultations with all stakeholders. This White Paper contains proposals to create a new system for registering a place of residence. In contrast to the old system, which is based on a person's having documents that prove their right to live in housing where they plan to register, the new system will be based on notifications. Just like any other model, the notification-based model has its advantages, disadvantages, and implications. That is why holding broad consultations with representatives of government authorities, local governments, territorial communities, associations, housing owners, tenants and so on is an important element in promoting the idea of adopting a notification-based system for registering a place of residence.

The results of such consultations should be analysed and used when proposing amendments to the current legislation.

Drawing up and registering the respective draft law. Since reform of the existing system for registering a place of residence requires amending the applicable laws, it is important that an effective draft law be drawn up. Apart from amending the relevant law on freedom of movement and free choice of a place of residence in Ukraine (so as to reflect the notification-based registration model), the draft law (its transitional provisions) should contain proposals to amend other Ukrainian laws to minimize any negative implications that the reform of the residence registration system could have, as well as proposals for the timeframe for the reform.

Holding discussions and conducting an advocacy campaign for the draft law. In view of the critical importance of reforming the domicile registration system, it is important that the draft law (i.e. concrete decisions to change the existing system) be discussed by the greatest possible number of experts in state administration, local governance, administrative services, and the protection of the rights of children, IDPs, persons who live in occupied areas, and other groups of people whose rights could be affected by the reform.

Communications. In order to explain the main changes to the residence registration system that will probably take place, and eliminating fears of, and misconceptions about the existing system for registering a place of residence, the state should communicate the main provisions of the draft law as broadly as possible to communities, registration authorities, housing owners and persons who live in places other than their registered place of residence. Such communications should take place while the draft law is being discussed together with ex-

perts and MPs, and continue after the law is adopted. This process should not be unilateral – it should envisage an analysis of the feedback, such as comments and opinions, on the change of the residence registration system.

Monitoring how the law is being implemented.

After the draft law is adopted, the state should monitor how the new law is being implemented, while also ensuring that other laws and regulations are amended, so as to effectively rebuild the domicile registration system in Ukraine. The state should also from time to time review public opinion on the reform and its impact on the quality of people's lives.

Notes

