



Омбудсман України  
Ombudsman of Ukraine

## **SPECIAL REPORT**

**of the Ukrainian Parliament Commissioner  
for Human Rights on the observance  
of the rights of persons  
affected by the armed aggression  
of the Russian Federation against Ukraine  
(for the period February 24 – October 31, 2022)**



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# **LIST**

## **OF DESIGNATIONS AND ABBREVIATIONS**



AR of Crimea	–	Autonomous Republic of Crimea
JSC	–	Joint Stock Company
FLA	–	Free Legal Aid
WHO	–	World Health Organisation
IDP	–	Internally displaced person(s)
VRU	–	The Verkhovna Rada (Parliament) of Ukraine
MID of MoD	–	Main Intelligence Directorate of the Ministry of Defence of Ukraine
SMS	–	State Migration Service of Ukraine
SE	–	State Enterprise
SESU	–	State Emergency Service of Ukraine
UE	–	European Union
Single contribution	–	Single contribution for compulsory state social insurance
ECHR	–	The European Convention on Human Rights
ECtHR	–	The European Court of Human Rights
HEI	–	Higher educational institution
FDU	–	Foreign diplomatic units
AF RF	–	Armed Forces of the Russian Federation
AFU	–	Armed Forces of Ukraine
LU	–	Laws of Ukraine
CCU	–	Criminal Code of Ukraine
CMU	–	Cabinet of Ministers of Ukraine
Code on Administrative Offences	–	Code of Ukraine on Administrative Offences
MIA	–	Ministry of Interior Affairs
IHL	–	International humanitarian law
IAC	–	International armed conflict
MFA	–	Ministry of Foreign Affairs
Ministry of Justice	–	Ministry of Justice of Ukraine
Ministry of Regional Development	–	Ministry for Communities and Territories Development of Ukraine
Ministry for Reintegration	–	Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine
Ministry of Social Policy	–	Ministry of Social Policy of Ukraine
Ministry of Digital Transformation	–	Ministry of Digital Transformation of Ukraine
ACS	–	Area(s) of compact settlement
ICC	–	International Criminal Court
ICRC	–	International Committee of the Red Cross
Ministry of Health	–	Ministry of Health of Ukraine

Ministry of Education	–	Ministry of Education and Science of Ukraine
IHRL	–	International human rights law
National Police	–	National Police of Ukraine
National Social Service	–	National Social Security Service of Ukraine
NIB	–	National Information Bureau
OSCE	–	Organization for Security and Cooperation in Europe
RMA	–	Regional Military Administration(s)
LSGA	–	Local self-government bodies
UN	–	United Nations
Prosecutor General's Office	–	Prosecutor General's Office of Ukraine
PFU	–	Pension Fund of Ukraine
RF	–	Russian Federation
SBU	–	Security Service of Ukraine
TOT	–	Territory of Ukraine temporarily occupied by the Russian Federation
UNHCR	–	United Nations High Commissioner for Refugees
OHCHR	–	United Nations High Commissioner for Refugees
Commissioner	–	Ukrainian Parliament Commissioner for Human Rights
SSO	–	Social services office
ASC	–	Centre for provision of administrative services
CEA	–	Central executive authorities
CPC	–	The Civil Procedural Code of Ukraine
UNICEF	–	United Nations International Children's Emergency Fund



# **PREFACE**

**BY THE UKRAINIAN  
PARLIAMENT  
COMMISSIONER  
FOR HUMAN  
RIGHTS**





The war in Ukraine has been lasting for almost 9 years already. An open, full-scale invasion of the troops of the Russian Federation into the territory of Ukraine began on 24 February 2022, which shocked the world with its brutality and disregard for the norms of international humanitarian law.

Missile attacks of the entire territory of Ukraine and the subsequent temporary occupation of individual areas is another phase of the international armed conflict, which began in February 2014 with the invasion of Russian troops and the temporary occupation of the Autonomous Republic of Crimea and the city of Sevastopol and continued by the temporary occupation of parts of Donetsk and Luhansk Regions.

The aggression resulted in a significant number of injured civilians, both killed and injured, people who were forced to leave their places of permanent residence and either became internally displaced persons in Ukraine or were granted temporary protection in other countries. Property worth nearly \$100 billion has been destroyed and damaged, about half of which accounts for residential buildings. The social, economic, cultural and other rights of millions of Ukrainians have been violated.

Please find below the Special Report on the observance of the rights of persons affected by the armed aggression of the Russian Federation against Ukraine in the period from 24 February to 31 October 2022.

The challenge for the preparation of this Report was the absence of a definition of persons affected by the armed (military) aggression of the Russian Federation against Ukraine in the national legislation. It does not cover all categories, but focuses on the most numerous ones. Thus, the Report brings forward the need to regulate the issue of the legislative definition of persons affected by the armed aggression of the Russian Federation against Ukraine, and this will be the task for the Verkhovna Rada (Parliament) of Ukraine in 2023.

The Special Report covers certain aspects of the observance of the rights and freedoms of civilians affected by the armed aggression, and proposes measures aimed at ensuring the observance of their rights in accordance with European and international standards. It highlights the situation with the observance and violations of international humanitarian law and international human rights law committed in the territory of Ukraine within its internationally recognized borders, which occurred in the context of the full-scale armed invasion of the territory of Ukraine.

The data mentioned in the Special Report were summarized with the expert support of the Council of Europe and are based, in particular, on the materials of the Office of the Ukrainian Parliament Commissioner for Human Rights and information provided by ministries and other central executive authorities, state enterprises, national non-governmental human rights organisations, as well on reports of international organisations.

**Ukrainian Parliament Commissioner for Human Rights**

**Dmytro LUBINETZ**

Kyiv, December, 2022

# INTRODUCTION

In its Resolution dated 24 March 2022 “Humanitarian consequences of the aggression against Ukraine”, the UN General Assembly demanded to immediately stop military operations of the Russian Federation against Ukraine, in particular any attacks on the civilian population and civilian facilities<sup>1</sup>. On its part, the Parliamentary Assembly of the Council of Europe in Resolution 2463 (2022) “Further escalation in the Russian Federation’s aggression against Ukraine” dated 13 October 2022 called on member states to ensure a comprehensive system of liability for grave violations of international law as a result of the aggression of the Russian Federation against Ukraine, actively cooperating with the Ukrainian authorities on this issue, as well as to declare the current Russian regime to be a terrorist regime<sup>2</sup>.

The heaviest losses suffered by Ukraine are the lives and health of its citizens, including among the civilians. This Special Report is devoted to the situation with the observance of the rights of civilians – IDPs, citizens living in the TOT and in the areas of hostilities, and citizens who have left the territory of Ukraine. The report does not cover the issue of protecting the rights of persons defending Ukraine (combatants), prisoners of war and civilian hostages, as well as the issue of searching for missing persons, because they require special attention, while promoting the observance of their fundamental rights by all available means is the daily duty of the Commissioner.

Certain difficulties in distinguishing the categories of persons affected by the armed aggression against Ukraine are due to the absence of a definition who can be considered as persons affected by the armed aggression against Ukraine in the national legislation. Affected persons have the right to reparations, but the number of such persons is so large that individual appeals to the court will inevitably cause collisions and complications associated with the lack of a unified approach to the deprivation of the “state immunity” and the mechanism for recovery of damages from the aggressor state within national jurisdiction.

Therefore, the concept of “persons affected by the armed aggression against Ukraine” should have a proper legislative definition, subject to European and international standards. This also applies to the compilation of a clear list of categories of such persons, because it is these categories of persons that will need priority legal protection and social support with the active participation of the international community, and will also claim compensation for damage from the aggressor state.

The law of international liability of states provides that a state responsible for a violation of IHL or IHRL must stop the wrongful conduct, provide appropriate assurances and guarantees that such conduct will not be repeated, and make full reparation, which includes restitution, compensation, and satisfaction, individually or in combination, provided by one state to another within the framework of specially established interstate commissions or existing judicial mechanisms. The legal regime of IHL does not provide for any mechanisms for individual appeals by victims to the offending state, i.e. the right to reparations to victims is exercised by the states of their citizenship. The ECHR is one of the judicial mechanisms for compensation of damage operating within the framework of the IHRL. In this regard, the Parliamentary Assembly of the Council of Europe called to take advantage of the

<sup>1</sup> Humanitarian consequences of the aggression against Ukraine: Resolution adopted by the General Assembly on 24 March 2022: A/ES-11/2. *United Nations. Digital Library*. URL: <https://digitallibrary.un.org/record/3966630?ln=en> (accessed on: 30.11.2022); General Assembly Adopts Text Recognizing Scale of Humanitarian Woes Arising from Russian Federation’s Ukraine Offensive as Unseen in Many Decades. *United Nations. Meetings Coverage and Press Releases*. 24 March 2022. URL: <https://www.un.org/press/en/2022/ga12411.doc.htm> (accessed on: 30.11.2022).

<sup>2</sup> Further escalation in the Russian Federation’s aggression against Ukraine: Resolution 2463 (2022). Paragraphs 13.6, 13.7. *Parliamentary Assembly*. URL: <https://pace.coe.int/en/files/31390/html> (accessed on: 30.11.2022).

opportunity provided by Article 33 of the European Convention on Human Rights to jointly or individual submit to the ECHR any claims of suspected violations of the Convention and its protocols committed by the Russian Federation by 16 September 2022, when the latter ceased to be a party to the Convention<sup>3</sup>.

The critical problem is the compensation of the Russian Federation for damages to the Ukrainian state, individuals and legal entities as a result of its violation of IHL norms and grave violations of human rights in the occupied territories. The damage caused in the course of legitimate attacks of the Russian Federation from the point of view of IHL must also be compensated by the aggressor state as part of its liability for the act of aggression. It is also important to emphasize that losses caused by Ukraine during any actions aimed at protecting against the armed aggression (for example, damage caused by air defence systems) must be compensated by the Russian Federation, since but for the aggression, Ukraine would not have had to use military equipment and arms, trying to restore its sovereignty and protect its citizens from encroachments on their fundamental rights, above all the rights to life, liberty, dignity, personal immunity, as well as the right to peaceful possession of their property.

Given the lack of proper international mechanisms within which today it would be possible to fully compensate persons affected armed aggression against Ukraine for damage, it is deemed necessary to introduce such a compensation mechanism. The basis for the establishment of such a mechanism can be an international agreement or an act of the national legislation, for example, an international agreement on the confiscation of property of the Russian Federation abroad as a countermeasure, and its transfer to the compensation fund. Compensation to individuals and legal entities can be implemented within the framework of both an international mechanism and national administrative reparation procedures with the active support of the international community and liability of the aggressor state.

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<sup>3</sup> The Russian Federation's aggression against Ukraine: ensuring accountability for serious violations of International humanitarian law and other international crimes Resolution 2436 (2022). Paragraph 11.8. *Parliamentary Assembly*. URL: <https://pace.coe.int/en/files/30024/html> (accessed on: 30.11.2022)

# **SECTION 1.**

**ENSURING THE  
RIGHTS OF IDPs**





## ENSURING THE RIGHTS OF IDPs

### 1.1. Registration and Provision of Financial Assistance to IDPs

The full-scale Russian invasion of Ukraine on 24 February 2022 caused an unprecedented humanitarian crisis all over the country<sup>4</sup>. Decree of the President of Ukraine No. 64/2022 dated 24 February 2022 “On Introduction of Martial Law in Ukraine” introduced martial law in the country, the term of which was repeatedly extended.

The long-term and permanent aggravation of the situation, the increase in the number of missile attacks throughout the territory of Ukraine, the destruction of houses and infrastructure facilities cause, first of all, the displacement of a large part of the Ukrainian population both within the country and abroad.

The number of IDPs in Ukraine is greater than the population of many countries of the world, including European ones (for example, the population of Montenegro is 647,000 people, and the population of Estonia is 1,265,000 people)<sup>5</sup>. Given the fact that, for various reasons, not all IDPs were registered after changing their place of residence, the number of such persons may be even much higher. Therefore, the Unified Information Database of IDPs, the formation and management of which is ensured by the Ministry of Social Policy, potentially contains underestimated values of the actual number of IDPs in Ukraine.

According to the Ministry of Social Policy, 1,478,214 IDPs were registered as of 24 February 2022.

According to the report prepared jointly by the World Bank, the Government of Ukraine and the European Commission, a month after the start of the invasion, a total of 1,537,923 IDPs were registered, but only 63,306 of them were displaced after 24 February 2022, the number of first registered IDPs since 24 February 2022 was 61,699 people. That is, the vast majority of registered IDPs were persons displaced since 2014. However, with the increase in the intensity of hostilities, the number of newly registered IDPs increased significantly: from 312,591 persons as of 1 April to 2,228,861 IDPs as of 1 May, and then to 2,495,747 IDPs as of 1 June 2022. As of 1 June 2022, the total number of registered IDPs, including those displaced since 2014, was 4,162,327<sup>6</sup>.

According to the Ministry of Social Policy, 3,439,070 IDPs were registered from 24 February to 20 October 2022, and the number of IDPs was 4,846,189 as of 11 November 2022 (*see detailed information in the annexes*).

The scope of the Law “On Ensuring Rights and Freedoms of Internally Displaced Persons” applies not only to citizens of Ukraine, but also to stateless persons and foreigners permanently residing in the territory of Ukraine, who were forced to leave or abandon their place of residence as a result of, or in order to avoid, the negative consequences of the hostilities, temporary occupation, numerous cases of violence, violations of human rights and emergency situations of a natural or man-made nature. The list of persons who can be registered as IDPs has been expanded by the modern regulatory framework. According to Resolution of the CMU No. 509 dated 1 October 2014 “On Registration of Internally Displaced Persons”, there are six categories of persons who can be registered as IDPs.

<sup>4</sup> Report on return to Ukraine. October 2022 / International Organization for Migration 2022. 11 p. URL: [https://displacement.iom.int/sites/g/files/tmzbd11461/files/reports/IOM\\_UKR%20Returns%20Report\\_R10%20GPS\\_FINAL\\_UKR%20%281%29.pdf](https://displacement.iom.int/sites/g/files/tmzbd11461/files/reports/IOM_UKR%20Returns%20Report_R10%20GPS_FINAL_UKR%20%281%29.pdf) (accessed on: 30.11.2022).

<sup>5</sup> Annual report of the Ukrainian Parliament Commissioner for Human Rights on the observance of human and citizen rights and freedoms in Ukraine. 2016 / Office of the Ukrainian Parliament Commissioner for Human Rights Kyiv, 2017. 627 p. URL: <https://dostup.pravda.com.ua/request/24669/response/44324/attach/3/002628%202.pdf> (accessed on: 30.11.2022).

<sup>6</sup> Ukraine. Quick Assessment of Damage and Needs for Recovery – August 2022: report / World Bank, Government of Ukraine, European Commission. 2022. 267 p. URL: <https://documents1.worldbank.org/curated/en/099545009082226957/pdf/P1788430ed0fce0050b9870be5ede7337c6.pdf> (accessed on: 30.11.2022).

In particular, these are persons whose declared place of residence is located outside the territory of the administrative-territorial unit where hostilities are taking place, but who are registered as single social taxpayers in the territory where hostilities are taking place; and who paid single social tax, or on whose behalf single social tax was paid, for the Quarter 4 of 2021 or for 2021 entirely in the territory of the administrative-territorial unit where hostilities are taking place.

IDPs also include persons whose residential premises have been destroyed or have become unfit for living, which is confirmed by the relevant inspection report on the technical condition of the residential premises. This is a category of persons who do not need to leave the settlement where they lived as they either stayed at their previous place of residence or moved to another housing within their settlement.

Other categories of IDPs include servicemen, except conscript servicemen; minor children who received a passport of a citizen of Ukraine; students of higher educational institutions, students of vocational and technical institutions that have moved from TOT, settlements in which state authorities temporarily do not exercise their powers, and settlements located on the contact line.

At the same time, students of higher educational institutions, students of vocational and technical educational institutions who have moved from territorial communities located in the area of military (combat) actions or that are in temporary occupation or blockade currently do not have the opportunity to be registered as IDPs.

Undoubtedly, the loss of the resource potential of IDPs, i.e. their social status, workplace, income, housing, property, and sometimes even their loved ones, caused by a sharp change in the social environment, hard conditions and worse livelihood opportunities, makes them dependent on social benefits.

IDPs who were registered before 24 February 2022, were entitled to a monthly targeted allowance in accordance with Resolution of the CMU No. 505 dated 1 October 2014 "On provision of monthly targeted assistance to internally displaced persons to cover their living expenses, including payment for housing and utility services", which has been invalidated. The Government's approaches to providing financial assistance for IDPs have changed since 24 February 2022.

Thus, according to Resolution of the CMU No. 332 dated 20 March 2022 "Some issues of payment of accommodation allowance to internally displaced persons", assistance is provided to persons who have moved from the territory of Ukraine temporarily occupied by the Russian Federation, as well as the territory of administrative-territorial units where hostilities are taking place and which are specified in the list of administrative-territorial units, single social taxpayers who are registered in the relevant territory can be provided with the assistance within the ePidtrymka program.

The resolution also stipulates that assistance shall not be provided to IDPs who were registered as IDPs until 24 February 2022, except for persons who received monthly targeted accommodation allowance for IDPs, including for housing and utility services, and persons who moved again from the TOT, the territory of territorial communities located in the area of military (combat) operations or which are in temporary occupation or blockade after 24 February 2022.

Starting from May 2022, assistance is provided to IDPs:

- who have moved from the TOT, the territories of territorial communities located in the area of military (combat) operations or which are in temporary occupation or blockade;
- whose housing has been destroyed or is unfit for habitation because of damage and who submitted an application for compensation of the relevant losses by 20 May 2022, in particular through the Unified State Web Portal of Electronic Services (Diia Portal), or on the condition of submitting documentary confirmation from the LSGA of the fact of damage / destruction of immovable property as a result of hostilities, acts of terrorism, sabotage caused by the military aggression of the Russian Federation.

A positive step of the Government is the creation of an opportunity to obtain an IDP certificate through the mobile application on the Diia Portal, however, not all IDPs were able to register using this tool.

In particular, only persons who have an ID card and those who have a foreign biometric passport can confirm the fact of their displacement using the mobile application. In addition, the service of filing an application for registration of IDPs through the mobile application of the Diia Portal is unavailable to those persons who have already received a certificate of registration as IDP and were displaced before 24 February 2022. It is also technically impossible to obtain a IDP certificate in the case of displacement within the same settlement, as provided for in the legislation. It is not possible to change the address of actual residence in the certificate received through the mobile application in the event of further displacement of an IDP to another community, although, as reported by the Ministry of Statistics, testing of this possibility has been carried out since October 2022. In order to register as an IDP and receive accommodation allowances, persons with disabilities have to apply only to SSA or ASC.

The Commissioner receives numerous complaints from IDPs regarding the refusal to accept their applications for the appointment and payment of financial assistance based on applications filed by 30 April 2022 using the mobile application of the Diia Portal.

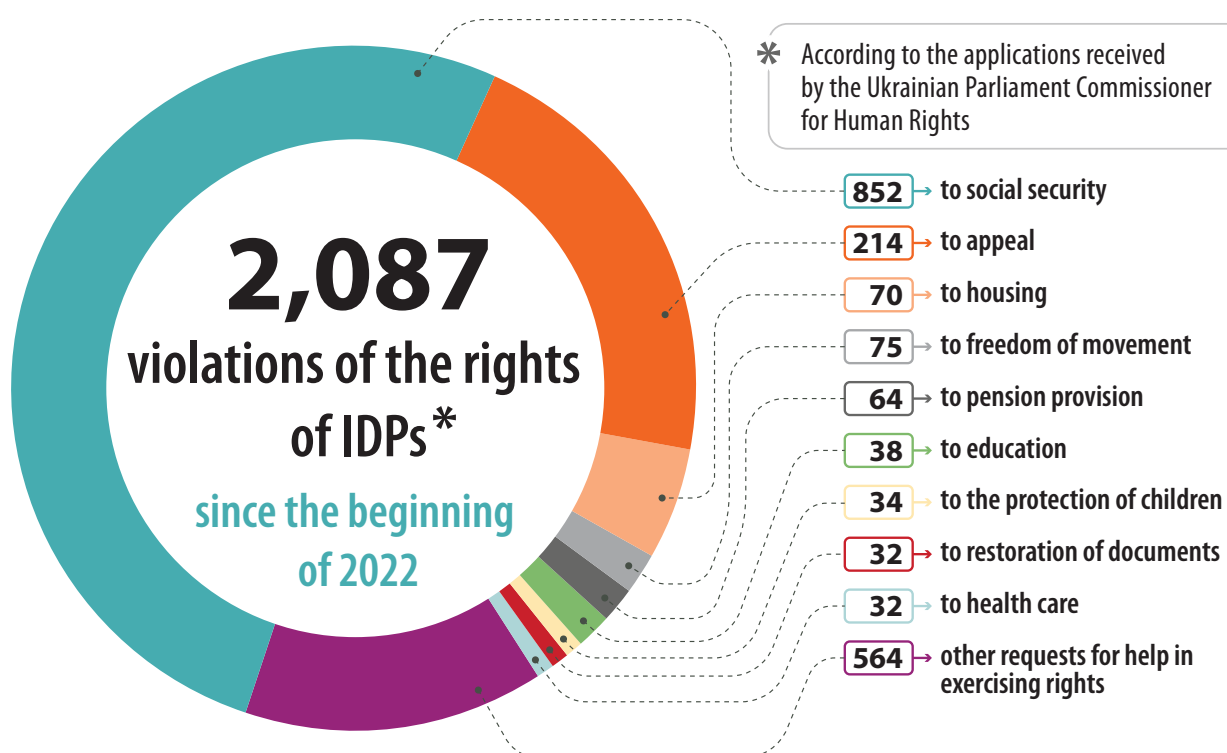
Thus, Yurii S. applied to the Commissioner and reported that after moving to Dnipro, he registered as an IDP through the Diia Portal on 30 April 2022. Because of the fact that the accommodation allowance was not paid for a long time, he applied to the SSA of the Shevchenkivskyi District in Dnipro Council. However, the applicant was informed there that there was no information about his registration as an IDP in the Unified Information Database of IDPs, therefore, he would be granted the accommodation allowance only from the moment of applying to the administration.

After changes were made to the Procedure for Providing Accommodation Allowances to Internally Displaced Persons approved by the resolution of the CMU No. 332 dated 20 March 2022 regarding the possibility of assigning accommodation allowance to IDPs for the period when they were entitled to it, Yurii S. again applied to the administration and provided information saved on the phone, which confirmed the fact that he had filed the application using the Diia Portal and a screenshot of the message. However, the employees of the administration did not take into account the information provided by the applicant, referring the fact that the message did not contain the date of filing the application, and they did not have relevant explanations regarding taking into account the information like information, in particular, in the applicant's situation.

In view of the above, the Commissioners sent requests to the Ministry of Digitization to confirm the date of filing the application through the Diia Portal by Yurii S. and to the Ministry of Social Policy for relevant methodological recommendations to SSA employees regarding the practical application of the changes made to the Procedure. Thanks to the assistance of the Commissioner, the information about the submission of the application by Yurii S. through the Diia Portal before 30 April 2022 was confirmed, and the administration was instructed to take measures for appointment and payment of the allowance to the applicant for the previous period.

The workload of the SSA, which currently deals with the problems of IDPs, their registration and provision of assistance to them, and the engagement of charitable organisations and volunteers has significantly increased. Separate queues are created for IDPs and local residents of the community on the ground. At the same time, the number of employees of social security agencies has not increased.

It is worth noting that a large number of IDPs have lost their jobs and do not have any in their new place of residence, so social assistance from the state may be the only source of livelihood for many of them. The Commissioner has received the largest number of appeals regarding issues of social benefits, their non-receipt because of the rules established by the above resolution of the Government, or delays in the payment of monetary assistance to IDPs.



In particular, since the beginning of 2022, the Commissioner has received appeals informing about 2,087 violations of the rights of IDPs, namely: 852 – right to social security, 214 – right to appeal, 70 – right to housing, 75 – right to freedom of movement, 64 – right to pension provision, 38 – right to education, 34 – right to the protection of children, 32 – right to restoration of documents, 32 – right to healthcare, 564 – other requests for help in exercising rights.

Separately, it should be noted that in connection with the adoption of Resolution of the CMU No. 1168 dated 14 October 2022 “On Amendments to the Procedure for Providing Accommodation Allowance to Internally Displaced Persons”, which provides for a selective check of the actual place of residence / stay of IDPs, there is a tendency to increased social tension among such persons.

The relevant verification mechanism does not provide for the procedure or the possibility of renewal of suspended payments of accommodation allowance to IDPs because of failure to pass physical identification at the place of residence or in the structural social security unit of the district, district in Kyiv state administrations, executive bodies of city, district in cities councils at the place of registration. In this context, it should be reminded that similar norms were stipulated in the Procedure for Controlling Paying Social Benefits to Internally Displaced Persons at the Place of Their Actual Residence / Stay approved by Resolution of the CMU dated 8 June 2016 No. 365. According to the decision of the District Administrative Court of Kyiv dated 11 June 2019 in case No. 640/18720/18, the clauses of the Procedure, which provided for checks at the place of actual residence, were found illegal and invalid. NGOs have already appealed to the Ministry of Social Policy to cancel checks at the actual place of residence of IDPs<sup>7</sup>.

It is also worth noting that, according to the information of the Donbas SOS NGO, its “hotline” and other communication channels receive applications regarding obtaining an IDP registration certificate and housing allowance for IDPs’ children born after displacement. There were cases when authorized bodies refused applicants to issue a certificate of registration of an IDP for IDPs’ children.

<sup>7</sup> Human rights defenders appealed to the Ministry of Social Policy regarding checks of the actual place of residence of IDPs. *Donbas SOS*. 28.10.2022. URL: <https://www.donbasssos.org/zvernennya-shchodo-perevirok-vpo/> (accessed on 30.11.2022).

Considering this issue, it should be emphasized that, in accordance with Article 4 of the Law on Ensuring Rights and Freedoms of Internally Displaced Persons, every child, including those who arrived unattended by their parents or other legal representatives, shall receive a certificate of registration as an IDP.

Moreover, Resolution of the CMU No. 509 dated 1 October 2014 “On Registration of Internally Displaced Persons” stipulates that every child shall receive a certificate, including those who arrived unattended by their parents or a legal representative, as well as a child of an IDP. Also, in accordance with the practice that has arisen during the period of application of the above Resolution of the CMU No. 505 dated 1 October 2014 “On provision of monthly targeted assistance to internally displaced persons to cover their living expenses, including payment for housing and utility services”, which was invalidated on 22 March 2022, monetary targeted allowance was provided to children of IDPs after displacement.

The above issue requires the provision of special clarifications for SSA from the Ministry of Social Policy.

## 1.2. Restoration of Lost Documents

As a result of the full-scale hostilities, many people have lost their passports or documents replacing them, or their documents have been destroyed. For registration as an IDP, according to Resolution of the CMU No. 755 dated 1 July 2022 On amending Resolution of the Cabinet of Ministers of Ukraine dated 1 October 2014 No. 509 and dated 20 March 2022 No. 332, such persons have the opportunity to present the information in electronic form contained in the identity documents and documents confirming the citizenship of Ukraine or their special status generated by means of the Unified State Web Portal of Electronic Services, in particular using the mobile application of the Diia Portal (“Diia”) or is an eDocument, or a certificate of submission of documents for obtaining a passport of a citizen of Ukraine issued by the ACS, a state-owned enterprise managed by the Ministry of Internal Affairs, and its stand-alone unit, territorial body or territorial unit of the SMS. However, the term of obtaining an IDP certificate for such persons and receiving social benefits by them is, of course, delayed due to the need to apply to the above authorities.

According to Resolution of the CMU No. 1180 dated 14 October 2022 On Amending Resolution of the Cabinet of Ministers of Ukraine dated 2 October 2016 No. 770, from 1 November 2022, the fee for issuing a passport of a citizen of Ukraine instead of a lost or stolen one within 20 working days shall be UAH 126, within 10 working days – UAH 496, and the cost of the form in both cases shall be UAH 324. However, the above fee is a pretty big amount for IDPs who leave urgently, especially if you consider that IDPs are evacuated by families, and the loss of documents and their accelerated obtaining for the purpose of receipt of social benefits takes place for all family members, materially affecting the family budget.

A person who has lost documents may face difficulties in receiving humanitarian and financial assistance. Current legislation does not contain any special requirements for documenting the provision of humanitarian and financial assistance. At the same time, for the purposes of reporting to donors and ensuring transparency of the procedure for provision of humanitarian and financial assistance to recipients, organisations record the data of such recipients (most often the IDP certificate number and the person’s full name).

That is, persons who have lost documents and do not have them in Diia and/or who do not have a certificate of submission of documents for obtaining a passport of a citizen of Ukraine may have difficulties in accessing humanitarian and financial assistance.

Special attention should be paid to the issue of risks of the violation of the legislation on personal data of IDPs by the authorities in the process of provision of humanitarian aid. In order to prevent such cases, the Commissioner has developed recommendations on some issues of processing personal data of IDPs by state authorities and LSGA<sup>8</sup>.

<sup>8</sup> Published recommendations of the Commissioner regarding some issues of processing personal data of internally displaced persons by state authorities and local self-government authorities. *Ukrainian Parliament Commissioner for Human Rights*. 22.09.2022. URL: [https://www.ombudsman.gov.ua/news\\_details/opublikovano-rekomendaciyupovnovazhenogoshchodo-deyakih-pitan-obrobki-personalnih-daniv-vnutrishno-peremishchenih-osib-organamiderzhavnoyi-vladi-ta-organami-miscevogo-samovryaduvannya](https://www.ombudsman.gov.ua/news_details/opublikovano-rekomendaciyupovnovazhenogoshchodo-deyakih-pitan-obrobki-personalnih-daniv-vnutrishno-peremishchenih-osib-organamiderzhavnoyi-vladi-ta-organami-miscevogo-samovryaduvannya) (accessed on: 30.11.2022).

IDPs, such as stateless persons and those conditionally at risk of statelessness, also needs special attention. There are many people among such persons who were born or lived (whose parents were born or lived) in the territory of the Russian Federation as of 24 August 1991. Because of the breakdown of the diplomatic relations, such people cannot deny that they have Russian citizenship, obtain or restore their documents. The increase in the number of appeals from such persons is noted by all human rights organisations that provide assistance to them, as well as by the SMS.

### 1.3. Temporary Housing

Housing is still a key issue for IDPs. Housing is the area where the most support and funding is needed from both the state and international financial institutions.

Since 22 March 2022, the Shelter social program has been in place, which provides assistance with housing to IDPs and provides for compensation for housing and utility services to housing owners who have provided accommodation to IDPs. Thus, Resolution of the CMU dated 19 March 2022 No. 333 approved the Procedure for Payment of Compensation for Expenses for Temporary Accommodation of Internally Displaced Persons who Moved during the Period of Martial Law<sup>9</sup>. According to the Ministry of Regions, there is information on 676,210 IDPs who live in residential premises of households whose owners provided them with housing and submitted applications for compensation. As of 17 October 2022, households were financed for the amount of UAH 368,200,577.40 (UAH 133,511,095.90 – funds of the state budget, UAH 5,155.85 – funds of local budget, and UAH 234,684,325.65 – funds from international organisations). In addition, as of 24 November 2022, the CMU made a decision to allocate funds from the reserve fund of the state budget in order to cover the costs of the owners of residential premises of the private housing fund who accommodated IDPs free of charge in the period from March to August 2022. In addition, compensation for the costs of temporary accommodation of IDPs who moved during the period of martial law will be made at the expense of the Red Cross Society of Ukraine from September 2022.

In addition, according to the State Fund for Promotion of Youth Housing Construction (State Youth Housing Fund), as part of the implementation of Resolution of the CMU dated 7 March 2022 No. 220 “Issue of providing humanitarian and other assistance to the civilian population in the conditions of martial law in Ukraine” and the decision of the Commission on allocation of funds for the provision of assistance in the conditions of martial law established by the Ministry of Social Policy, the State Youth Housing Fund has been designated as the recipient of monetary assistance in the amount of UAH 100 million. At the expense of the funds received from the account of the Ministry of Social Policy, 60 apartments were purchased in Zhytomyr, Kyiv, Sumy, and Chernihiv Regions to provide such housing for the temporary accommodation of affected persons whose homes were destroyed or damaged as a result of the military emergency caused by the armed aggression of the Russian Federation.

The list of affected persons who are provided with housing for temporary residence and the sequence of its provision are determined by the regional and Kyiv city state administrations, as determined by Resolution of the CMU dated 29 April 2022 No. 495 Specific Measures to Form the Housing Stock for Temporary Accommodation of the Internally Displaced Persons. Today, 56 families (243 people) live in the purchased apartments. This is obviously insufficient compared to the number of IDPs of all categories who need assistance.

The above Resolution stipulates that the housing stock intended for temporary accommodation of IDPs is formed through the reconstruction of existing houses and dormitories, as well as conversion of non-residential premises into residential ones, major repairs of housing stock, in particular social purpose facilities. However, the stock is formed almost exclusively through the construction of new housing on the ground. However, there are buildings that need repair and can be converted into apartments in every locality. The difficulty of transferring abandoned property, among other things, is caused by the need to apply to the court for the transfer of abandoned property into municipal ownership no earlier than one year after it was registered.

<sup>9</sup>The name of the Procedure as of 30 November 2022.

Thus, the temporary housing stock actually remains unformed in the regions or consists of a very small number of premises for accommodation of IDPs.

IDPs are accommodated in areas of compact settlement not accommodated for habitation (in particular, for groups of people with low mobility), in dormitories, gyms, etc., without taking into account gender differences, with non-separate accommodation of men and women who are not family members, which is unacceptable in the long term.

IDPs address accommodation issues, including arranging sleeping places, carrying out repairs in shelters, purchasing household appliances, generators, water storage tanks and means for water disinfection, either on their own or with the help of international organisations or host communities.

Part of the IDPs will not return to their abandoned permanent places of residence, but will be integrated into a new host territorial community, therefore the issue of providing housing and creating normal living conditions is an urgent need that will allow speeding up this process. It is appropriate to develop conceptual state programs aimed at meeting the housing needs of IDPs through lending, compensation for the cost of lost housing through new construction, etc. It is also worth paying attention to the fact that there is currently no comprehensive assessment of the number of IDPs who need housing, including temporary accommodation.

#### **1.4. Training**

The educational process in institutions of general secondary education in academic year 2022/2023 is organized in full time, remote and mixed forms, depending on the capabilities of the protective structures in such institutions.

It should be noted that children who live in areas of compact settlement face significant difficulties, and sometimes they are even deprived of the opportunity to access on-line education, the participation in the educational process and preparation for lessons is very problematic given the occupancy of rooms of 10–15 people and the absence of a separate educational space. Children who do not have electronic devices to participate in on-line classes face urgent needs.

In addition to the financial difficulties for parents associated with the creation of conditions for education of their children in the on-line format because of the need to have an electronic device and a stable Internet connection and constant air alarms, there is one more issue of the organisation of education as such. In connection with the situation in the country after 21 October 2022, the already complex organisation of distance education is called into question, taking into account the power outages at different times in different settlements of Ukraine. This virtually brings to nought any attempts at quality organisation of the educational process.

#### **1.5. Pension Payments**

In order to receive a pension after moving, IDPs must confirm the fact of their displacement with a certificate of registration as IDP and then apply to the PFU authorities at the place of their actual residence. IDPs who received a pension through banks or offices of Ukrposhta JSC must open an account with Oschadbank JSC and transfer the receipt of pension payments to this account by a separate application to the PFU. Only persons with disabilities of group 1 and persons who are not capable of self-care and need help according to the opinion of the medical and consultation commission may receive pensions through Ukrposhta JSC.

Separately, it is worth paying attention to the fact that people who lost their employment record books because of displacement face difficulties when applying for a pension because of the impossibility of confirming their length of employment or most of it, since data on the payment of contributions are displayed in the personalized accounting system only from 1 January 2004. Until this date, the main document confirming the length of employment is the employment record book, and in its absence, certificates from enterprises, archival institutions with a mandatory reference to primary documents, extracts from orders, data from the register of insured persons, employment contracts and

other documents are accepted to confirm the length of employment, but the availability and preservation of such documents is problematic or impossible for many IDPs in the conditions of martial law.

Citizens of Ukraine who are IDPs who previously lived in the territory of the Republic of Crimea and the city of Sevastopol, who moved to the territory controlled by the Government of Ukraine after 24 February, found themselves in a vulnerable state because of the refusal of the PFU authorities to pay pensions on the basis that they are considered to be provided with pensions from the Pension Fund of Russia, or because they can neither confirm nor deny the fact of non-receipt of pension and other social benefits "at the previous place of receipt of a pension". Despite the Law "On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine" (hereinafter – Law No. 1207-VII), which guarantees the payment of pensions to all citizens of Ukraine without exception, pensions are not actually paid to persons from the relevant territories.

The violation of the right to receive pensions from the PFU for IDPs from the Autonomous Republic of Crimea and the city of Sevastopol is due to the presence of norms in the current legislation of Ukraine that contradict Law No. 1207-VII. In particular, the ban on the payment of pensions to citizens from the Republic of Crimea and the city of Sevastopol is effective, if IDPs who previously lived there have Russian citizenship; receive or have received a pension from the Pension Fund of Russia; the PFU has not received information about the payment and termination of payment of the pension to an IDP from the Pension Fund of the Russian Federation (which is generally impossible to do during martial law); the PFU has not received the pension file of an IDP from the Pension Fund of Russia (which also cannot be fulfilled during martial law because of the break of diplomatic relations with the Russian Federation).

Resolution of the CMU dated 2 July 2014 No. 234 "On approval of the Procedure for paying pensions and providing social services to citizens of Ukraine living in the territory of the Autonomous Republic of Crimea and the city of Sevastopol" defines a mandatory condition for granting a pension to IDPs who left the territory of the Republic of Crimea and the city of Sevastopol: provision of a certificate from an authorized Russian body confirming that the person was not assigned a pension at the place of registration in the territory of the Autonomous Republic of Crimea and the city of Sevastopol, and a personal declaration about the absence of citizenship of the Russian Federation. Such a requirement contradicts Law No. 1207-VII, and meeting it is obviously impossible during martial law.

The Commissioner has received a number of similar appeals from IDPs from the Autonomous Republic of Crimea and the city of Sevastopol regarding deprivation and/or restriction of their right to receive pension payments guaranteed by law, for an indefinite period. In particular, the applicant, who in April of this year submitted an application for resumption of pension payment, which had not been received since March 2014, to the Administration of the PFU in Brovary and Brovary District, was refused because of the absence of diplomatic relations with the aggressor state and the impossibility of requesting the pension file.

To the request of the Commissioner, the PFU responded that documents were needed to resume payment of a pension at a new place of residence, in particular, documents that contain information about the termination of payment of a pension at the previous place of residence, which is the TOT. Accordingly, it is not possible to obtain the documents necessary for the resumption of pension payments during the period of martial law.

The recommendation made by the Commissioner regarding the need to resolve this issue as soon as possible was taken into account by the PFU, and Draft Resolution of the CMU "On Amendments to Resolutions of the Cabinet of Ministers of Ukraine dated 2 July 2014. No. 234 and dated 5 November 2014 No. 637" was developed.

Also, based on the results of monitoring and processing of appeals received by the Commissioner, problems were identified in exercising the right to receive accrued pension payments for the past period by IDPs.



According to the PFU, as of 1 September 2022, the territorial bodies of the PFU made a decision to resume pension payments for the past period to 284,439 persons in the amount of UAH 11,760,686.4 thousand, and a decision to pay pensions not received in connection with the death of pensioners to 7,372 persons in the amount of UAH 770,171.1 thousand. UAH 7.1 billion will be needed to repay the debt in 2023, but the PFU budget for 2023 has not yet been approved.

### 1.6. Health Care

The health care sector is not an exception in terms of the negative impact of the war. Currently, a part of health care facilities has been destroyed and damaged (144 destroyed and 953 damaged).

According to NGO “The Tenth of April”, greatly vulnerable IDPs (elderly people, people with reduced mobility, etc.) are unable to provide themselves with drugs prescribed by doctors, and the need for proper treatment only increases because of the grave moral and psychological condition of such people.

A certain number of IDPs have been injured during hostilities and require either outpatient or inpatient treatment. Thus, according to Order of the Ministry of Health No. 332 dated 17 March 2022 No. 496 “Some issues of provision of primary medical care in conditions of martial law”, primary medical care for IDPs is provided without re-concluding declarations with a family doctor. IDPs can receive the required scope of medical care under the medical guarantee program in health care facilities that have signed contracts with the National Health Service of Ukraine, and the declaration is not mandatory for this. Emergency medical care is provided to IDPs free of charge, regardless of the presence of a declaration signed with a doctor at the place of their actual stay.

According to the Ministry of Health, patients who need outpatient treatment for cardiovascular diseases, type 1 / type 2 diabetes, diabetes insipidus, bronchial asthma, mental and behavioural disorders, epilepsy can receive drugs provided for in the program free of charge or with a small extra payment. Financing of the “Affordable Medicines” program has not stopped for a single day, and pharmacies that have a contract with the National Health Service receive reimbursement from the National Health Service of Ukraine for drugs sold under both electronic and paper prescriptions<sup>10</sup>.

At the same time, IDPs face such a problem as failure to be provided with a full list of necessary drugs at the expense of the state, and not all IDPs are able to purchase the necessary drugs on their own. Thus, according to NGO “The Tenth of April”, the problem of refusal to issue prescriptions under the “Affordable Medicines” state program with the motivation that there are no funds to finance the program for all IDPs has been identified. According to the Ministry of Health, in 2022, 73 appeals from IDPs were registered, of which 8 appeals related to refusal to provide medical care or refusal to provide drugs.

Along with the provision of medical care, IDPs also need psychological help. In response to this, according to the Ministry of Health, a free psychological help hotline started working on 1 June 2022, which was launched by the National Psychological Association. Psychological support is also provided by psychologists of charitable foundations and international NGOs.

### 1.7. Return Home

The full-scale invasion of the Russian Federation into Ukraine forced IDPs to move, but the uncertainty of further prospects remains a problem for them. The relevant persons expect de-occupation and a return to a stable life in conditions as much close as possible to the usual conditions<sup>11</sup>.

<sup>10</sup> Ministry of Health: The “Affordable Medicines” program continues working. *Governmental Portal*. 12 July 2022 URL: <https://www.kmu.gov.ua/news/moz-prohrama-dostupni-liky-prodovzhuie-diiaty> (accessed on: 30.11.2022).

<sup>11</sup> Report on the statistics of returns of Ukrainians. October 2022 / International Organization for Migration 2022. 10 p. URL: [https://displacement.iom.int/sites/g/files/tmzbdl1461/files/reports/IOM\\_UKR%20Returns%20Report\\_R9%20GPS\\_FINAL\\_UKR.pdf](https://displacement.iom.int/sites/g/files/tmzbdl1461/files/reports/IOM_UKR%20Returns%20Report_R9%20GPS_FINAL_UKR.pdf) (accessed on: 30.11.2022).

Uneven resettlement in the territory of Ukraine and the presence of a large number of IDPs in the regions closest to the previous places of residence of such persons testify to the desire of the majority of Ukrainians to wait until the end of the war in more peaceful areas, where there are no active hostilities, and not to change their place of residence.

Many Ukrainians are actively returning to their place of residence for various reasons since July 2022. According to the International Organisation for Migration, most returnees do not intend to move again in the future. A total of 57% of returnees are women, 25% are babies and children under 17. About 16% of returnees are elderly people aged 60 and older<sup>12</sup>.

Returning to their places of residence is a voluntary choice of IDPs themselves due to the decrease in active hostilities in these territories, and a forced step at the same time. Because of the instability of the current situation, it is impossible to determine what proportion of people returns permanently, and what proportion returns temporarily. The survey results as of 26 September 2022 testify that return is a long-term decision chosen by 69% of current IDPs in Ukraine. According to the International Organisation for Migration, the proportion of people who have returned and plan to leave again because of the war is the largest in the east (11%) and in the south (10%) as of September 2022<sup>13</sup>.

Factors such as the lack of appropriate housing in places where people have moved fleeing from hostilities, or the high cost of rented housing, in addition to the absence of job in the new place of residence, are often the reason for IDPs to return to their previous places of residence if housing fit for habitation remains there or there is a job. Moreover, the list of territorial communities that are located in the area of military (combat) operations or that are in temporary occupation or blockade, established by Resolution of the CMU dated 25 April 2022 No. 75 is constantly changing, which also results in the cancellation of state social assistance, which in most cases is the main source of livelihood for those people.

At the same time, the unstable security situation, the lack of appropriate housing and the acute financial problems associated with displacement can reduce the ability of families to return home permanently. The biggest obstacles to the return of IDPs to their places of permanent residence are the damage or destruction of their housing, which is especially important before the winter period. The lack of money and state assistance for housing reconstruction, as well as the lack of a mechanism for obtaining compensation for destroyed or damaged housing, are good reasons for many to stay in the place where they moved or were evacuated. Water supply, sanitation, access to food, health care services, a job at the place of permanent residence or savings are also important factors in the IDPs' assessment of their possibility of return. The longer hostilities last, the more impossible it is for many IDPs to return.

The lack of benefits for utility services and the impossibility to find a job in a new place of residence with a salary that would cover the expenses also become a frequent reason for IDPs to return.

Returning home or departure of IDPs abroad is grounds for removal from the IDP register. According to the Ministry of Social Policy, 1,023,342 people were deregistered in the period from 24 February to 20 October 2022 (*see detailed information in the annexes*).

### **1.8. Compensation for Destroyed or Damaged Housing**

The issue of compensation for destroyed or damaged housing is one of the most acute since the beginning of the armed aggression against Ukraine in 2014.

Resolution of the CMU dated 26 March 2022 No. 380 (hereinafter –Resolution No. 380) approved the Procedure for submitting an information report on immovable property damaged and destroyed as a result of hostilities, terrorist attacks, and sabotage caused by the armed aggression of the Russian Federation.

<sup>12</sup> Report on the statistics of returns of Ukrainians. October 2022 / International Organization for Migration 2022. 10 p.

<sup>13</sup> Ibid.

With the adoption of Resolution of the CMU dated 9 August 2022 No. 885 on amendments to the above Procedure, such reports on a number of properties can be submitted starting from 19 February 2014.

In order to ensure the collection, accumulation, accounting, processing, storage and protection of information about damaged and destroyed immovable property, the establishment of the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Attacks, and Sabotage Caused by the Armed Aggression of the Russian Federation is provided. It is filled based on applications without checking the relevant facts either through the Diia Portal or using the mobile application of the Diia Portal, or through an ASC administrator or a notary.

According to the Ministry of Statistics, the total number of submitted informational reports in the information and communication system of the Diya Portal was 282,435 as of 17 October 2022. At the same time, according to the Ministry of Digital Transformation, the Diia Portal and the mobile application of the Diia Portal do not yet provide the technical possibility of submitting information reports by legal entities.

Also, a technical imperfection of the procedure for reporting on destroyed property through the Diia Portal has been identified, as it is currently impossible to report the destruction that occurred since 19 February 2014, although this possibility is provided for by law.

No monetary assistance is currently paid to persons whose housing has been damaged or destroyed. It is worth noting that Resolution No. 380 establishes that after the entry into force of the Law of Ukraine on the settlement of relations regarding compensation for real property damaged and destroyed as a result of hostilities, terrorist attacks, sabotage caused by the military aggression of the Russian Federation, informational notices submitted by individuals in accordance with this Resolution are made equal to applications for compensation for damaged and destroyed real property. Unfortunately, there is no corresponding law as of today.

In April 2022, the VRU adopted the Draft Law “On Compensation for Real Property of Certain Categories Damaged and Destroyed as a Result of Hostilities, Terrorist Attacks, Sabotage Caused by the Military Aggression of the Russian Federation” (registration No. 7198 dated March 24, 2022) as a basis, but this draft law is still being prepared for the second reading. A number of draft laws have also been registered in the VRU, which aim to settle the said issue. It should be noted that the legislative mechanism for the restoration of real property should be based on the preference of restitution (reconstruction of real property) over payment of compensations, as well as take into account positive experience and obstacles in the implementation of regulations adopted by the Government of Ukraine for the purpose of accounting of destroyed and damaged housing and property, assessment of damage and reconstruction of property destroyed or damaged as a result of the armed aggression of the Russian Federation against Ukraine.

### **1.9. Adaptation and Integration of IDPs in Host Territorial Communities**

In the conditions of a large-scale process of internal displacement, the issues of assistance in the adaptation and integration of IDPs in the host territorial communities are becoming more relevant. From the moment of the decision on internal displacement to the moment of integration, the state should collect information about the needs of IDPs in order to further ensure addressing those needs. Today, the mechanism for collecting and assessing the said needs is ineffective. In addition, the means of the Unified State Portal of Electronic Services are actively used for surveys on various issues, therefore, with the already existing functionality, it would be appropriate to use the relevant opportunities for assessing the needs of IDPs. At the same time, local authorities and LSGA have a direct opportunity to use other information collection tools, implement methods of assessing and analysing the needs of IDPs, systematize and use them to develop programs and a legal framework aimed at addressing the needs of IDPs.

Although the Strategy for the Integration of Internally Displaced Persons and the Implementation of Medium-Term Decisions on Internal Displacement until 2024 approved by Decree of the CMU dated 28 October 2021 No. 1364, which contains specific strategic goals, ways to achieve them and expected results, is currently being implemented, it concerns only the relatively small part of IDPs who were forced to move by 24 February 2022. At the same time, the objectives defined by the Strategy are relevant for all IDPs in our country. As suggested by the problems covered in this Special Report, the issues of exercising the right to housing and property, employment and education, social protection, health care, access to documents and creating conditions for the integration of IDPs into the host territorial communities are urgent and require state regulation and support. There is currently no relevant strategy for the integration of all IDPs, especially those who moved after 24 February 2022, or any other document on state policy in the area of internal displacement, which would introduce the actualisation of problems of IDPs and contain ways to address them.

## Recommendations

*1. The VRU should speed up consideration and adoption of Draft Law of Ukraine “On Compensation for Real Property of Certain Categories Damaged and Destroyed as a Result of Hostilities, Terrorist Attacks, Sabotage Caused by the Military Aggression of the Russian Federation” (registration No. 7198 dated 24 March 2022).*

*2. The CMU:*

- should introduce a mechanism for collecting and assessing the needs of IDPs in order to ensure further addressing such needs;*
- should eliminate the discriminatory norm, which provides for a special procedure for making a decision on allocation of pensions to citizens of the Republic of Crimea and the city of Sevastopol after confirming that such persons do not receive a pension in the Russian Federation;*
- should take measures to eliminate / settle the existing problem of exercising the right of IDPs to receive pension payments for the past period and unreceived pension in connection with the death of a pensioner;*
- should provide for the possibility of deferring payment, reducing the amount or exempting from payment of the administrative fee and state duty for issuing a passport of a citizen of Ukraine instead of a lost or stolen one for persons who moved from territorial communities located in the area of military (combat) operations or that are in temporary occupation or blockade, as well as to exempt persons who have a permanent place of residence in the territory of such communities from a fee for the administrative service for registration and exchange of a passport of a citizen of Ukraine;*
- should cancel the discriminatory norm on random checks of the actual place of residence / stay of IDPs;*
- should update the IDP Integration Strategy and implement medium-term solutions in respect of internal displacement, taking into account the challenges faced by the state in connection with the full-scale invasion of the Russian Federation into Ukraine;*
- should approve the State Target Program for Providing Housing to IDPs, which, in particular, provides for the introduction of: living standards of IDPs in areas of compact settlement, a standard regulation on IDPs, and a sample contract for persons living there;*
- should grant the right to receive a certificate of registration of IDPs to students of higher educational institutions, students of vocational and technical educational institutions who moved from territorial communities located in the area of military (combat) operations or that are temporary occupation or blockade;*
- jointly with local authorities and LSGA, should introduce a program for support IDPs in the winter period by providing assistance for the purchase of fuel, a fixed amount of compensation for the cost of heating, or an individual social benefit.*

3. The ministries, other central executive authorities, local executive authorities, territorial communities that have suffered destruction as a result of the armed aggression of the Russian Federation should promote the implementation of digital tools (platforms) to ensure high-quality accounting, mapping and assessment of the damage caused, as well as administering all stages of the reconstruction of destroyed / damaged housing and property, including with the assistance of international organisations.

4. The Ministry of Statistics and the Ministry of Reintegration should take measures to introduce additional functionality for IDPs on the Diya Portal, including its mobile application, providing opportunities for:

- assessment of the current needs of IDPs and transfer of information to appropriate authorities;
- separate submission of an application for financial assistance to IDPs;
- application for monetary accommodation allowance for IDPs with disabilities;
- submission of an information notice on property damaged and destroyed since 19 February 2014.

5. The Ministry of Social Policy and the National Social Security Service should take measures in respect of:

- ensuring the timely payment of accommodation allowances to IDPs;
- prompt provision to the social security bodies with clarifications, methodological recommendations regarding changes in the legislation, as well as the practice of applying the provisions of regulations in the area of ensuring the rights of IDPs.

6. The Ministry of Reintegration and the Ministry of Regional Development should promote the attraction of financing in order to ensure the right of IDPs to housing, including through the construction of new housing, current repairs of residential buildings, and major repairs or reconstruction of residential buildings.

7. The Ministry of Education and Science should study the possibility of adapting educational programs and the learning process to the conditions of martial law, taking into account the existing challenges.

8. State authorities and LSGA should ensure compliance with the recommendations of the Commissioner on the processing of personal data of IDPs.

# **SECTION 2.**

**OBSERVANCE  
OF RIGHTS  
AND FREEDOMS  
OF CITIZENS  
LIVING IN TOT**

## OBSERVANCE OF RIGHTS AND FREEDOMS OF CITIZENS LIVING IN TOT

### 2.1. Definition of TOT Regime

The Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” contains a general definition of TOT. These are parts of the territory of Ukraine in which the armed forces of the Russian Federation and the occupation administration of the Russian Federation have established and exercise effective control or in which the armed forces of the Russian Federation have established and exercise general control with the aim of establishing the occupation administration of the Russian Federation.

As for the geographical definition of such territories, the above law actually applies different approaches to such definition: territories temporarily occupied before the date of introduction of martial law and after that date.

In order to improve the mechanism of determining TOT in conditions of martial law and to create prerequisites for the proper application of the provisions of the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” in the territories that were temporarily occupied by the aggressor state after 24 February 2022, the Draft Law “On Amendments to the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” Regarding Certain Issues of Determining the legal Status of Temporarily Occupied Territories of Ukraine in Conditions of Martial Law” was registered in the VRU (registration No. 8088 dated 29 September 2022).<sup>14</sup> It proposes to address the problematic issue of determining the TOT during the period of the legal regime of martial law by granting the relevant powers to the CMU. In addition, given the fact that some settlements have already been returned to the general control of the Government of Ukraine since the beginning of the large-scale invasion, it is also proposed to grant the CMU with the authority to determine the date of the end of the temporary occupation of the relevant territories<sup>15</sup>. On 16 November 2022, the specified draft law was adopted by the Verkhovna Rada, and on 22 November it was sent to the President of Ukraine for signature.

It should also be noted that paragraph 7 of Article 11 of the Law “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” actually defines the territory temporarily occupied by the Russian Federation as a part of the territory of Ukraine, in which the armed forces of the Russian Federation and the occupation administration of the Russian Federation have established and carry out actual or general control.

With such regulation, it is still unclear what “actual” and “general” control of the Russian Federation means and how this difference affects the status of the territories; whether it is possible to recognize new territories as temporarily occupied without martial law, and what mechanisms and rules should be applied then.

In addition, the legislation of Ukraine contains other categories the content of which is similar to TOT. Thus, Resolution of the CMU dated 07 May 2022 No. 562 “On Approval of Regulation on Information System for Formation of a List of Territorial Communities Located in the Area of Military (Combat) Operations or which are in temporary occupation or blockade”, stipulates that the Ministry

<sup>14</sup> Draft Law on Amendments to the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” Regarding Certain Issues of Determining the legal Status of Temporarily Occupied Territories of Ukraine in Conditions of Martial Law: No. 8088 dated 29 September 2022 *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40558> (accessed on: 30.11.2022).

<sup>15</sup> Explanatory note to the Draft Law on Amendments to the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” Regarding Certain Issues of Determining the legal Status of Temporarily Occupied Territories of Ukraine in Conditions of Martial Law. *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1491232> (accessed on: 30.11.2022).

of Reintegration, in coordination with the Ministry of Defence, regional and Kyiv city military administrations shall approve and regularly update the list of territorial communities which, in particular, are in temporary occupation or blockade.

However, the concept, criteria and mechanism by which “territorial communities that are in temporary occupation blockade” are determined are not defined at the legislative level. It is also not clear how this term correlates with the term “territory of Ukraine temporarily occupied by the Russian Federation” defined by the Law “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine”.

The law also contains a general unspecified definition of “de-occupation” as a process, that is, a set of measures of state policy, the result of which is the complete absence of the armed forces of the Russian Federation and the occupation administration of the Russian Federation in the territory of Ukraine, which was temporarily occupied, and the establishment of the general effective control of Ukraine over this territory. But currently there is no procedure for recognizing certain territories as de-occupied. This problem has remained since 2014, and after the full-scale invasion of the Russian Federation it has only deepened.

Since the scope of rights and additional guarantees for citizens from TOT is closely related to the determination of the status of such territories, it is obvious that the possibility of exercising the rights of such people depends on the clarity of the definition of the concept of TOT in the legislation. For the purposes of this Special Report, TOT means the territory of the Republic of Crimea and the city of Sevastopol, as well as territories in which the armed forces of the Russian Federation and the occupation administration of the Russian Federation have established and exercise actual control.

## 2.2. Right to Freedom of Movement

People living in the TOT involuntarily face the problem of impossibility of exercising their right to freedom of movement, in particular, to move safely. Leaving the TOT is one of the most dangerous processes for those who decide to do so.

Article 10 of the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” regulates the procedure for entering and leaving the TOT. It was determined that citizens of Ukraine shall have the right to free and unimpeded departure from the TOT to other territory of Ukraine. Such departure can be carried out:

- 1) across the administrative border – through the checkpoints, where temporary border control is carried out, in the condition of presentation of a document confirming Ukrainian citizenship;
- 2) across the contact line – through humanitarian corridors<sup>16</sup> organized by representatives of state authorities, as well as in any other manner available to them.

That is, the legislation of Ukraine as a legal way of exiting the TOT provides for exit towards the territory controlled by the Government of Ukraine, and in the case of exit across the administrative border (such as, for example, from the Autonomous Republic of Crimea) – the fulfilment of the condition of presenting a passport. It is often impossible to enforce these rules in the time of war because of the following:

- the person may not have a passport;
- hostilities that may take place in the vicinity of the contact line or checkpoints to and from the TOT create dangerous conditions for evacuation to the territory controlled by the Government of Ukraine.

<sup>16</sup>Humanitarian corridor is a zone temporarily demilitarized by agreement between authorized representatives of Ukraine and representatives of the armed forces of the Russian Federation and/or the occupation administration of the Russian Federation, intended to ensure the safe transit of humanitarian aid to the TOT and/or the provision of medical aid to the civilian population and the wounded people at the TOT and/or evacuation of civilian population, wounded and dead from the TOT (paragraph 2 of Part 1 of Article 1<sup>1</sup> of the Law “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine”).



The Commissioner received an appeal from a citizen of Ukraine D., who intended to evacuate from the temporarily occupied territory of Kherson Region. However, he was detained and robbed by the Russian military, after which he was left without any documents. Thus, he became a hostage of the situation. Citizen D. could not leave TOT either by leaving to the Government-controlled territory or through the Russian Federation because of the lack of identity documents.

Taking into account the expansion of the TOT geography, the actual non-operation of checkpoints that worked until 24 February 2022, and the lack of clear regulation of the definition of TOT, observance of the norms set forth in Article 10 of the Law “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” is actually impossible today.

Because of the active hostilities, the safest way to leave the TOT is often not leaving to territories controlled by the Government of Ukraine, but through the territory of the Russian Federation and other countries. For example, it is route through the Russian Federation to Belarus, Estonia, Lithuania, Latvia, Turkey, Georgia, Armenia and from there to the territory controlled by the Government of Ukraine. Some people stay in third countries. Such routes are physically hard and require significant funds. So, for example, to go from Donetsk to Georgia via Rostov-on-Don, one has to spend about UAH 10,000 per person and it takes about a day on the road if you go by bus<sup>17</sup>. The cost of a bus ticket from Simferopol to Minsk is UAH 3,500, and such trip will last more than 40 hours<sup>18</sup>. Such travels are often complicated by the need to evacuate small children, elderly people or people with disabilities. Most often, people leave for nowhere, not understanding exactly where they are going and whether they have enough money for their needs.

When leaving through the Russian Federation, citizens of Ukraine are also at risk of improper treatment by representatives of the Russian authorities. People are often forced to undergo humiliating and sometimes dangerous procedures in the so-called filtration camps. People undergo checks, including mobile phone and laptop searches, interrogations and personal searches.

At the same time, the Code of Administrative Offences of Ukraine (Article 2042) provides for liability for violation of the procedure for entering and exiting the TOT. Being aware of the reasons and all the difficulties of leaving the TOT, the existence of risks of bringing to administrative liability those who do it seems unacceptable.

Currently, there are procedures for entering and exiting the TOT of Ukraine, which were in effect even before the start of the full-scale invasion (Resolutions of the CMU dated 4 June 2015 No. 367 “On Approval of the Procedure for Entry into and Exit from the Temporarily Occupied Territory of Ukraine” and dated 17 July 2019 No. 815 “On Approval of the Procedure for Entry of persons, Movement of Goods to Temporarily Occupied Territories in Donetsk and Luhansk Regions and exit of Persons, Movement of Goods from Such Territories”). Given the fact that after 24 February 2022, the checkpoints to and from the TOT actually ceased to operate, the pre-war norms for entering and exiting the TOT in wartime are considered to be inconsistent with the new reality, and the application of this type of liability is unacceptable and does not comply with the principle of legal certainty.

According to the information of the Administration of the State Border Service of Ukraine, in the period from 24 February to 1 October 2022, the personnel of this service drew up 27 reports on administrative offences under Article 2042 of the Code of Administrative Offences of Ukraine for facts that occurred after 24 February 2022. The presence of the circumstances described above raises doubts as to their soundness.

This is also confirmed by the court practice based on the results of appeals against decisions on administrative offences. Thus, for example, in case No. 522/4876/22, the court considered a claim against

<sup>17</sup> Ticket search results on the Sindbad website (<https://sindbad.com.ru>).

<sup>18</sup> Ticket search results on the Intercars Europe website (<https://www.intercars-tickets.com>) as of 25.11.2022.

a resolution in the case of an administrative offence under Article 2042 of the Code of Administrative Offences of Ukraine, which was made for the departure from the TOT (AR of Crimea) on 26 March 2022 via the bridge across the Kerch Strait without a permit of the relevant authorities. An administrative fine in the amount of UAH 5,100 was charged from the plaintiff by a specified resolution. As it was explained at the court hearing, the man lived with his family in Mariupol, at the end of March he managed to leave with his family to Berdiansk, where he planned to wait for the humanitarian corridor to Zaporizhzhia. However, there were no corridors, gunfights began, and he made a decision to save the family in the direction in which it was possible. He and his family entered Crimea through the checkpoint, then went from Crimea to Georgia, from Georgia to Moldova and from there to Ukraine. The court established that the actions qualified as an administrative offence had been committed by the plaintiff in a state of extreme necessity. The danger that arose for the life and health of the plaintiff, his wife and child was actual and real. As the plaintiff's family had no other opportunity to leave the territory of active hostilities, that threat could not be evaded by any other means. Therefore, the court cancelled the decision in the case.

### 2.3. Access to Legal Aid and Justice

Access to legal aid and justice is a critical human right that is the de facto mechanism for ensuring all other human rights. It is obvious that the temporary occupation of part of the territory of Ukraine made it impossible for courts, law enforcement agencies, and LABs to be physically present there, however, it is very important to do everything possible from Ukraine to ensure access of citizens living on the Ukrainian territory to the Ukrainian judicial system.

In the conditions of suspension of the operation of courts and law enforcement agencies at the TOT, electronic communication is the only effective means of reaching Ukrainian justice (courts and law enforcement agencies) for citizens in temporary occupation. In this context, the recent practice of using electronic addresses for communication, for example, with the National Police and Prosecutor's Office, courts, is positive; introduction of electronic court. In most cases, all contact information is available on the official websites of these authorities, but there are also situations when law enforcement agencies are not available for electronic communication. It is also important to note that in the first months of the war, some official websites and electronic registers were unavailable.

Access to legal aid is a constituent element of the right of access to justice.

The physical separation of people at the TOT obviously introduces its own nuances into the manner of interaction between a citizen and a lawyer. A positive thing in this context is the absence of legal restrictions on concluding agreements on the provision of legal aid remotely (electronically). Thus, in particular, the Bar Council of Ukraine concluded that "...lawyers are entitled to enter into such agreements with the help of information and telecommunication systems or in another way in compliance with the requirements established by the Constitution of Ukraine and the Law of Ukraine "On the Bar and Practice of Law"<sup>19</sup>

In the condition of martial law, the role of the LAB system in the context of access to legal aid is crucial. People often do not have the resources to apply to lawyers on a fee basis or do not know where to start their search for a lawyer, while the extensive system of LAB centres facilitates the selection of a lawyer who is a specialist in a particular practice.

According to the information of the LAB Coordinating Centre for, starting from 24 February 2022, a total of 2,043 persons living on the TOT applied to local centres for the provision of free secondary legal aid as of 30 September 2022. Of these, 1,946 appeals related to obtaining legal advice and

<sup>19</sup> Following consideration of the appeal of Lawyer K. B. Prokonova regarding the possibility of concluding a legal aid agreement in accordance with the Law of Ukraine "On Electronic Commerce": Decision of the Bar Council of Ukraine dated 27 May 2017 No. 146. URL: [https://unba.org.ua/assets/uploads/legislation/rishennya/2017-05-27-r-shenny-arau-146\\_59316d9c50a47.pdf](https://unba.org.ua/assets/uploads/legislation/rishennya/2017-05-27-r-shenny-arau-146_59316d9c50a47.pdf) (accessed on: 30.11.2022).

clarifications. 97 decisions were made by local centres to provide free secondary legal aid to those persons. The most frequently asked questions related to the procedure for obtaining state aid, social payments, crossing the border, establishing facts of legal significance, the procedure for state registration of vital records (birth, death, change of the name, etc.), and collection of alimony.

The opportunity to receive advice remotely using a single contact centre number of the LAB system, which works 24/7 and free of charge within Ukraine from landline and mobile phones, has gained new relevance in wartime, especially for citizens who stay in the TOT<sup>20</sup>. At the same time, it is necessary to pay attention to the need for creating separate communication channels for persons who stay in the TOT, since it is likely that it is not always possible to contact a Ukrainian phone number from there.

Along with this, there are a number of problems that the war has actualized. Thus, the points of access to LAB are temporarily not operating in the TOT and in the areas of active hostilities. Therefore, the requirement of the current legislation that registration of the provision of secondary legal aid is possible only after a personal “live” application of the client to the LAB centre is often impossible to fulfil in conditions of war and the person’s stay on the TOT.

In view of the above, the submission of the Draft Law “On Amendments to Certain Legislative Acts for Simplifying Access to Free Legal Aid” (registration No. 7473 dated 9 August 2022) to the VRU is a good step. Thus, the above draft law provides for new norms (Articles 11<sup>1</sup>, 18) that regulate the new procedure for applying for the provision of legal services. It is provided that a written appeal can be sent using the Internet and electronic means of communication. Also, the proposed new wording of Article 21 provides for the possibility of authorizing a lawyer to represent a citizen only by a power of attorney in the absence of a power of attorney from the person<sup>21</sup>. This Draft Law was adopted as a basis on 30 August 2022.

#### 2.4. Registration of Vital Records for Persons from TOT

Birth and death are natural processes that do not stop because of the war or occupation, they cannot be put on pause. The availability of legitimate documents that confirm such facts is closely related to the ability of people to exercise their rights. The war has actualized this issue, as there is an increase in the number of deaths due to special circumstances. According to the Mariupol city authorities alone, more than 22,000 people died in the city<sup>22</sup>.

According to the comment of the Ministry of Justice, the current decrease in the number of state registrations of death is related to the temporary occupation of the territory of Ukraine, the active hostilities, and the impossibility of exercising the powers of the state registration of vital records in such territories.

Currently, the specifics of the use of documents issued at the TOT are regulated by the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine”, according to which any act (decision, document) issued by the occupying power is invalid and does not create legal consequences, except for documents confirming the fact of birth, death, registration (dissolution) of a person’s marriage in the TOT, which shall be attached to the application for state registration of the appropriate vital record.

Despite the existence of a legal norm that allows the direct use of documents from the TOT for state registration of civil records regarding facts that took place in the TOT, currently there is only

<sup>20</sup> Contact Centre *Free legal aid* URL: <https://legalaid.gov.ua/kliiyentam/pro-bezoplatnu-pravovudopomogu-bpd/kontakt-czentr/> (accessed on: 30.11.2022).

<sup>21</sup> Draft Law on Amendments to Certain Legislative Acts for Simplifying Access to Free Legal Aid: No. 7473-д dated 09.08.2022. The *Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40197> (accessed on: 30.11.2022).

<sup>22</sup> “The smell of death is everywhere.” At least 22,000 people died in Mariupol in three months – the Mayor’s Office. *Liga. News* 25/05/2022. URL: <https://news.liga.net/ua/politics/news/povsyudu-zapah-smerti-za-tri-mesyatsa-v-mariupole-pogibline-menee-22-000-chelovek-meriya> (accessed on: 30.11.2022).

a judicial procedure for establishing the fact of birth or death of a person in the TOT. Thus, Article 317 of the Civil Procedure Code regulates the specifics of court proceedings in cases of establishing the fact of birth or death of a person in the territory where martial law or emergency has been introduced, or in the TOT.

The issue of registration of birth of children in the conditions of martial law is regulated by Order of the Ministry of Health dated 4 March 2022. No. 407 “On Ensuring the Registration of Newborn Child in Conditions of Martial Law”.

Establishing the fact of the conclusion or dissolution of a marriage in the TOT under the current state of the legislation is not at all possible, despite the fact that Part 3 of Article 9 of the Law “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” provides for the recognition of documents that certify the registration (dissolution) of a person’s marriage in the TOT. Although Article 315 of the Civil Procedure Code provides for the possibility of judicial establishment of the fact of marriage registration and its dissolution, the registration of such a fact cannot be carried out. The rules of state registration of vital records in Ukraine do not contain such a basis for registration of a vital record for the conclusion / dissolution of a marriage as a court decision establishing the fact that has legal significance. As a result, civil registry authorities refuse to register such decisions. As a result such acts are not taken into account by the Ukrainian authorities or it causes the need for re-registration of the conclusion/dissolution of a marriage in the territory under the control of the Government of Ukraine, which creates an additional burden on citizens and cause confusion in the determining the moments of emergence of certain civil statuses.

In international practice, the approach by which some documents issued by the occupying authorities are recognized is called “Namibian exceptions”, the essence of which is that documents issued by the occupying authorities can be recognized if their non-recognition causes serious violations or restrictions of fundamental human rights. The application of this approach is most common for the recognition of civil records of births, deaths and marriages.

Establishing the fact of birth or death, which took place in the TOT, only through a judicial procedure (as it is currently provided for by the legislation) imposes a disproportionate burden on the persons concerned, and also creates an additional, quite noticeable (given the number of such cases) burden on the courts. For example, the Unified State Register of Court Decisions contains information on 9,361 court decisions by the search words “establishment of the fact in TOT 317 of the CPC” for the period from January to November 2022 alone.

The existing situation actually results discrimination of persons who are forced to legalize these statuses through court procedures, on the basis of residence in the TOT.

The way out of such a situation is the introduction of an extrajudicial administrative procedure for registration of at least the facts of birth, death, registration (dissolution) of marriage that took place in the TOT. Such procedures will comply with the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” and will significantly simplify the lives of people who have remained in the TOT or left from there, will contribute to the reintegration of these territories and the maintenance and development of legal ties of the residents of the TOT with Ukraine, will create conditions for the state of Ukraine to fulfil its positive obligations to ensure the rights of the person even in the conditions of occupation of part of its territory<sup>23</sup>.

<sup>23</sup> Obstacles in exercising the rights and freedoms of individuals in the occupied territory of the Crimean peninsula and temporarily uncontrolled territories of Donetsk and Luhansk Regions (registration facts of birth and death): analytical report / CIM Centre for Legal and Political Studies; Ukrainian Helsinki Human Rights Union. Lviv, 2017. 40 p. URL: <https://helsinki.org.ua/wp-content/uploads/2018/02/Zvi1t.pdf> (accessed on: 30.11.2022).

## 2.5. Uncertainty of Application of Criminal Legislation to Persons Living in TOT

With the temporary occupation of the new territories, the discussion of the issue of bringing to justice the citizens of Ukraine who stay there was actualized. Two parallel problems can be noted in this context: the imperfection of the legal norms themselves, which provide for such liability and informing about such liability by representatives of the state.

Thus, the Criminal Code has been supplemented by Article 111<sup>1</sup>, which provides for liability for collaborative activities, as well as Article 111<sup>2</sup>, which provides for liability for assisting the aggressor state. At the same time, it is obvious that virtually all spheres of activity of people who continue to live in the TOT will formally fall at least in the category “fulfilment of decisions of the occupying administration of the aggressor state” provided for in this article. Therefore, it is not clear how criminal activity will be distinguished from forced behaviour of persons in the TOT in practice.

Such supplements are contrary to Part 2 of Article 11 of the Criminal Code of Ukraine, according to which an act or omission is not a criminal offence, which, although formally, contains elements of any act provided for by the Criminal Code of Ukraine, but does not pose a public danger due to its insignificance. This proposal is also contrary to the provisions of the Criminal Code of Ukraine regarding the circumstances of extreme necessity.

Clarity in the issue of distinguishing the *corpus delicti* of the crime of “Collaborative activity” (Article 1111 of the Criminal Code of Ukraine) from other related elements could make comprehensive changes to the Criminal Code of Ukraine. As of 31 October, the VRU registered several draft laws aimed at clarifying the nature of the crime of collaborative activity.

Thus, for example, in August 2022, the CMU submitted Draft Laws No. 7646<sup>24</sup> and No. 7647<sup>25</sup> to the Parliament. The above draft laws contain a list of activities of authorities, LSGA, economic entities, which can be continued in the TOT, provided that this does not constitute provision of assistance to the aggressor state. However, as the Chief Scientific and Expert Department of the VRU rightly notes in its opinions<sup>26</sup>, the proposed approach does not solve all problem issues. It is, in particular, about the use of evaluative and language constructions that can be interpreted broadly (“measures to ensure the rights and freedoms of man and citizen”, “measures aimed at addressing humanitarian problems”).

In addition, the VRU registered Draft Law “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Improve Liability for Collaborative Activities and Related Criminal Offences” (registration No. 7570 dated 20 July 2022). It is proposed to eliminate the gaps related to the intersection of the *corpus delicti* of crimes related to collaborative activities. However, according to the opinion of the Chief Scientific and Expert Department of the VRU<sup>27</sup>, individual descriptions of actions considered

<sup>24</sup> Draft Law on Amendments to the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” Regarding Certain Issues of Determining the legal Status of Temporarily Occupied Territories of Ukraine in Conditions of Martial Law regarding the specifics of activities in the temporarily occupied territory of Ukraine: No. 7646 dated 08.08.2022 The Verkhovna Rada of Ukraine. URL <https://itd.rada.gov.ua/billInfo/Bills/Card/40204> (accessed on: 30.11.2022).

<sup>25</sup> Draft Law on Amendments to the Criminal Code of Ukraine to Improve Liability for Collaborative Activities: No. 7647 dated 08.08.2022 *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/Card/40205> (accessed on: 30.11.2022).

<sup>26</sup> Opinion of Draft Law on Amendments to the Law of Ukraine “On Ensuring Rights and Freedoms of Citizens and Legal Regime in Temporarily Occupied Territory of Ukraine” Regarding Certain Issues of Determining the legal Status of Temporarily Occupied Territories of Ukraine in Conditions of Martial Law regarding the specifics of activities in the temporarily occupied territory of Ukraine”. *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1450242> (accessed on: 30.11.2022); Opinion on Draft Law on Amendments to the Criminal Code of Ukraine to Improve Liability for Collaborative Activities”. *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1439241> (accessed on: 30.11.2022).

<sup>27</sup> Opinion on Draft Law “On Amendments to the Criminal and Criminal Procedure Codes of Ukraine to Improve Liability for Collaborative Activities and Related Criminal Offences” *The Verkhovna Rada of Ukraine*. URL: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1449127> (accessed on: 30.11.2022).

to be collaborative activities proposed by the draft law may lead to their broad interpretation and, as a result, difficulties in their proper application in practice.

Also, the VRU registered Draft Law “On Amendments to Article 111<sup>1</sup> of the Criminal Code of Ukraine to Improving Criminal Liability for Collaborative Activities” (registration No. 8077 dated 26 September 2022), which was proposed to supplement Article 111<sup>1</sup> with a new Part 5, providing for criminal liability for carrying out, in particular, professional activities related to the provision of attorney services by a citizen. It should be noted that lawyers in the TOT defend the rights of Ukrainian citizens before occupying Russian courts and are often the only possible connection with family members held in detention facilities in the TOT. Moreover, lawyers can contribute to the collection of evidence against the occupation authorities, which can be used both in national courts and in international institutions. Criminalization of such activities may deprive citizens of Ukraine of any legal protection against the occupation “authorities”.

Thus, no draft law currently registered can comprehensively solve the problem issues of bringing to criminal liability for committing the crime of collaborative activity. Therefore, an urgent task is to develop a new draft law, which, in view of the current occupation of certain territories of Ukraine, would take into account the current practice of applying Article 111<sup>1</sup> of the Criminal Code and the need to distinguish between related crimes.

## **2.6. No Compensation for Damaged and Destroyed Real Property in TOT**

Parliamentary Assembly of the Council of Europe Resolution No. 1708 (2010)<sup>28</sup> calls for ensuring timely and effective compensation for lost access and rights to housing, land and property left by refugees or IDPs, without waiting for the results of negotiations to resolve armed conflicts or the status of a particular territory.

As of today, the procedure for obtaining monetary assistance for damaged property and compensation for destroyed housing has certain restrictions. Thus, monetary compensation is granted to victims owning housing located only in the territories controlled by the Government of Ukraine. That is, the owners of housing that was destroyed in the TOT are deprived of such a right to compensation.

The absence of a legislative mechanism for compensation to persons whose property was destroyed or damaged as a result of the armed aggression testifies to the failure of the state to fulfil its positive obligations. Such a mechanism should be introduced at the level of a special law, rather than a by-law, because it concerns the right to restitution and compensation, which is one of the fundamental human rights.

On 1 April 2022 the VRU adopted the Draft Law “On Compensation for Real Property of Certain Categories Damaged and Destructed as a Result of Hostilities, Terrorist Attacks, Sabotage Caused by the Military Aggression of the Russian Federation” (registration No. 7198 dated 24 March 2022). It is assumed that the compensation procedure established by it will apply to cases of damage and destruction of real property as a result of the armed aggression against Ukraine, from the effective date of the Decree of the President of Ukraine dated 24 February 2022 No. 64 “On Introduction of Martial Law in Ukraine” That is, compensation for property destroyed before 24 February 2022 shall be paid according to the procedure established earlier.

This problem of different regulation is rightly pointed out by human rights organisations<sup>29</sup>. Also, the provisions of this draft law do not provide for the procedure for compensation for destroyed real property located in the TOT.

<sup>28</sup> Addressing property issues of refugees and internally displaced persons: Resolution 1708 (2010): 28 January 2010 Cl. 10.1. COUNCIL OF EUROPE URL: <https://rm.coe.int/16806b5a6d> (accessed on: 30.11.2022).

<sup>29</sup> Draft Law on Compensation for Real Property of Certain Categories Damaged and Destructed as a Result of Hostilities, Terrorist Attacks, Sabotage Caused by the Military Aggression of the Russian Federation: analysis of the main provisions. *Right to Protection*: 15.04.2022. URL <https://r2p.org.ua/proyekt-zakonu-pro-kompensacziyu/> (accessed on: 30.11.2022).

## 2.7. Exercising Right to Education of Persons from TOT

According to the estimates of non-governmental organisations, more than 15,000 young people, who are citizens of Ukraine, graduate from schools annually in the TOT in the Autonomous Republic of Crimea and in Sevastopol, Donetsk and Luhansk Regions. This is more than 100,000 graduates during the years of occupation. Unfortunately, despite the introduction of a simplified procedure for admission to Ukrainian educational institutions, the majority of TOT residents cannot take advantage of educational programs in the free territory of Ukraine and continue their studies in the TOT<sup>30</sup>.

Access to statistics and data collection that would reflect the real number of graduates from the TOT is quite problematic. According to UN estimates, about 92% of graduates of secondary education institutions in the TOT stay in these territories after graduation (including entering the local “occupational” higher education institutions). 5% of graduates enter Ukrainian higher education institutions by the simplified procedure, and another 1% enter by the general procedure with passing external independent assessment (EIA), like other applicants. Also, 1% of graduates enter Russian higher education institutions and higher education institutions of other countries<sup>31</sup>.

According to the Ministry of Education and Culture, all children staying in the TOT can continue their studies in general secondary education institutions located in the territory under the control of the Government of Ukraine, where there are no hostilities, either remotely or externally.

On the other hand, there are currently no verified statistics on the number of children who stay in particularly dangerous areas<sup>32</sup>.

In 2022, persons whose place of residence is registered (declared) in a particularly dangerous territory, and persons whose place of residence is the TOT, the territory of settlements on the contact line and the administrative border or who moved from it after 1 January 2022, participated in the competitive selection based on the results of an individual oral interview or a national multi-subject test when applying to higher education institutions to obtain higher education with the educational degrees of junior bachelor and bachelor.

If citizens of Ukraine from among such persons were admitted to the competitive selection for an open or fixed competitive offer, they participated in the competitive selection within quota-2 for places of state or regional order. Creative competitions and individual oral interviews were held remotely for such applicants at their request.

Special conditions for participation in the competitive selection during admission to obtain a master’s degree based on a bachelor’s degree in the form of a recommendation for admission based on obtaining a bachelor’s degree in the same speciality in 2022 were used by persons whose place of residence is registered (declared) on especially dangerous territory, in the case of admission to the same higher education institution (except for admission to specialities 081 “Law” and 293 “International Law”).

If the higher education institution does not provide master’s training in the speciality in which a bachelor’s degree was obtained, a person could submit documents under such conditions to any temporarily relocated higher education institution or higher education institution of Zaporizhzhia, Kyiv, Mykolaiv, Sumy, Kharkiv, and Chernihiv Regions.

<sup>30</sup> Position on the procedure for confirming educational qualifications by residents of temporarily occupied territories of Ukraine. Crimea SOS. 09.02.2022. URL: <https://krymsos.com/pozycziya-shhodo-procedury-pidtvverzhennya-osvitnihkvalifikacij-meshkanczyamy-tymchasovo-okupovanyh-terytorij-ukrayiny/> (accessed on: 30.11.2022).

<sup>31</sup> Education and occupied territories. According to the results of the expert discussion within the Audit of Legislative Framework Regarding Occupied Territories of Crimea and Donetsk and Luhansk Regions 2020–2014 Project, 20–21 October 2020: Analytical notes. I Analytical Centre of Ukrainian Catholic University. 16 p. URL: [https://ac.ucu.edu.ua/wp-content/uploads/2020/12/LDK\\_-osvita.pdf](https://ac.ucu.edu.ua/wp-content/uploads/2020/12/LDK_-osvita.pdf) (accessed on: 30.11.2022).

<sup>32</sup> A particularly dangerous territory means the territory of Ukraine that is recognized as temporarily occupied under martial law, territorial communities located in the area of military (combat) operations, or those that are in temporary occupation blockade.

Similar approaches were used for the further training of such persons for state budget funds. Thus, special conditions for obtaining higher education at the expense of the state or local budget (by state or regional order) on the basis of a bachelor's degree in the form of a recommendation for admission on the basis of obtaining a bachelor's degree in 2022 in the same speciality were used by persons whose place of residence was registered (declared) in a particularly dangerous territory and who obtained a bachelor's degree with the same source of funding, in the case of admission to the same higher education institution (except for admission to specialities 081 "Law" and 293 "International Law"). If the higher education institution does not provide master's training in the speciality in which a bachelor's degree was obtained, a person could submit documents under such conditions to any relocated higher education institution or higher education institution of Zaporizhzhia, Kyiv, Mykolaiv, Sumy, Kharkiv, and Chernihiv Regions.

Therefore, persons from particularly dangerous areas did not undergo a competitive selection (did not take exams) in the course of admission to higher education institutions to obtain higher education for a master's degree based on a bachelor's degree.

The development of an admission procedure for persons from TOT and especially dangerous areas through an on-line interview was an important step to ensure the admission campaign of 2022. Such a mechanism caused interest among applicants, as evidenced by numerous appeals to non-governmental organisations. At the same time, human rights defenders note the inadequacy of information regarding the training opportunities for persons from TOT in the territory under the control of the Government of Ukraine. Given that such procedures are regularly subject to changes, timely and up-to-date information is extremely important<sup>33</sup>.

A significant obstacle in the process of exercising the right to education is the lack of the necessary equipment for access to distance learning (computer, laptop or at least a smartphone). Despite the ongoing digitization of all processes in the modern world, the lack of the above technical means, especially among persons who have directly suffered from the armed aggression of the Russian Federation and are financially unable to purchase expensive equipment, remains an extremely urgent issue. Moreover, the distance form of education may be inaccessible / partially inaccessible for children with some types of disabilities.

It is also worth paying attention to the double burden on children from the TOT and the existing risks of oppression by representatives of the occupation authorities of participants in the Ukrainian educational process (teachers / lecturers, pupils / students and their parents, etc.) who are actually staying in the TOT.

Finally, special attention should be paid today to the issue of the lack of a mechanism by which citizens who have received an education in the TOT would have the opportunity to confirm their knowledge and educational competences in order to continue their studies or gain access to employment in the territory under the control of the Government of Ukraine.

<sup>33</sup> Key problem issues of protecting the rights of victims of the armed aggression against Ukraine. *Donbas SOS*: 05/08/2022. URL: <https://www.donbasssos.org/zahyst-postrazhdalyh-vid-agresii/> (accessed on: 30.11.2022).



## Recommendations

### 1. To the VRU:

- to work out the issue of exemption from liability for violation of the procedure for entering to and exiting from the TOT for people who thus escaped from the armed aggression of the Russian Federation;
- to speed up consideration and adoption of Draft Law of Ukraine “On Amendments to Certain Legislative Acts for Simplifying Access to Free Legal Aid” (registration No. 7473-đ dated 9 August 2022);
- to develop comprehensive changes to the Criminal Code, aimed at distinguishing the types of crimes provided for in Articles 111, 111<sup>1</sup>, 111<sup>2</sup>, 436<sup>2</sup>;
- to legislatively regulate the issue of payment of compensation for destroyed real property located in the TOT.

### 2. To the CMU:

- to develop amendments to the legislation that would provide for a clear procedure for recognizing territories as temporarily occupied and de-occupied;
- to develop and submit to the Verkhovna Rada (Parliament) a draft law on the introduction of the procedure for the registration of births and deaths, conclusion and dissolution of marriages that took place in the TOT by civil registry offices in an administrative extrajudicial procedure.

3. The Ministry of Education should work out the possibility of legislative regulation of the issue of attestation for recognition of acquired qualifications, study results and periods of study by persons from TOT who began obtaining higher education after the date of the beginning of the temporary occupation of the relevant territory.

# **SECTION 3.**

**GRAVE VIOLATIONS  
OF IHL AND HUMAN  
RIGHTS IN THE  
COURSE OF  
HOSTILITIES**

## GRAVE VIOLATIONS OF IHL AND HUMAN RIGHTS IN THE COURSE OF HOSTILITIES

### 3.1. Determination of Spatial and Temporal Scope of Hostilities and Applicable Law

The conflict between the Russian Federation and Ukraine, which began in February 2014 with the invasion of Russian troops and the occupation of the AR of Crimea and certain district of the Donetsk and Luhansk Regions, continued after 24 February 2022 with the full-scale military operations taking place almost throughout the territory of Ukraine. In the conditions of this IAC, both the norms of IHL, namely the respective applicable treaties and customs that regulate the behaviour of belligerents during the IAC<sup>34</sup>, and the norms of the IHRL, namely the respective applicable international treaties and international customs<sup>35</sup>, which continue to be applied even in the conditions of armed conflicts with certain limitations.

IHL norms apply to the entire territory of belligerent states<sup>36</sup>. The hostilities unleashed by the Russian Federation are currently being conducted in the territory of Ukraine, and IHL obliges both the Russian Federation and Ukraine to comply with the norms of IHL within the entire territory of Ukraine, including the TOT. Understanding that IHL norms apply to the entire territory of Ukraine, and not only to the zone of hostilities, is especially important in the context of the increasingly active use of combat drones and missile attacks of all regions of Ukraine by the Russian Federation. Given the fact that Ukraine has the right to self-defence provided for in Article 51 of the UN Charter, it can conduct military operations also in the territory of the Russian Federation. In each such case of the use of armed force in the territory of the Russian Federation by Ukraine, such actions will be subject to the provisions of IHL, which regulate IAC. In addition, IHL norms continue to protect Ukrainians forcibly removed to the territory of the Russian Federation.

IHRL obligations are extraterritorial in nature where the state exercises jurisdiction or effective control. The Russian Federation, as an aggressor state and an occupying state, bears full responsibility for the observance of human rights in the TOT both before 24 February 2022, and after that date, including in territories where effective control is exercised by non-state actors under the control of the Russian Federation, in particular, de facto occupation administrations. The Russian Federation has such control over the territories of the AR of Crimea and Sevastopol, certain districts of Donetsk and Luhansk Regions occupied in 2014, as well as during certain periods of temporary occupation of certain areas over which the Russian Federation previously established or still has effective control after 24 February 2022, in particular in Kyiv, Chernihiv, Kharkiv, Luhansk, Donetsk, Zaporizhzhia, Kherson Regions.

<sup>34</sup> The Russian Federation and Ukraine are bound by a number of international treaties, first of all, by the four Geneva Conventions of 1949, Additional Protocol I to them from 1977, the IV Hague Convention of 1907 and the Regulations on the Laws and Customs of War on Land added to it (Hague Conventions provisions), other treaties in the field of IHL, as well as norms of customary IHL applicable to IAC.

<sup>35</sup> Both Ukraine and the Russian Federation ratified the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, the Convention against Torture of 1984, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on Elimination of All Forms of Discrimination against Women of 1979, the Convention on the Rights of the Child of 1989, and the Convention on the Rights of Persons with Disabilities of 2006. Ukraine additionally ratified the Convention on the Protection of All Persons from Enforced Disappearance of 2006.

<sup>36</sup> The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in *Prosecutor v. Dusko Tadic* found that although the Geneva Conventions of 1949 are silent on the geographical scope of international "armed conflicts," their provisions suggest that they extend to the entire territory of the parties to the conflict, rather only the area where the actual hostilities take place (*Prosecutor v. Dusko Tadić*, IT-94-1/AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995, paragraphs 67–68. URL: <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Prosecutor%20v%20Tadic%20%28IT-94-1-AR72%29%20ICTY.pdf> (дата звернення: 30.11.2022)).

Ukraine's obligations regarding IHL in the territories occupied by the Russian Federation are reduced to positive ones only – these are diplomatic, economic, judicial or other measures that it can take to ensure applicants the rights stipulated by its treaties concerning IHRL<sup>37</sup>.

There is no definition and no separate legal regime for the combat zone (“combat zone”, “battlefield”, “area of military operations”) in the norms of IHL. Traditionally, the combat zone means the territory of the enemy's possible fire influence, but in the conditions of modern war, when cyber attacks, drones and other remote targeting technologies are actively used, the “narrow” concept of the combat zone is a thing of the past.

As for the effect of the IHRL norms in the zone of hostilities and the phase when such hostilities are taking place (“active phase of hostilities”), there are different approaches. If we follow the recent position of the ECtHR, determined in the case *Georgia v. Russian Federation* of 2021, the Russian Federation does not have jurisdiction to ensure human rights over those parts of the territory where the active phase of hostilities has not yet ended, and effective control has not yet been established<sup>38</sup>. Likewise, a state under attack, according to the ECtHR aforementioned judgement, should not bear responsibility (even positive obligations) regarding the territories of active hostilities, as the Court recognizes that it would be unrealistic to demand this from the captured state in a general situation of chaos and confusion<sup>39</sup>. The only legal regime applicable here, according to the Court, is IHL. This approach of the ECtHR was criticized by some international experts as narrowing the role of the Court in the area of human rights protection in armed conflicts. In the IAC between the Russian Federation and Ukraine, it is often impossible to clearly establish neither a temporal nor a geographical boundary between active hostilities and a stable situation of occupation. Worth to note the approach of the UN Human Rights Committee formulated in the General Commentary to Article 6 of the International Covenant on Civil and Political Rights of 2018, according to it, states that commit acts of aggression that lead to loss of life ipso facto violate their obligations under the IHL, and efforts aimed at preventing the risk of war are one of the most important guarantees of the right to life<sup>40</sup>. This approach interprets the concept of extraterritorial jurisdiction in a progressive way, proposing a new “impact” model of jurisdiction. In paragraph 63 of the Commentary, the Committee determines that a Contracting Party to the International Covenant on Civil and Political Rights is obliged to respect and ensure the rights provided for in Article 6 of the Covenant, even with respect to those persons who are outside the territory effectively controlled by that state, but whose right to life is nevertheless directly and reasonably affected by its military or other activities<sup>41</sup>. Today, in the conditions of the aggression of the Russian Federation against Ukraine and the lack of mechanisms of legal protection within the framework of the IHL regime, such a step of the Committee is in line with the idea of protecting human rights at the war.

In addition, the approach of the ECtHR differs from the practice of the International Court of Justice on this issue, which takes the position that IHL and IHRL in any territorial zones of armed conflict complement each other, and in cases of conflict, the norms of one of the areas act as *lex specialis*<sup>42</sup>.

<sup>37</sup> *Ilaşku and Others v. Moldova and Russia*, Application no. 48787/99, Judgment, European Court of Human Rights (ECtHR), 8 July 2004, paragraph 331.

<sup>38</sup> *Georgia v. Russia (II)*, Application no. 38263/08, Judgment (GC), ECtHR, 21 January 2021, paragraph 73.

See also: Guide on Article 1 of the European Convention on Human Rights: Obligation to respect human rights – Concepts of “jurisdiction” and imputability: Updated on 31 August 2022. URL: [https://www.echr.coe.int/documents/guide\\_art\\_1\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_1_eng.pdf) (accessed on: 05.11.2022).

<sup>39</sup> See: *Shavlokhova and Others v. Georgia (Decision)*, ECtHR, 2021, paragraphs 32–34; *Bekoyeva and Others v. Georgia (Decision)*, ECtHR, 2021, paragraphs 37–39.

<sup>40</sup> General Comment No. 36 to Article 6: Right to Life, CCPR/C/CG/36, Human Rights Committee. 30 October 2018. URL: <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life> (accessed on: 30.11.2022).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, International Court of Justice (ICJ), 8 July 1996, paragraphs 25, 106; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, ICJ, 9 July 2004, paragraph 106.

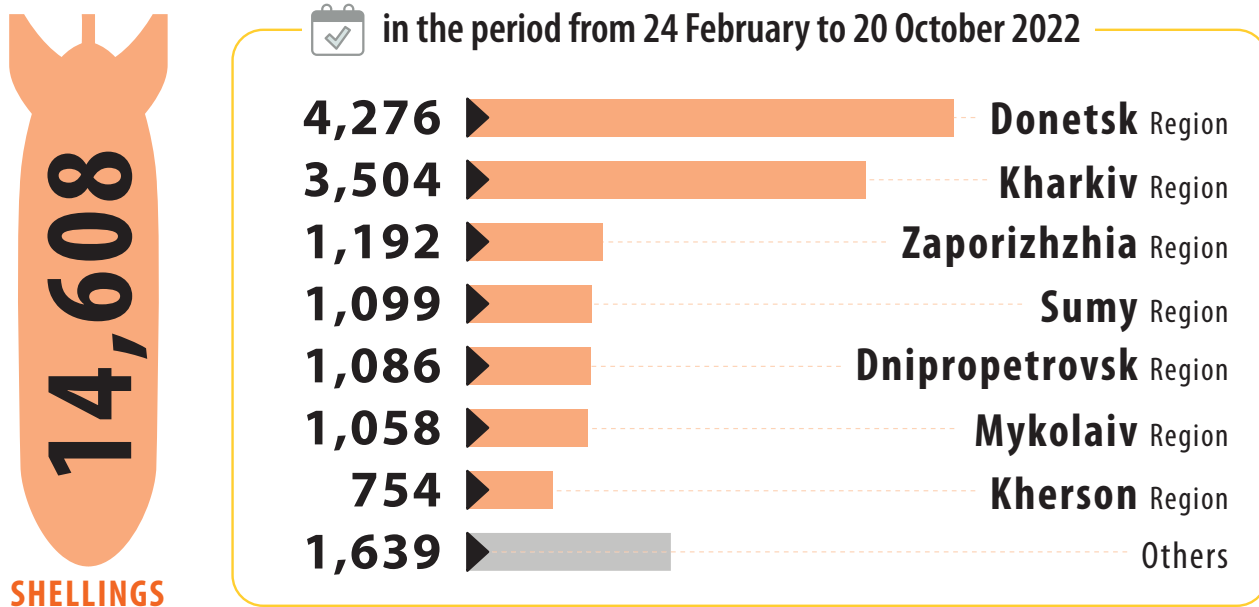
Thus, in the spatial terms of active hostilities, the prevailing legal regime will be IHL and its norms regarding the targeting of military targets, on the other hand, in the occupied territories, the norms of the IHRL should be more active, for example, regarding exercising the right to a fair trial and other guarantees of human rights.

At the same time, the amount of losses and destruction in those regions of Ukraine that were or are near the front line, as well as in those where Russian military operations were conducted, is significantly greater compared to other central and western regions of Ukraine. Destruction of civilian facilities, killing and wounding of civilians and other violations of human rights occur almost daily in this war zone.

On 25 April 2022 The Ministry of Reintegration issued an order “On Approval of Regulation on Information System for Formation of a List of Territorial Communities Located in the Area of Military (Combat) Operations or which are in temporary occupation or blockade”, which has been regularly updated since its publication<sup>43</sup>. Neither this order nor other regulations define the concept of “combat zone” and, accordingly, its special legal regime has not been defined.

At the request of the Commissioner, the Ministry of Reintegration, the Ministry of Defence, the Prosecutor General’s Office, the National Police, the SBU also distinguished those regions of Ukraine where the largest number of violations of IHL and serious violations of human rights occurred.

According to the SBU, in the period from 24 February to 20 October 2022, there were 14,608 shellings by the Russian occupying forces in the territory of Ukraine, the main part of which happened in Donetsk (4,276), Kharkiv (3,504), Zaporizhzhia (1,192), Sumy (1,099), Dnipropetrovsk (1,086), Mykolaiv (1,058) and Kherson (754) Regions.

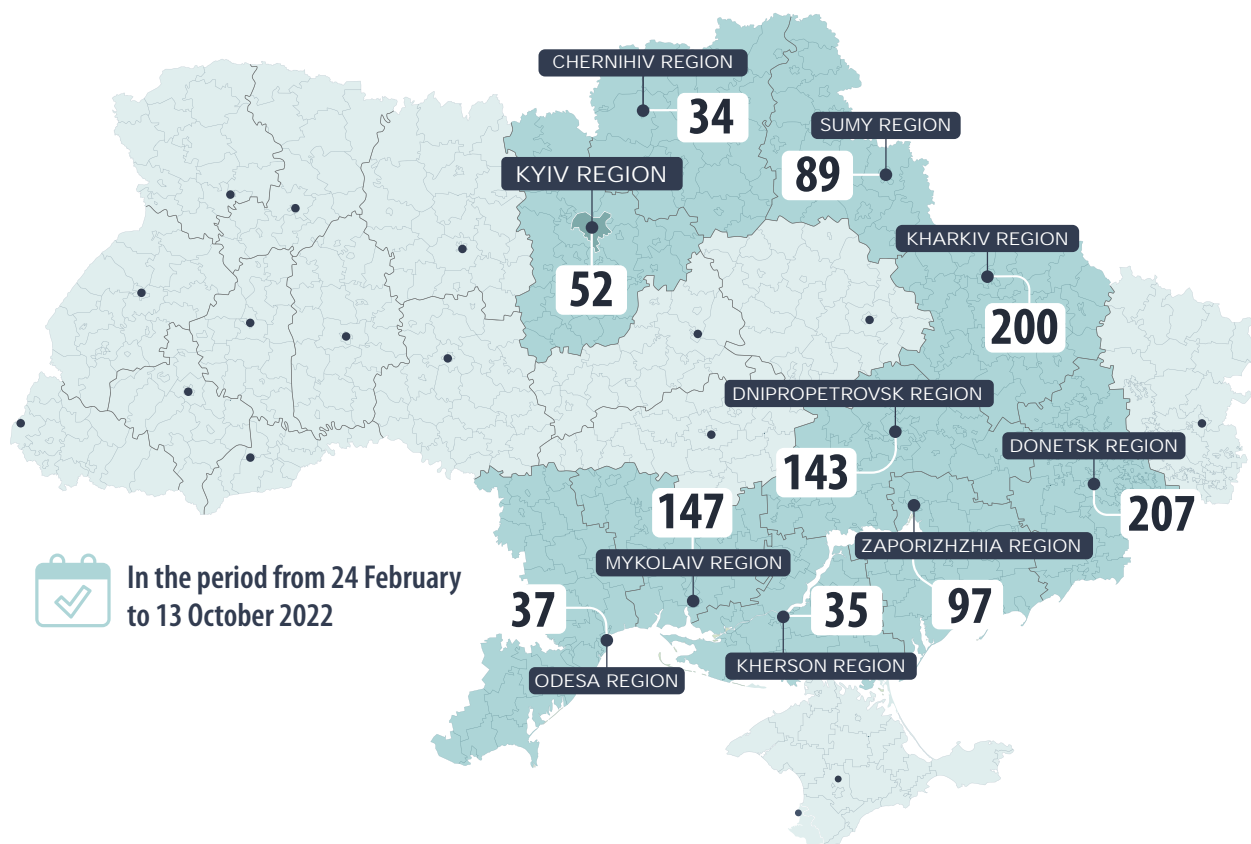


According to the Ministry of Defence, it can be concluded that the regions with most violations of IHL in the period from 24 February to 13 October 2022 are Donetsk (207 cases of violations of IHL), Kharkiv (200), Mykolaiv (147), Dnipropetrovsk (143), Zaporizhzhia (97), Sumy (89), Luhansk (79), Kyiv (52), Odesa (37), Kherson (35), and Chernihiv (34) Regions.

<sup>43</sup> On Approval of Regulation on Information System for Formation of a List of Territorial Communities Located in the Area of Military (Combat) Operations or which are in temporary occupation or blockade: Order of the Ministry of Reintegration of Temporarily Occupied Territories of Ukraine dated 25 April 2022 No. 75: Version dated 04.11.2022. URL: <https://zakon.rada.gov.ua/laws/show/z0453-22> (accessed on: 05.12.2022).

At the time the Order was issued, the Kyiv Region was already de-occupied.

## Regions with Most Violations of IHL



The list mainly includes violations related to the use of long-range explosive weapons in densely populated areas, but not only. It should also be noted that the Ministry of Defence cannot currently reflect all the facts of violations committed in the occupied territories, information about which can be collected in full only after de-occupation.

Taking into account the significant civilian losses and destruction, as well as the large volume of violations of human rights and IHL that take place in the zone of hostilities, it can be recommended to provide for a special procedure for the protection of persons residing in these zones at the legislative level, taking into account the requirements of IHL (in particular, the application of passive preventive measures) and the IHLR (in particular, the obligation to investigate the death of every civilian).

### 3.2. Grave Violations of IHL Norms during Hostilities

#### 3.2.1. General Registration of Violations of IHL Norms

##### (Violations of the Laws and Customs of War) in the National Jurisdiction of Ukraine

Starting from 24 February 2022, law enforcement agencies of Ukraine have opened criminal proceedings related to the full-scale aggression of the Russian Federation against Ukraine.

According to the Prosecutor General's Office, investigations into 60,101 crimes related to the armed conflict have been initiated as of 24 October 2022. Most of the proceedings were initiated on the grounds of violation of the laws and customs of war, i.e. IHL norms (Article 438 of the Criminal Code) – 40,221 proceedings. According to the results of the investigation of the crimes provided for by Article 438 of the Criminal Code, 195 persons were notified of suspicion. Indictments against 47 persons were sent to the court, 10 of whom have been convicted so far.

According to the Prosecutor General's Office, the volume of other violations investigated by the law enforcement agencies of Ukraine in connection with the armed aggression of the Russian Federation

against Ukraine, but which do not constitute violations of IHL norms, is also significant. Such criminal offences include: encroachment on the territorial integrity and immunity of Ukraine (Article 110 of the Criminal Code) – 12,578, collaborative activities (Article 111<sup>1</sup> of the Criminal Code) – 3,034, treason (Article 11<sup>1</sup> of the Criminal Code) – 1,828.

The central norm of the Criminal Code of Ukraine, which provides for criminal liability for violations of international humanitarian law (violation of the laws and customs of war), is Article 438 of the Criminal Code of Ukraine. It criminalizes a limited list of acts, but at the same time allows the direct application of the norms of IHL treaties ratified by Ukraine – it is a blanket norm<sup>44</sup>.

In the process of pre-trial investigation of criminal violations of IHL norms committed in the period from 24 February 2022, Ukrainian law enforcement agencies apply an approach according to which the fact of committing an act in the context of and in connection with the armed conflict, as well as the awareness of the perpetrator of the crime of the existence of the armed conflict, shall be proven (the contextual elements of war crimes shall be established).

Article 438 of the Criminal Code does not distinguish categories of violations of the laws and customs of war<sup>45</sup>. In addition, there is no consolidated position among law enforcement agencies on the categorization of these violations, and there are discrepancies in the data they report on them. Because of this, it is currently impossible to determine how many of the 40,221 criminal proceedings under this article are war crimes. However, law enforcement agencies are already paying special attention to some types of war crimes, such as conflict-related sexual violence. Within the framework of the interpretation of Article 438 of the Criminal Code of Ukraine, law enforcement agencies can be recommended to categorize war crimes (violations of the laws and customs of war) and to develop a methodology for investigation and criminal prosecution of each of the categories or types, as well as to start keeping a register by individual categories.

Despite the fact that law enforcement agencies collect information about the victims and the damage caused to them as part of each of the proceedings, neither they nor other state agencies keep a register of victims of these violations. The introduction of such registers in coordination with the Ministry of Reintegration would allow the latter to develop better measures to protect civilians and start reparations as soon as possible.

The Criminal Code of Ukraine stipulates liability for planning, preparing, launching and waging an aggressive war (Article 437), genocide (Article 442), violation of the laws and customs of war (Article 438), but does not criminalize crimes against humanity. It was stipulated by the Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law” adopted by the VRU on 20 May 2021 (Draft Law No. 2689<sup>46</sup>), which was approved by the Verkhovna Rada, but was not signed by the President of Ukraine. At the same time, it is necessary to make changes to the Criminal Code of Ukraine that will allow prosecution for all international crimes, including crimes against humanity, within the framework of the national jurisdiction.

<sup>44</sup> The list of violations in Article 438 is not exhaustive and provides for the possibility of criminal prosecution also for “other violations of the laws and customs of war provided for by international treaties ratified by the Verkhovna Rada of Ukraine, as well as giving an order to commit such actions”.


<sup>45</sup> Examples of such categorization include Article 8 of the Rome Statute of the ICC or Sections 8–12 of the German Code of Crimes against International Law (see: Code of Crimes against International Law of 26 June 2002, as last amended by Article 1 of the Act of 22 December 2016. URL: [https://www.gesetze-im-internet.de/englisch\\_vstgb/englisch\\_vstgb.html](https://www.gesetze-im-internet.de/englisch_vstgb/englisch_vstgb.html) (accessed on: 30.11.2022)).

<sup>46</sup> See: Draft Law “On Amendments to Certain Legislative Acts of Ukraine Regarding the Implementation of International Criminal and Humanitarian Law” *The Verkhovna Rada of Ukraine*. 20 May 2021 URL: <https://www.rada.gov.ua/news/Povidomlennya/208710.html> (accessed on: 30.11.2022).

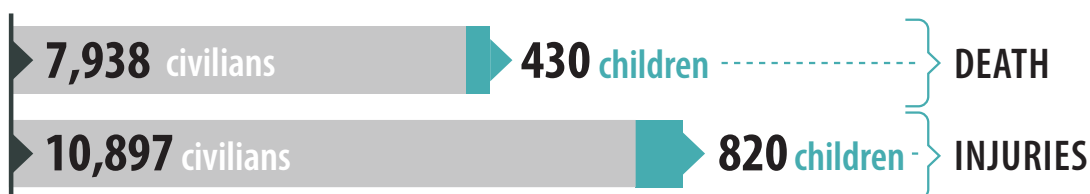
### 3.2.2. Killings and Injuries of Civilians

According to the Ukrainian Parliament Commissioner for Human Rights, this body recorded 16,295 victims among the civilian population in the country from 24 February to 30 October 2022, of which 6,430 were killed and 9,865 were injured<sup>47</sup>. Of them, 8,996 victims (3,833 dead and 5,163 wounded) were in Donetsk and Luhansk Regions, namely: in the territory controlled by Ukraine – 7,103 victims (3,404 dead and 3,699 injured); and in the territory controlled by the armed forces of the Russian Federation and associated armed forces – 1,893 victims (429 dead and 1,464 injured). In other regions of Ukraine, which were under the control of the Government of Ukraine at the time of the losses, there were 7,299 victims (2,597 dead and 4,702 injured).

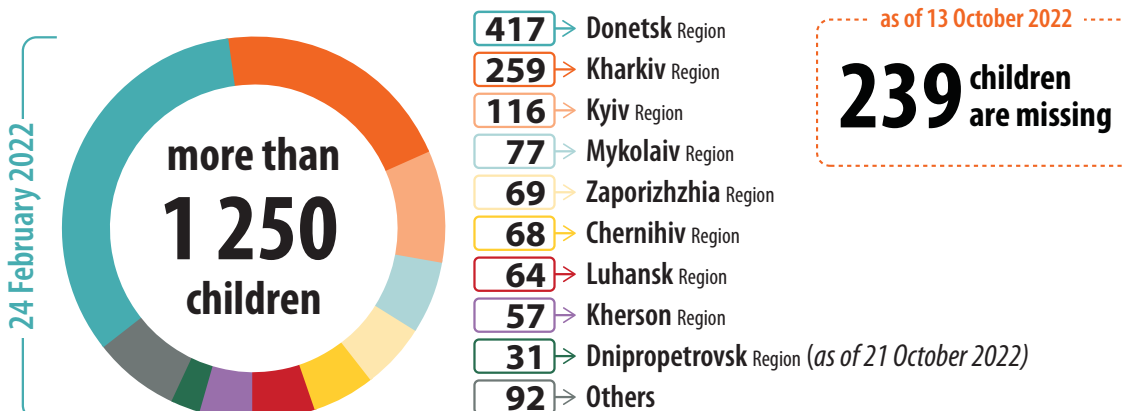
The data of the Prosecutor General’s Office of Ukraine as of 24 October 2022 are larger: crimes committed by the Russian Federation resulted in the death of 7,938 civilians (including 430 children) and wounding of 10,897 civilians (including 820 children). Thus, more than 1,250 children have been affected in Ukraine since 24 February 2022. The greatest number of affected children are in Donetsk Region – 417, Kharkiv Region – 259, Kyiv Region – 116, Mykolaiv Region – 77, Zaporizhzhia Region – 69, Chernihiv Region – 68, Luhansk Region – 64, Kherson Region – 57, Dnipropetrovsk Region – 31 (as of 21 October 2022). As of 13 October, 239 children are considered missing.

 as of 24 October 2022

#### Information on injuries and deaths of civilians



#### Information on the number of affected children



<sup>47</sup>Total casualties: 6,430 killed (2,511 men, 1,716 women, 167 girls and 201 boys, as well as 34 children and 1,801 adults, whose gender is still unknown) and 9,865 wounded (2,107 men, 1,515 women, 205 girls and 292 boys), as well as 242 children and 5,504 adults, whose gender is still unknown) (Ukraine: casualties among civilians / Office of the United Nations High Commissioner for Human Rights. 31 October 2022. URL: <https://ukraine.un.org/sites/default/files/2022-11/Ukraine%20-%20civilian%20casualty%20updat%20as%20of%2030%20October%202022%20UKR.pdf> (accessed on: 30.11.2022)).



The actual numbers are much higher, as it is currently unknown how many people died and were injured in the TOT.

In addition, according to the information of the National Police, investigators are identifying the bodies of unidentified victims<sup>48</sup>. Biological samples have been taken from all of them and research has been appointed. Obtained DNA profiles are placed in the single database of human genetic traits maintained by the Expert Service of the Ministry of Internal Affairs. So far, 2,300 bodies are still unidentified.

Such a significant number of dead and wounded civilians is due to the fact that, firstly, most of the hostilities took place in densely populated areas, including, among others, the cities of Kharkiv, Donetsk and the Donetsk conurbation, Chernihiv, Mariupol, Kherson, Mykolaiv. Secondly, according to UNHCR<sup>49</sup>, the majority (92.1%) of civilian casualties were caused by the use of explosive weapons with a wide impact zone in populated areas. In particular, the Russian Federation actively used heavy artillery, rocket launch systems, cluster shells, missile attacks and airstrikes, mostly of an indiscriminate nature, which caused mass casualties among civilians, damage and destruction of civilian facilities at an unprecedented level, and contamination of large areas of the territory of Ukraine by dozens of thousands of mines and explosive remnants of war, from which the civilian population continues to suffer even after the de-occupation of the territories.

As of 21 October 2022, law enforcement agencies registered 225 criminal offences involving the use of prohibited weapons and means of warfare. 793 facts of the use of prohibited means of warfare<sup>50</sup> have been established, of which: 2 – chemical weapons, as well as suffocating, poisonous or other similar gases; 673 – cluster ammunition; 110 – mines (anti-personnel, landmines, remote mines); 3 – phosphorus and thermobaric (“vacuum”) bombs and shells; 5 – incendiary weapons or weapons that are primarily intended for setting fire to objects or for burning people by flame or heat. The Prosecutor General’s Office does not keep an individual register of cases of the use of prohibited or restricted weapons by the Russian Federation.

Since the start of the full-scale invasion, 274,000 explosive devices have been defused, including 2,148 aerial bombs. About 74,000 hectares of Ukrainian territory were examined and cleared of explosive objects. Kharkiv Region is the most polluted by mines, its mine concentration is greater than that of Kyiv, Chernihiv and Sumy Regions combined. In order to ensure the safety of the civilian population in the de-occupied territories and in the zones where active hostilities took place, it is necessary to strengthen the work for finding, mapping and removing mines and explosive remnants of war, to develop a strategy for the current protection of the civilian population from mine danger, as well as an action plan to normalize the life of the population in the de-occupied territories.

At the same time, not only explosive weapons of mass destruction cause the death of civilians. There are numerous evidences of executions and targeted killings of civilians in the occupied territories, and after de-occupation it became known about mass burials in these territories (Bucha of Kyiv Region, Izium of Kharkiv Region and other areas), from which bodies with signs of torture, rape and violent death are exhumed.

<sup>48</sup> The creation and operation of the Unified Register of Persons Disappeared in Special Circumstances is provided for by the Law of Ukraine dated 12 July 2018 No. 2505-VIII “On Legal Status of Persons Who Disappeared in Special Circumstances.” According to Article 12 of Chapter IV of this law, the holder of the Register is the Ministry of Internal Affairs, and the administrator is an enterprise managed by the Ministry of Internal Affairs. In addition, Order of the Ministry of Internal Affairs dated 29 August 2022 No. 535 “On Approval of the Regulation on the Unified Register of Persons Who Disappeared in Special Circumstances.” The Register is currently under development.

<sup>49</sup> Report on the situation with human rights in Ukraine, 1 February – 31 July 2022: published on 27 September 2022: Office of the United Nations High Commissioner for Human Rights 54 p. <https://www.ohchr.org/sites/default/files/documents/countries/ua/2022-09-23/ReportUkraine-1Feb-31Jul2022-ua.pdf> (accessed on: 30.11.2022).

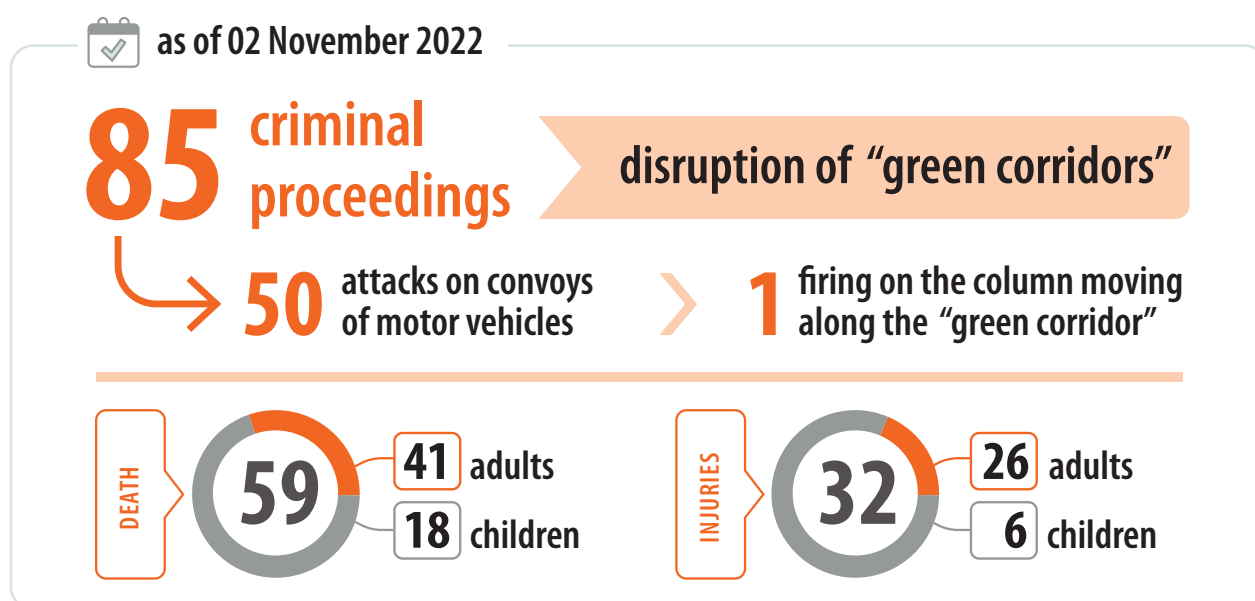
<sup>50</sup> Not all of the weapons listed below are prohibited per se. Neither Ukraine nor the Russian Federation is a party to the Convention on Cluster Munitions of 2008, but the use of such weapons in densely populated areas due to their wide impact zone is prohibited by paragraph 4 of Article 51 of the Additional Protocol to the Geneva Conventions of 12 August 1949, which concerns the protection of victims of international of armed conflicts (Protocol I) of 1977 and customary norms of IHL, as it results indiscriminate attacks and, accordingly, unacceptable deaths of civilians.

Also, the bodies of tortured civilians are found in the basements of residential buildings and other premises where torture chambers were arranged.

It should be noted separately that there have been direct attacks on media representatives. Investigators of the National Police initiated 53 criminal proceedings on the facts of criminal offences committed by the Russian military against media representatives, including on the facts of the death of 29, wounding of 15 and kidnapping of 12 media representatives. Based on the results of the pre-trial investigation, 45 criminal proceedings were transferred to the SBU authorities for investigation.

A significant number of civilians were also injured during attempts of evacuation from the TOT.

According to the National Police, as of 2 November 2022, there were 85 criminal proceedings pending on the facts of violations of the operation of “green corridors”, delays of convoys of motor vehicles with evacuees, firing, injuries, and killings. During the proceedings, 50 cases of firing on motor vehicle convoys, 1 case of firing in a convoy moving along the agreed “green corridor” and other violations were established. It was also established that 59 civilians were killed (41 adults and 18 children), 32 people were injured (including 6 children).



According to the Prosecutor General’s Office, since the beginning of the full-scale military aggression of the Russian Federation against Ukraine, the law enforcement agencies of Ukraine have registered 1,553 criminal offences under Article 438 of the Criminal Code, which included attacks on the lives and health of persons committed by servicemen and/or representatives of other military forces of the Russian Federation. In view of the above data, the deaths and injuries of civilians are much more than the registered cases. According to the recommendations of the UN Human Rights Committee<sup>51</sup> and the practice of the ECtHR<sup>52</sup>, all of them should be investigated, and the persons guilty of them should be held criminally liable for violations of IHL norms and/or grave violations of human rights.

Keeping an individual state register of dead and wounded civilians is not provided for by any law. Currently, such activities are carried out fragmentarily only by international and national human rights organizations<sup>53</sup>.

<sup>51</sup> General Comment No. 36 to Article 6: Right to Life, CCPR/C/CG/36, Human Rights Committee. 30 October 2018.

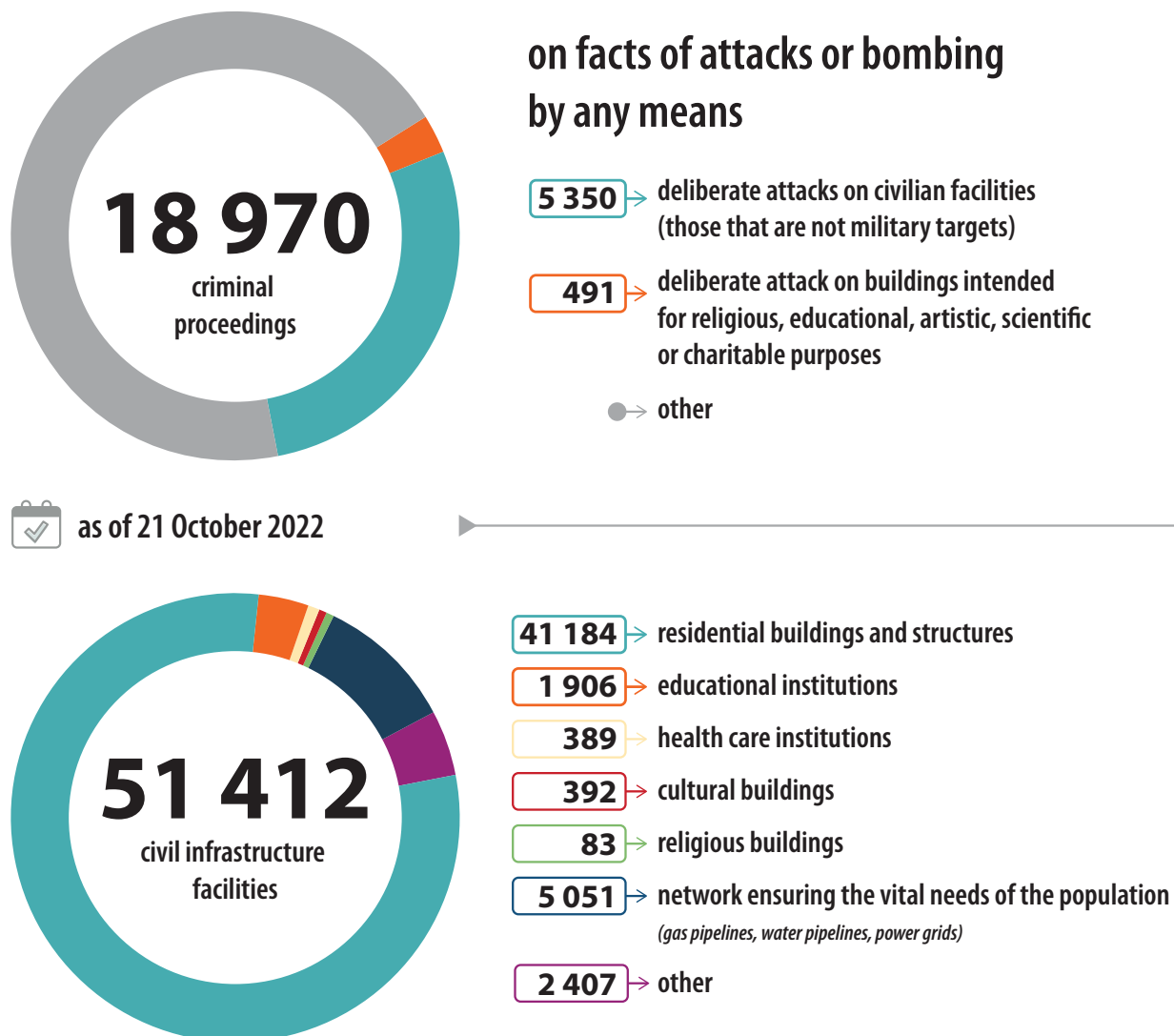
<sup>52</sup> Al-Skeini and Others v. United Kingdom, Application no. 55721/07, Judgment (GC), ECtHR, 7 July 2011, paragraphs 165–166.

<sup>53</sup> In particular, there is a volunteer project with open data called Memorial Platform (<https://www.victims.memorial>).

Such an accounting of victims will serve the purpose of reparation for the harm caused to persons affected by the armed aggression against Ukraine, and will be necessary for international and national reparation mechanisms, as well as for establishing the truth in the framework of post-conflict transitional justice. In addition, since the collected data will reflect certain “patterns of harm”, and with access to a larger amount of information, and “patterns of criminal behaviour”, the collection of data and the maintenance of such a register will contribute to the more productive work of law enforcement agencies. The methodology for forming such keeping records of civilians affected by the armed conflict was recently developed within the framework of the UN – in 2019. OHCHR issued a Manual for Keeping Records of Victims<sup>54</sup>.

### 3.2.3. Destruction and Capture of Civilian Facilities and Facilities Enjoying Special Protection

As of 21 October 2022, the Prosecutor General’s Office initiated 18,970 criminal proceedings on the facts of attacks or bombing by any means of cities, towns, villages, housing and non-residential buildings that were not military objects. Among them, 5,350 were deliberate attacks on civilian facilities



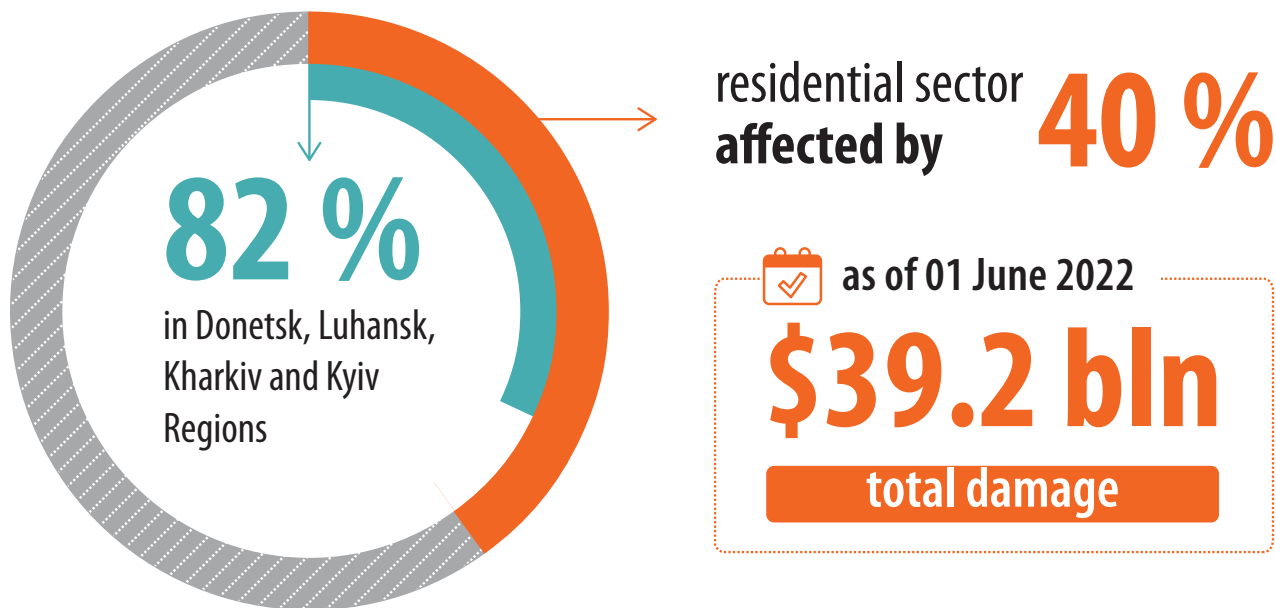
<sup>54</sup> See: Guidance on Casualty Recording / Office of the United Nations High Commissioner for Human Rights. New York; Geneva: United Nations, 2019. vi, 38 p. URL: [https://www.ohchr.org/sites/default/files/Documents/Publications/Guidance\\_on\\_Casualty\\_Recording.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/Guidance_on_Casualty_Recording.pdf) (accessed on: 30.11.2022).

(those that are not military targets), 491 were deliberate attacks on buildings intended for religious, educational, artistic, scientific or charitable purposes<sup>55</sup>.

According to the Prosecutor General’s Office, 51,412 civil infrastructure facilities were destroyed and damaged, in particular: 41,184 – residential buildings and structures, 1,906 – educational institutions, 389 – health institutions, 392 – cultural buildings, 83 – religious buildings, 5,051 – networks ensuring the vital needs of the population (gas pipelines, water pipelines, power grids), 2,407 – others.

Data of the Ministry of Reintegration (an estimate prepared by the World Bank, the Government of Ukraine, and the European Commission)<sup>56</sup> regarding the amount of destroyed housing significantly exceed the figures of the Prosecutor General’s Office.

It was the housing sector that suffered the most – 40% of the total amount of damage caused to various facilities (transport, infrastructure, agriculture, etc.). Donetsk, Luhansk, Kharkiv and Kyiv Regions accounted for 82% of the total amount of damage to the housing stock of Ukraine. As of 1 June 2022, the total estimated damage to the residential sector amounted to USD39.2 billion (not including restoration costs), mostly urban housing.



<sup>55</sup> Letter of response of the Department for Monitoring the Observance of Rights of Citizens Affected by the Armed Aggression against Ukraine of the Prosecutor General’s Office No. 166544–22 to the request of the Office of the Commissioner No. 12317.2/22/41.2 dated 13 October 2022. (<https://docs.google.com/document/d/1dXOLsAir-hI38zjgCdxZitXgUfZ8WOBYg65LLHO9eLk/edit>).

<sup>56</sup> Ukraine. Quick Assessment of Damage and Needs for Recovery – August 2022: report / World Bank, Government of Ukraine, European Commission. 2022. 267 p. URL: <https://www.minregion.gov.ua/napryamki-diyalnosti/oczinka-zbytkivta-potreb-na-vidnovlennya/rezultaty-zbytkiv-ta-potreb-na-vidnovlennya/shvydka-oczinka-zavdanoyi-shkody-tapotreb-na-vidnovlennya-stanom-na-cherven-2022r/> (accessed on: 30.11.2022).

According to the Ministry of Reintegration, as of 1 June 2022, the damage and losses were estimated at the level of about USD97 and 252 billion, respectively. Total reconstruction and recovery needs were estimated at more than USD349 billion.

In terms of the amount of damage, the civil infrastructure is second – 31%, or USD56 billion in damage and losses. In recent months, the destruction in this sector has greatly increased.

Examples of attacks on civilian facilities include the following (data from the Ministry of Defence): 12 March 2022 – artillery shelling of the residential sector by the Russian Armed Forces in Mykolaiv, as a result of which 8 people were injured, 167 residential buildings were damaged, 11 of which were completely destroyed, Hospital No. 3 and 11 educational institutions were damaged; 22 March 2022–84 artillery shellings by the Russian Armed Forces of residential areas in Kharkiv, as a result of which more than 600 houses were destroyed and damaged; 8 April 2022 the Armed Forces of the Russian Federation made a missile strike using the Tochka-U tactical missile complex at the railway station of the city of Kramatorsk, where there were about 4,000 civilians, as a result of which 59 civilians were killed, including 7 children, and 109 people were injured, including 16 children.

In order to compensate for damages caused to housing and civil infrastructure, law enforcement agencies record the damage caused, conduct inspections, demand documents and appoint relevant forensic examinations. At the same time, the filing of civil claims in criminal proceedings in such cases is not an effective measure of response and compensation for damage, since the property of persons who may be held criminally liable is located abroad, and its value is not commensurate with the amount of damage caused. At the same time, taking into account the fact that attacks on civilian infrastructure are part of an aggressive war against Ukraine, the development and implementation of international mechanisms for recovering damages from the aggressor state is considered promising.

Since the beginning of the full-scale military operations of the Russian Federation against Ukraine, there has been a massive deployment of military equipment and military units near civilian facilities in densely populated areas. In any case, such actions are a violation of the obligation to apply passive preventive measures. However, if such placement is done deliberately to protect against attacks by the opposing side, such actions constitute a war crime, namely the use of civilians as “human shields”. In addition, in the occupied territories, the practice of the Armed Forces of the Russian Federation to keep civilians in basements or other premises of buildings in which or near which armed forces are located is quite common. As of 21 October 2022, according to the Prosecutor General’s Office, 1 criminal proceeding was initiated on the fact of using protected persons as “human shields”.

According to information from the Mission of the President of Ukraine in the Autonomous Republic of Crimea, there was the movement of military equipment and weapons to the territory of the AR of Crimea and the city of Sevastopol from the Russian Federation in September – October. In connection with its large number and because of the fear of its possible destruction by the Armed Forces, most warehouses and parking lots of military equipment are located in populated areas of Crimea near civilian facilities. Moreover, a large number of military equipment and personnel are currently being recorded in the settlements in the north of Crimea and the city of Sevastopol, which also poses a threat to the civilian population living there.

### **Seizure and Damage to Educational Institutions**

According to the Prosecutor General’s Office, in addition to the destruction of educational infrastructure for children, there have been numerous cases of deployment of the Russian military in schools and other institutions for children. Such facts were established in Donetsk, Luhansk and Kherson Regions. Educational institutions were also seized in the occupied territories of Kharkiv and Kherson Regions. In all these cases, criminal proceedings have been opened on the grounds of a criminal offence provided for by Article 438 of the Criminal Code, i.e. a violation of the laws and customs of war.

### **Seizure and Damage to Health Care Facilities**

According to the data of the Ministry of Health, as of 21 October 2022, based on the information provided by health care units of the regional and Kyiv military administrations, 144 facilities were


destroyed (in Donetsk, Kharkiv, Mykolaiv Regions), 953 facilities in 498 health care facilities were damaged.

According to the Ministry of Health, as of November 7, 2022, 1,102 facilities in 500 health care facilities were damaged, and 144 facilities in 70 health care facilities were destroyed.

According to the Ministry of Health, the Register of damaged objects of health care facilities is currently being maintained, which is filled by the structural health care units of the regional military and Kyiv city state administrations, as well as institutions managed by the Ministry of Health. At the same time, the Ministry of Health does not have information on the number of people who died or were injured as a result of explosive devices hitting health care facilities. There is also no information on cases of forced deportation of persons to the Russian Federation from health care facilities. In addition, no information was provided to the Ministry of Health regarding the destroyed and stolen sanitary vehicles.

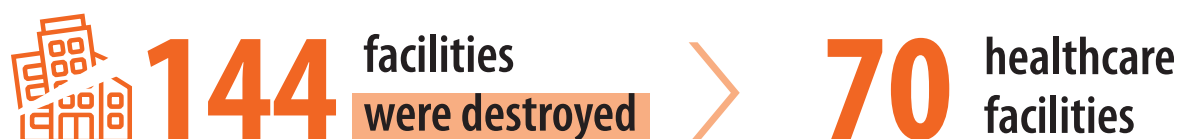
### 3.2.4. Conflict-Related Sexual Violence

Since the beginning of the full-scale invasion, the scale of conflict-related sexual violence has increased many times, which is confirmed by the reports of international organizations<sup>57</sup>. However, the lack of security in some regions of Ukraine, the stigma and trauma associated with sexual violence, as well as the lack of access of victims of conflict-related sexual violence to medical, legal and psychological services result in a low number of reports of such cases.

 as of 21 October 2022



 as of 7 November 2022



<sup>57</sup> Report on the situation with human rights in Ukraine, 1 February – 31 July 2022: published on 27 September 2022: Office of the United Nations High Commissioner for Human Rights 54 p.; Nassar A., Busol K., Sydor-Czartorysky A. Ukraine study on the status of and opportunities for reparations for survivors of conflict-related sexual violence. May 2022. 96 p. URL: <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2022/07/report/ukraine-study-on-the-status-of-and-opportunitiesfor-reparations-for-survivors-of-conflict-related-sexual-violence/GSFUkraineEng.pdf> (accessed on: 30.11.2022).

As of 31 July 2022, OHCHR documented 9 cases of rape (8 women and 1 girl), 15 cases of sexual violence as a method of torture or ill-treatment of men, and 11 cases of forced public undressing of both men and women who were considered “lawbreakers”, as well as 8 cases of other forms of sexual violence<sup>58</sup>.

The facts about the victims of conflict-related sexual violence are established in the vast majority with the help of independent visits of investigators and prosecutors to de-occupied settlements as part of a joint working group of the National Police and the Prosecutor General’s Office, receiving statements and reports from victims or their relatives to the 102 line, and media reports. However, only a small number of victims of sexual violence report such crimes on their own initiative. The majority remain silent about what happened to them, as they have suffered severe psychological trauma, are afraid of the condemnation of their relatives and the community, and worry about safe living conditions and their health.

The Prosecutor General’s Office conducts procedural management of several dozen cases of conflict-related sexual violence committed by the Armed Forces of the Russian Federation. At this time, 5 persons have been notified of suspicion of committing crimes of sexual violence related to the armed conflict (Part 1 of Article 438 of the Criminal Code). Indictments against 2 persons accused of committing the above crimes, which are currently being considered in closed sessions, have been sent to the courts for the organization of the consideration by the procedural managers.

At the same time, since the introduction of martial law in Ukraine, pre-trial investigations were started in 7 criminal proceedings for crimes against sexual freedom and sexual integrity of children committed by servicemen of the Armed Forces of the Russian Federation, of which 1 proceeding was sent to court with an indictment. So far, 5 child victims (girls aged 4 to 16) of this category of criminal offences have been identified. Such facts took place in Kyiv, Kherson and Chernihiv Regions.

It is worth emphasizing that all cases of conflict-related sexual violence, committed with the awareness of such a context, should be investigated and prosecuted by law enforcement agencies exclusively under Article 438 of the Criminal Code, and not under other articles, for example, against sexual freedom and sexual integrity.

The Prosecutor General’s Office, together with national and international experts in IHL, has prepared a Strategy for ensuring a victim- and witness-oriented approach to conducting cases related to conflict-related sexual violence. The main goal of the Strategy is to apply new approaches to the investigation of such crimes with a focus on the protection of victims, rather than to punish criminals, as it was the case before. A system of full protection of victims is now being implemented: from providing psychological, legal and financial assistance to closing personal data from the public. Law enforcement agencies should develop similar strategies for each category of war crimes.

### 3.2.5. Looting of the Civilian Population Committed in the Context of the Armed Conflict

From the very beginning of the full-scale invasion, large-scale looting of private and communal property in the territory of Ukraine began. Among other things, they were recorded by the cameras of the branch of the courier service of SDZK in Mozyr, Belarus, on the border with Ukraine<sup>59</sup>. Later, the transfer of looted property has gained on extremely large-scale forms.

Journalists of the opposition Russian online mass media “Mediazona” tracked all postal (courier) shipments and established a connection between the cities in the Republic of Crimea and Belarus on

<sup>58</sup> Report on the situation with human rights in Ukraine, 1 February – 31 July 2022: published on 27 September 2022: Office of the United Nations High Commissioner for Human Rights 54 p.

<sup>59</sup> Russian soldiers send things stolen in Ukraine to the Russian Federation through SDEK. Mozyr, Belarus, 2.04.2022 I MotolkoHelp Project: Belarusian Gayun. URL: <https://www.youtube.com/watch?v=6vyY4rnJ7IA> (accessed on: 30.11.2022).

the border with Ukraine and the cities of the Russian Federation, where the parcels were sent, which confirms the widespread practice of looting<sup>60</sup>. The magnitude of this crime is also confirmed by numerous testimonies of residents of de-occupied areas, telephone conversations of Russian soldiers with their relatives in the Russian Federation intercepted by the SBU<sup>61</sup>.

The prohibition of looting is an ancient norm of customary IHL<sup>62</sup>, codified in Articles 28 and 47 of the Hague Regulations of 1907, where looting is prohibited under all circumstances, and enshrined in Part 2 of Article 33 of the Geneva Convention for the Protection of Civilian Population in Time of War. Looting has been defined as a war crime since the First World War, later in the Statute of the Nuremberg Tribunal and currently in Article 8(2)(b)(xvi) of the Rome Statute of the ICC.

At the time of preparation of the Special Report, law enforcement agencies are investigating 5,118 cases of destruction and appropriation of property not caused by military necessity. Information on all criminal offences is recorded in the Unified Register of Pretrial Investigations, a separate register of victims of criminal offences of the specified category is not provided for. Looting of the civilian population in the context of an armed conflict is qualified by Article 438 of the Criminal Code.

### 3.2.6. Compulsion to Serve in the Armed Forces of the Russian Federation

According to the MID of the MoD, illegal “conscription” of Ukrainian citizens into the Armed Forces of the Russian Federation is carried out in the TOT in the Autonomous Republic of Crimea, Donetsk and Luhansk Regions. Also, in April 2022, the MID of the MoD made public information about the mobilization, including of doctors, in the occupied territories of Kherson, Zaporizhzhya, and Kharkiv Regions<sup>63</sup>. After the illegal referendums in the TOT, the residents of Mariupol also began to receive messages urging them to appear at the “Military Commissariat” in connection with the mobilization<sup>64</sup>, document checks of people with Donetsk registration began on the streets who, as reported, were immediately sent to the front<sup>65</sup>.

According to the MID of the MoD, as of October 2022:

- in the TOT in the ER of Crimea – a conscription campaigns have been conducted since 15 April 2015, during which about 35,000 residents of the occupied peninsula were illegally conscripted into the Armed Forces of the Russian Federation. After the announcement of the so-called “partial mobilization” in the Russian Federation<sup>66</sup>, about 2,000 conscripts and reservists from among the residents of the AR of Crimea were “conscripted” for military service under a contract in the Russian Armed Forces;
- in the TOT in Donetsk and Luhansk Regions – the “conscription” of residents of the occupied Donbas aged 18 to 27 for military service in the units of the 1st and 2nd Army Corps of the Southern Military District of the Armed Forces of the Russian Federation began in April 2021.

<sup>60</sup> The most complete map of marauders. Mediazona tracked how the military sent 58 tons of parcels (and one “Orlan”) from the border with Ukraine within three months. *Mediazona*. 26 May 2022 URL: <https://zona.media/article/2022/05/26/marauders> (accessed on: 30.11.2022).

<sup>61</sup> The Russian occupiers became so insolent that looting Ukrainian houses became for them like a trip to the supermarket. Security Service of Ukraine: Telegram channel. 30 March 2022 URL: <https://t.me/SBUkr/4013> (accessed on: 30.11.2022).

<sup>62</sup> Rule 52. Robbery. IHL database. Customary IHL / International Committee of the Red Cross. URL: [https://ihl-databases.icrc.org/customary-ihl/rus/docs/v1\\_rul\\_rule52](https://ihl-databases.icrc.org/customary-ihl/rus/docs/v1_rul_rule52) (accessed on: 30.11.2022)

<sup>63</sup> The occupiers began forced mobilization, including of doctors, in the occupied territories of Kherson, Zaporizhzhia, and Kharkiv Regions. *The Main Intelligence Directorate of the Ministry of Defence of Ukraine*: Telegram channel. 23 April 2022 URL: <https://t.me/DIUkraine/395> (accessed on: 30.11.2022).

<sup>64</sup> Mariupol residents receive messages requested them to appear to the Military Commissariat. Mariupol City Council: Telegram channel. 27 September 2022 URL: <https://t.me/mariupolrada/11166> (accessed on: 30.11.2022).

<sup>65</sup> In Mariupol preparations are being made for mobilization. Mariupol City Council: Telegram channel. 30 September 2022 URL: <https://t.me/mariupolrada/11216> (accessed on: 30.11.2022).

<sup>66</sup> Decree of the President of the Russian Federation dated 21 September 2022 No. 647 “On the announcement of partial mobilization in the Russian Federation”.



During 2021, two conscription campaigns were held, during which about 1,200 people were conscripted for conscript military service, including 700 people from the TOT in Donetsk Region and 500 people from the TOT in Luhansk Region. On 19 February 2022, the authorities under the control of the Russian Federation in the TOT in Donetsk and Luhansk Regions announced the beginning of “mobilization” and illegal “conscription” of local residents aged 18 to 55 into the Russian occupation forces. From the end of February 2022, up to 90,000 residents of the occupied east of Ukraine were mobilized to the units of the 1st and 2nd Army Corps of the Southern Military District of the Armed Forces of the Russian Federation.

The conscription of TOT residents from the Autonomous Republic of Crimea, Donetsk and Luhansk Regions for term military service in the Armed Forces of the Russian Federation was carried out under coercion, which consisted in the application of the provisions of the Criminal Code and the Code of Administrative Offences of the Russian Federation against residents of the Autonomous Republic of Crimea who refused (evaded) military service in Armed Forces of the Russian Federation. Conscription for military service and mobilization of residents of Donetsk and Luhansk Regions was carried out using methods of physical influence and threats of physical violence.

According to the Mission of the President of Ukraine in the Autonomous Republic of Crimea, an illegal mobilization campaign of the Russian Federation continues from 21 September 2022 in the Autonomous Republic of Crimea and in Sevastopol, the victims of which are citizens of Ukraine. As reported by Crimean Tatar activists<sup>67</sup>, 1,500–2,000 conscription notices were served on representatives of the Crimean Tatar community alone, despite the fact that Crimean Tatars make up about 12% of the population of the Crimean Peninsula. At least 181 people from the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol died while participating in hostilities in the territory of Ukraine on the side of the Russian Federation, and at least 25 such persons were taken prisoners.

According to the Coordination Headquarters for the Treatment of Prisoners of War, law enforcement agencies received 15 appeals regarding forcibly mobilized and military personnel, which, of course, does not reflect the real extent of the commission of such a war crime.

The Main Department of the SBU in Donetsk and Luhansk regions is conducting criminal proceedings regarding cases of forced service under part 1 of Article 438 of the Criminal Code of Ukraine. According to the proceedings, on 19 February 2022, the leadership of the occupation administration of the Russian Federation, under the conditions of the ongoing IAC, announced the forced general mobilization of Ukrainian citizens living in the temporarily occupied territory of the Donetsk Region, including minors, to participate in military actions against Ukraine. During the investigation within the framework of this proceeding, the suspicion was reported to the “head of the department of the military commissariat of the DPR in the city of Horlivka” and the “Military Commissar of the Donetsk People’s Republic” under Part 2 of Article 110, Part 2 of Article 260, Part 2 of Article 28, Part 1 of Article 438 of the Criminal Code of Ukraine.

The Prosecutor’s Office of the Autonomous Republic of Crimea and the city of Sevastopol is conducting procedural management in 12 criminal proceedings under Part 1 of Article 438 of the Criminal Code of Ukraine for the facts of 12 conscription campaigns conducted by the occupying power, during which more than 34,000 civilians from the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol were conscripted to the term military service in the armed forces and other military forces of the Russian Federation. During the pre-trial investigation, evidence was obtained of the involvement in the commission of a criminal offence of 10 so-called “military commissars” who illegally carry out their activities in the territory of the Autonomous Republic of Crimea. 3 indictments against 3 persons were sent to the court as part of a special pre-trial investigation.

At the same time, human rights organizations report on cases when, after being surrendered (captured) citizens of Ukraine who lived in the territory of Ukraine and participated in hostilities on the side of the Russian army, were subjected to criminal prosecution for treason (Article 111 of the Criminal

<sup>67</sup>Data provided by the Mission of the President of Ukraine in the Autonomous Republic of Crimea.

Code)<sup>68</sup>. It should be emphasized that in such a situation, in the process of pre-trial investigation it is important to establish the fact of the voluntary transfer of a citizen of Ukraine to the side of the enemy, and not to presume it, as well as to study in detail the circumstances of the person's mobilization.

### 3.2.7. Illegal Detentions in Connection with the Armed Conflict

On the eve of the full-scale invasion, according to human rights organizations, the Russian Federation illegally detained at least 127 citizens of Ukraine in the temporarily occupied Autonomous Republic of Crimea and on its territory, as well as at least 301 hostages were held in detention facilities in the Donetsk and Luhansk Regions<sup>69</sup>.

In January 2022, the VRU adopted the Law of Ukraine "On social and legal protection of persons who have been deprived of personal liberty as a result of the armed aggression against Ukraine, and their family members", aimed at introducing a clear and transparent procedure for providing state assistance to these persons.

Since the beginning of the full-scale invasion, there has been a significant increase in the number of arrests related to the armed conflict, carried out by representatives of various bodies of the Russian Federation. Enforced disappearances and arbitrary detentions of civilians have become common in the territory controlled by the Russian Armed Forces or armed groups controlled by them. OHCHR recorded 407 such cases (359 men, 47 women, 1 boy)<sup>70</sup>. Most of the victims were current or former civil servants of local authorities, human rights defenders, civil society activists, journalists and media representatives. OHCHR also recorded the enforced disappearances of clergymen, retired military personnel of the Armed Forces, employees of emergency services and municipal institutions, as well as civilians who did not hold any public office. OHCHR documented 18 victims found dead after disappearance (some with signs of violent death, others died in detention because of the lack of medical care). The enforced disappearance of 36 civilians detained by the Russian Armed Forces was also documented.

At least 232 victims remain arbitrarily detained, most of them in unknown locations.

Since 24 February 2022, 1,984 criminal proceedings have been initiated on the facts of kidnapping and illegal deprivation of liberty of the civilian population by servicemen of the Russian Federation and representatives of the occupation administrations. In addition, law enforcement agencies recorded 368 cases of torture and inhumane treatment, violation of human dignity (offensive and humiliating treatment) and infliction of severe suffering or serious bodily injury or harm to health by servicemen and/or representatives of other military forces of the Russian Federation.

According to information from the Mission of the President of Ukraine in the Autonomous Republic of Crimea, the occupying forces systematically violate the laws and customs of war, in particular, commit war crimes and carry out punitive and repressive measures against local residents. According to the information of the Kherson Regional Prosecutor's Office, military forces and the occupation administration of the Russian Federation have kidnapped 613 people in the territory of Kherson Region since 24 February 2022, including local government officials and others: mayors of the cities of Kherson, Kakhovka, Tavriisk, Skadovsk, Hola Prystan, Beryslav, village heads of Nova Oleksandrivka, Bekhterivka and Mylove territorial communities, the chairman of the Chornobaiivka settlement council and his deputy, the heads of the villages of Stara Zbu'ivka, Zmiivka and Osokorivka, the secretary of the Nova Kakhovka City Council, 17 deputies of regional and local councils, 43 law enforcement officers, 20 activists and 2 clergymen.

<sup>68</sup> For details, see: Analytical report "Forcible mobilization of citizens of Ukraine in the occupied territory of Ukraine by the Russian Federation: facts and legal qualifications", prepared by the Coalition "Ukraine. Five in the Morning".

<sup>69</sup> Key problematic issues in the area of protection of the rights of the affected population in the conditions of full-scale armed aggression against Ukraine / Coalition for Human Rights Organisations. (NGO "Influence Group Public Holding", NGO "Donbas SOS", NGO "Crimea SOS", etc.). URL: <https://www.donbasssos.org/zahyst-postrazhdalyh-vid-agresii/> (accessed on: 30.11.2022).

<sup>70</sup> Report on the situation with human rights in Ukraine, 1 February – 31 July 2022: published on 27 September 2022 Office of the United Nations High Commissioner for Human Rights 54 p.

### 3.3. Compliance with Norms of IHRL in Respect of Citizens in the Course of Hostilities

#### 3.3.1. The Impact of Armed Aggression of the Russian Federation on Civil and Political Rights

##### Right to Life

Life is a prerequisite for exercising all human rights and freedoms. The right to life is enshrined in Article 3 of the Universal Declaration of Human Rights: “Every person has the right to life, liberty and personal integrity.” The provisions of Article 6 of the International Covenant on Civil and Political Rights stipulate that “the right to life is an inalienable right of every person. This right is protected by law. No one can be arbitrarily deprived of life.” Article 2 of the Convention on the Protection of Human Rights and Fundamental Freedoms states that “everyone’s right to life is protected by law. No one can be intentionally deprived of life except in execution of the death sentence of the court, issued after finding him guilty of a crime for which the law provides for such a punishment. In Ukraine, the right to life is enshrined in Article 27 of the Constitution of Ukraine: “Every person has an inalienable right to life. No one can be arbitrarily deprived of life. The duty of the state is to protect human life. Everyone has the right to protect his life and health, the life and health of other people from illegal encroachments.” International law does not contain a mandatory norm regarding the parallel application of IHL and IHRL norms during armed conflicts, while the practice of the UN International Court of Justice and the UN Human Rights Committee recognizes IHL as *lex specialis* in relation to IHRL.

The armed conflict and the situation of violence within the state become the main obstacle to exercising the right to life. The specifics of the state’s obligations regarding the protection of the right to life in the conditions of an armed conflict include: issues of jurisdiction in conditions of occupation of the territory; the list of obligations of the state during an armed conflict; the limits of the need to use force in legitimate military actions, in the conditions of the need to counter terrorist attacks, special operations; peculiarities of the investigation of facts of deprivation of life.

It should be noted that since the beginning of the full-scale invasion of the Russian Federation, the investigators of the National Police have registered more than 14,900 criminal proceedings on the facts of the disappearance of 19,900 citizens, of which 7,900 are civilians. Places of mass shootings and burials of the civilian population, torture chambers, destroyed vital facilities are discovered by police officers in the de-occupied territories, including those that remain near the contact line.

Adequate shelters must be provided for the civilian population. In recent years, the issue of creation and maintenance of the fund of protective structures of civil protection has been repeatedly considered by the top leadership of the state. By the Decision of the National Security and Defence Council of Ukraine dated 18 February 2015 “On additional measures to strengthen the national security of Ukraine”, put into effect by Decree of the President of Ukraine dated 12 March 2015 No. 139, the central and local executive authorities, as well as LGSA, were instructed to ensure the readiness of the existing fund of protective structures of civil defence, as well as to organize commission inspections of buildings (structures, premises) of various purposes and their registration as dual-purpose structures and the simplest shelters. Also, the relevant tasks related to the readiness of the fund of civil defence protective structures were determined by decisions of the State Commission on Technogenic and Environmental Safety and Emergency Situations.

At the same time, according to the State Emergency Service, the existing system of shelters is insufficient. According to the electronic register of protective structures of civil defence, there are 5,694 shelters and 15,356 anti-radiation shelters in the territory of Ukraine. The existing civil protection structures, given their state of readiness (26% are not ready for use as intended) and location, can provide shelter for no more than 10% of the population of Ukraine.

Currently, sheltering of the main part of the population by local executive authorities and local government agencies is planned in dual-purpose buildings and the simplest shelters, as well as in

metro structures in the cities of Kyiv, Kharkiv, and Dnipro. According to the information provided by the relevant authorities, 367 dual purpose structures and more than 1.4 million of the simplest shelters are included in the fund of protective structures.

### Right to a Fair Trial

Since the beginning of the full-scale hostilities in the territory of Ukraine, questions have arisen regarding the activities of courts located in the territories where active hostilities are taking place and which are in temporary occupation, and judicial consideration of cases has undergone changes<sup>71</sup>.

As a result of hostilities in some regions of Ukraine, the work of the courts is not safe, which is why, the territorial jurisdiction of court cases heard in such courts was changed by the relevant orders of the Chairman of the Supreme Court, given the impossibility of courts to administer justice during martial law. In March, the Chairman of the Supreme Court changed the territorial jurisdiction in Donetsk, Kyiv, Luhansk, Kherson Regions, individual courts of Mykolaiv, Sumy, Chernihiv, Zaporizhzhia, and Kharkiv Regions. In total, 24 from February 2022, the jurisdiction of 145 courts was changed, of which only 44 resumed their work as of 17 November 2022<sup>72</sup>.

According to the recommendations of the Council of Judges of Ukraine regarding the work of courts under martial law dated 2 March 2022, courts are recommended to: if there is possibility of postponing the consideration of cases (with the exception of urgent court proceedings) and withdrawing them from consideration, taking into account the fact that a large number of parties in court proceedings are not always able to submit an application for postponing the consideration of the case due to engagement in the operation of critical infrastructure, joining the ranks of the Armed Forces of Ukraine, territorial defence, volunteer military formations and other forms of resistance to the armed aggression against Ukraine, or cannot appear in court due to danger to life; cases that are not urgent should be considered only with the written consent of all parties in the court proceedings; focus exclusively on conducting urgent court proceedings (detention, extension of detention)<sup>73</sup>.

Court hearings in most cases are conducted remotely, the relevant court practice has been formed by the moment. At the same time, a new challenge, along with air alarms, rocket and bomb strikes, is the blackout and interruptions of Internet communication, which, accordingly, make impossible the holding of court hearings even remotely.

### Right to Freedom of Expression.

On 2 May 2022, the United Nations, the OSCE, the African Union and the Organization of American States issued a joint statement on the Russian invasion and the importance of freedom of speech and information. The statement focuses on issues such as the safety of journalists, media workers and related personnel, and states that Ukrainian media and Internet infrastructure may be deliberate targets of the Russian military in order to prevent access to information, including cyber attacks<sup>74</sup>. The Council of Europe has created a platform on the safety of journalists, which regularly reports on all attacks on journalists within its competence, with particular attention paid to Ukraine.

<sup>71</sup> Updated current list of communities in the areas of hostilities, in the TOT and those in blockade. *Ministry for Reintegration of the Temporarily Occupied Territories of Ukraine*. 3 October 2022 URL: <https://minre.gov.ua/news/onovlenoaktualnyy-perelik-gromad-u-rayonah-boyovyh-diy-na-tot-i-tyh-shcho-v-otochenni-0> (accessed on: 30.11.2022).

<sup>72</sup> Order on determination of territorial jurisdiction of cases. Supreme Court. URL: [https://supreme.court.gov.ua/supreme/gromadyanam/terutor\\_pidsudnist/](https://supreme.court.gov.ua/supreme/gromadyanam/terutor_pidsudnist/) (accessed on: 30.11.2022).

<sup>73</sup> To all courts of Ukraine! The CJU has published recommendations on the work of courts under martial law. *Council of Judges of Ukraine*. 02.03.2022. URL: <http://rsu.gov.ua/ua/news/usim-sudam-ukraini-rsu-opublikovala-rekomendacii-sodo-rootisudiv-v-umovah-voennogo-stanu> (accessed on: 30.11.2022).

<sup>74</sup> Joint statement on the invasion of Ukraine and the importance of freedom of expression and freedom of information: press release OSCE. 2 May 2022 URL: <https://www.osce.org/uk/representative-on-freedom-of-media/518718> (accessed on: 30.11.2022).

At the level of non-governmental organizations, there are several key organizations, such as the Committee for Protection of Journalists, the non-governmental organization “Institute of Mass Information”, the European Federation of Journalists and the International Association for the Protection of Freedom of Speech, which regularly report on violations of journalists’ rights, as well as security problems. At the beginning of May 2022, the Pulitzer Prize Board awarded a special award to all Ukrainian journalists for their courage, resilience and dedication to truthful coverage of events<sup>75</sup>.

By Order of the Commander-in-Chief of the Armed Forces 3 March 2022. No. 73 “On the organization of interaction between the Armed Forces of Ukraine, other components of the defence forces and representatives of the mass media during the legal regime of martial law” defines a list of information that is restricted for publication. The Armed Forces of Ukraine developed recommendations for journalists regarding the organization of work at military facilities and in the area of hostilities under martial law, which provide, among other things, safety rules for journalists themselves, information that can be published, etc.<sup>76</sup>.

As of 24 October 2022, since the beginning of the full-scale war, 8 journalists have been killed while performing their professional duties, including 3 Ukrainian and 5 foreign. 34 journalists died as participants in hostilities or as a result of Russian shelling or torture, not while performing their journalistic duties<sup>77</sup>.

### 3.3.2. Impact of Armed Aggression of the Russian Federation on Social and Economic Rights

#### Right to Education

The war negatively affected the possibility of exercising the right to education in Ukraine, the operation of educational institutions and the educational process. According to the Ministry of Education and Culture, as of 17 October 2022, 2,663 educational institutions were destroyed and damaged:

In the administrative-territorial units where hostilities are taking place, the educational process continues exclusively remotely (on-line). Heads of educational institutions are informed about their personal responsibility for the organization of safe conditions for education seekers, teachers and other workers during the educational process in the educational institution. It is assumed that the form of organization of the educational process may change during the academic year depending on the security situation.

According to the Ministry of Education and Culture, from Donetsk, Luhansk, Kherson, certain district of Zaporizhzhia and Kharkiv regions, where active hostilities are going on, 30 secondary schools, 44 institutions of vocational pre-university and 65 stand-alone structural units of institutions of vocational pre-university, state, communal and private higher education have been temporarily relocated.

#### Right to Health

Healthcare facilities are used for medical purposes and become targets of military attacks. The war has increased the demand for medical services, while they have become more difficult to obtain, especially in areas where hostilities are taking place. According to the Ministry of Health, as of 21 October 2022, 1,097 facilities in 498 health care facilities were damaged.

In the first months of the war, there was a shortage of medicines, only a few pharmacies worked. This issue is currently resolved. The State Service of Ukraine for Medicinal Products and Drug Control

<sup>75</sup> The Journalists of Ukraine. *The Pulitzer Prizes*. URL: <https://www.pulitzer.org/winners/journalists-ukraine> (accessed on: 30.11.2022).

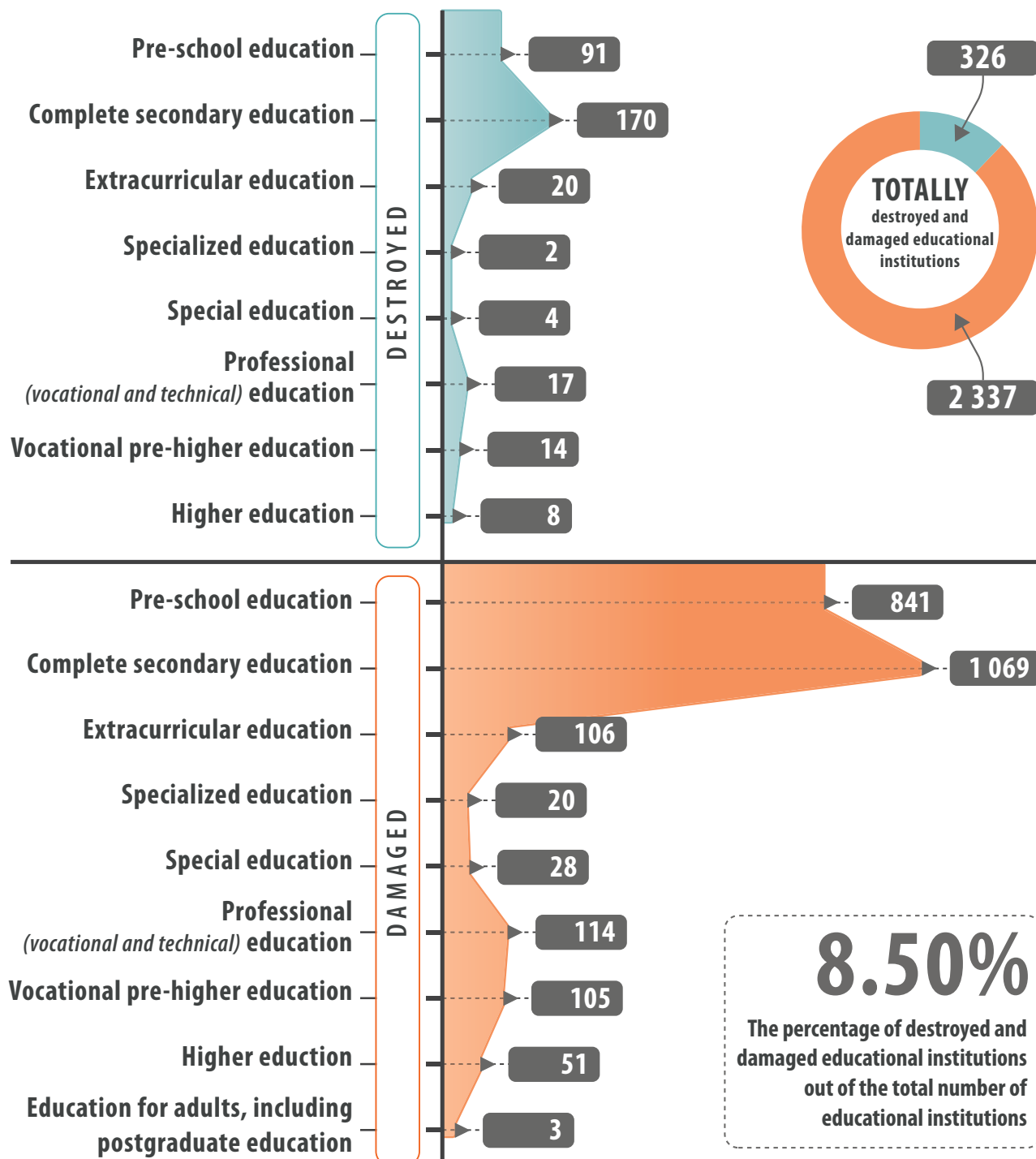
<sup>76</sup> URL: [https://www.mil.gov.ua/content/mou\\_orders/nakaz\\_73\\_zi\\_zminamu.pdf](https://www.mil.gov.ua/content/mou_orders/nakaz_73_zi_zminamu.pdf) (accessed on: 30.11.2022).

<sup>77</sup> List of killed journalists. *Institute of mass information*. 03.06.2022: data as of 24.10.2022. URL: <https://imi.org.ua/info-graphics/spysok-zagyblyh-zhurnalistiv-i45958> (accessed on: 30.11.2022).

# INFORMATION on destroyed and damaged educational institutions

as of 17 October 2022

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has launched an online pharmacy search resource in test mode, which displays pharmacies that are working “at the moment”, as well as those that are closed.

In addition, the structural units for health care of the RSA determine the places where medicines and medical products are distributed, and inform the public about them. In these points, patients receive the necessary drugs that come as charitable (humanitarian) aid<sup>78</sup>.

On 2 June 2022, WHO published a report on the problems of Ukraine against the background of the war<sup>79</sup>. It highlights key issues such as the significant increase in psychological harm and suffering; lack of access to proper medical care for people who were injured during hostilities; increase in the level of morbidity and mortality among newborns, as well as people with cancer; the risk of outbreaks of diseases such as cholera, measles, diphtheria or COVID-19 due to lack of access to water, sanitation and hygiene, overcrowded conditions in bomb shelters and collective centres, and suboptimal coverage for routine immunization and vaccination against COVID-19.

### Right to Social Security

The war, especially due to the mass displacement of the population, made the work of the social welfare sector difficult. Many people in Ukraine are completely dependent on social security and have no alternative source of income.

The Ministry of Social Policy has developed methodical recommendations for organizing the provision of social services under martial law to assist local government in providing services to citizens<sup>80</sup>. According to them, emergency (crisis) social services are provided free of charge, case management is not used. In the case of stabilization of a situation that does not threaten the life and health of a person, to use the technology of case management / handling the case. LSGA and social service providers are encouraged to organize their cohabitation with the consent of citizens to ensure the possibility of providing them with the necessary care at home, taking into account the impossibility of providing care at home to all persons with whom a social security contract has been concluded.

### Employment

Since the beginning of the full-scale invasion of the Russian Federation, 37% of Ukrainians have lost their jobs and have not yet found new jobs<sup>81</sup>. Most of them never started working, remaining in the territory where hostilities are taking place. According to the report of the International Labour Organisation, 4.8 million jobs have been lost since 24 February 2022<sup>82</sup>.

Persons who stay in the territory where hostilities are taking place can receive a certificate of registration of IDPs, even while in the territory of hostilities, which makes it possible to receive financial assistance at the same level as IDPs who have moved to another territory of Ukraine.

<sup>78</sup> Medical aid to internally displaced persons / Ministry of Health of Ukraine. *Department of Health Protection of the Zaporizhzhia Regional State Administration*, 6 September. 2022 URL: <http://doz.zoda.gov.ua/news-deialnist/2664-medichnadopomoga-vnutrishno-peremishchenim-osobam> (accessed on: 30.11.2022).

<sup>79</sup> Emergency in Ukraine: External Situation Report #14, published 2 June 2022: Reporting period: 26–1 June 2022 / World Health Organization, Regional Office for Europe. URL: <https://apps.who.int/iris/rest/bitstreams/1427327/retrieval> (accessed on: 30.11.2022).

<sup>80</sup> Recommendations on the organization of the provision of social services in conditions of martial law. Association of Ukrainian Cities URL: [https://auc.org.ua/sites/default/files/sectors/u-140/lystoda-rekomendacii\\_socposlугy\\_1646898338.pdf](https://auc.org.ua/sites/default/files/sectors/u-140/lystoda-rekomendacii_socposlугy_1646898338.pdf) (дата звернення: 30.11.2022).

<sup>81</sup> Assessment of the damage caused by Russia’s war crimes in Ukraine (15–19 September 2022). *RATING Sociological Group*. 04.10.2022. URL: [https://ratinggroup.ua/research/ukraine/oc\\_nka\\_shkodi\\_zavdano\\_vo\\_nnimi\\_zlochynami\\_ros\\_v\\_ukra\\_n\\_15-19\\_veresnya\\_2022.html](https://ratinggroup.ua/research/ukraine/oc_nka_shkodi_zavdano_vo_nnimi_zlochynami_ros_v_ukra_n_15-19_veresnya_2022.html) (accessed on: 30.11.2022).

<sup>82</sup> The impact of the Ukraine crisis on the world of work: Initial assessments: ILO Brief / International Labour Organization. URL: [https://www.ilo.org/wcmsp5/groups/public/--europe/--ro-geneva/documents/briefingnote/wcms\\_844295.pdf](https://www.ilo.org/wcmsp5/groups/public/--europe/--ro-geneva/documents/briefingnote/wcms_844295.pdf) (дата звернення: 30.11.2022).

Law “On Amendments to Certain Laws of Ukraine on the Operation of the Employment Spheres and Mandatory State Social Insurance in Case of Unemployment During Martial Law” regulates the issue of granting unemployment status and receiving unemployment benefits, respectively, to persons who stay in the territory where hostilities are taking place, who have not terminated the employment relations with the employer, according to an individual procedure for submitting an application for termination of the employment contract through the employment centre.

With the beginning of full-scale hostilities in the territory of Ukraine, self-employed persons, such as lawyers, notaries, private enforcement officers, arbitration administrators, faced the issue of the possibility to work. Some of them left the territorial units where they lived and carried out their activities.

### 3.3.3. Protection of Vulnerable Categories of Persons

#### Evacuation of the Population

According to the information of the Ministry for Reintegration, starting from 5 March 2022, the Ukrainian side, through the mediation of the ICRC, proposed 384 humanitarian corridors for the evacuation of the population from the areas of hostilities and temporary occupation. Of these, 305 were agreed with the Russian Federation, but only 165 humanitarian corridors for the evacuation of the population of 6 regions actually worked.

According to the State Emergency Service, as of 18 October 2022, a total of more than 2,267,000 people were evacuated, including more than 597,000 children and more than 47,000 people with disabilities. About half of these people were evacuated from the territory of Donetsk Region. Thus, the State Emergency Service reported that since 26 February 2022, 1,098,064 people have been evacuated (internally displaced) outside Donetsk Region alone, including 131,593 children and 24,244 people with disabilities.

The statistics of the Donetsk RSA regarding the number of people who died and were injured while trying to leave the TOT, where active hostilities are taking place, are also disappointing. Thus, according to the received data, as of 1 November 2022, the number of dead among the civilian population was 376, of which 253 were men and 123 were women; the number of wounded among the civilian population was 2,602, of which 1,606 were men and 996 were women.

It should be noted that the evacuation process is particularly difficult for people with disabilities, as it is burdened by the lack of a sufficient number of technical means for transporting people with reduced mobility. For example, according to the study “Ensuring Tender-Sensitive Inclusion of Persons with Disabilities in the Process of Humanitarian Response” conducted in July – October 2022 by the joint program of the UN Development Program, UN Women, UNICEF and the UN Population Fund, AT “Ukrzaliznytsia” has only 15 cars available that are adapted for the transportation of passengers with disabilities who use wheelchairs. Of them, 4 cars were under repair.

Vehicles are often not equipped with, or insufficient, facilities for entry and exit of people with musculoskeletal disorders who cannot travel independently to assembly points.

However, despite the existing difficulties, from 24 February 2022, AT “Ukrzaliznytsia” made approximately 5,000 evacuation travels, which transported more than 4 million passengers, including people with disabilities. In the period from 1 March to 30 June 2022, 114,180 discounted tickets for passengers with disabilities were sold. It also seems that one of the important aspects of organizing an evacuation is to properly inform the population about such a possibility. Unfortunately, today there is a lack of information among the population regarding the order and conditions of evacuation.



Inadequate quality information on evacuation routes makes it difficult for people to make an appropriate decision<sup>83</sup>.

It should also be noted that, according to the data provided by the Ministry of Justice, the evacuation of convicts and persons taken into custody from penal institutions and pretrial detention centres located in areas close to hostilities began on 3 April 2022. As of 19 October 2022, the Ministry of Justice has ensured the implementation of such measures from 17 institutions. The total number of evacuees was 4,628. Convicts and persons taken into custody were evacuated to prisons and detention centres of the Central-Western and Western interregional departments for serving criminal punishments, which are located in a safe area.

According to the Ministry of Health, as of 11 October 2022, out of 37 24-hour care facilities for children aged 3 (4) and older, which are subordinate to the structural health care units of the regional and Kyiv city military administrations, 11 children's homes were evacuated from Ukraine, in particular, 2 facilities were evacuated to Poland, 2 to Germany, 2 to the Netherlands, and one facility each to Austria, Lithuania, Romania, Slovenia, and Switzerland. Also, pupils of 13 institutions were transferred to safer territories of Ukraine.

According to the State Emergency Service, as of 18 October 2022, a total of more than 2,267,000 people were evacuated, including more than 597,000 children. Most were accommodated in Lviv (over 252,000 people), Poltava (over 191,000), Dnipropetrovsk (over 189,000), Vinnytsia (over 181,000), Zaporizhzhia (over 180,000), Kirovohrad (over 168,000), Ivano-Frankivsk (over 147,000), Cherkasy (over 128,000) and Zakarpattia (over 122,000) Regions.

### **Protection of Children**

Children live the lives of their parents. Accordingly, if the parents have not left abroad or to safer administrative-territorial units of Ukraine, the children stay living with their parents in the territory where active hostilities are taking place. Being in danger, in a prolonged state of stress, the child is deprived of normal conditions for development and education. Children are exposed to danger, many have witnessed traumatic events, including the murder or maiming of their parents and loved ones. Due to the feeling of anxiety, tension, fear, uncertainty, the process of full socialization of the child is complicated. Thus, they are one of the most vulnerable population groups.

Some parents sent their children abroad with relatives and acquaintances. Children are separated from their families, depending on the country they are assigned a guardian or given the opportunity to live with the adults who took them away from the war.

According to UNICEF, as of 1 June 2022, on average more than two children die and more than four are injured in Ukraine every day.

In the territory where hostilities are taking place, preschool education institutions are closed and schools are working remotely. In fact, extracurricular education and leisure facilities are closed. Children are forced to stay at home with their parents.

UNICEF, together with the Ministry of Education and Science, opened the NUMO online kindergarten with video classes for children aged 3 to 6. All issues are available for viewing on the Ministry of Education and UNICEF YouTube channels and on the MEGOGO platform. This project is a platform where parents and teachers can find educational materials in open access.

The Ministry of Education actively distributes recommendations on providing psychological support for participants in the educational process in the conditions of martial law in Ukraine and links to

<sup>83</sup> Results of a rapid assessment of the experience of evacuation of people with disabilities in Ukraine due to military operations in 2022, conducted by the Joint Program of the UN Development Program, UN Women, UNICEF and the UN Population Fund in the area of "Ensuring gender-sensitive inclusion of persons with disabilities in the humanitarian response process".

resources for psychological support and assistance in social networks and among the Departments of Education and Science of the RSAs<sup>84</sup>.

### **Protection of the Elderly and People with Disabilities**

In Ukraine, about a quarter of the population is over 60 years old<sup>85</sup>. They remain one of the most vulnerable categories of people. Because of their age, they most often stay at their places of residence, “look after the property” of children who have left for safer regions of Ukraine or abroad, they are afraid of not finding themselves and having social connections in their new places of residence. In some cases, elderly people cannot leave their homes due to poor health. They need help in purchasing food, water, medicines. In places of active hostilities, they rely on themselves or on volunteers.

About 2.7 million people with disabilities live in Ukraine. Such people were mostly left behind or decided to stay in areas where active hostilities are ongoing, because they cannot leave their homes due to their disability, move to a shelter in time. Their inability to use shelters is largely due to physical disabilities and the inaccessibility of many places, including metro stations and underground shelters, to persons with such disabilities. Persons with mental disabilities face problems of misunderstanding the situation and difficulty communicating with those who provide them with assistance. Due to a broken mobile connection or a lack of money to top up the account, such persons are unable to call hotlines to receive information about help and evacuation.

Some facilities for persons with disabilities come under shellings, such as the Oskil Psychoneurological Boarding School in Kharkiv Region. Unevacuated elderly people and persons with disabilities experience isolation and have difficulties in providing for their basic needs and receiving social security services. Help for such people is most often provided by volunteers.

In accordance with the recommendation of the Ministry of Social Policy during the period of martial law, in particular in the territories of hostilities, it is proposed to organize inpatient, palliative care, supported residence of elderly citizens with disabilities in an emergency (crisis) upon application by this person or their legal representative (for incapacitated persons) / notification to guardianship and guardianship body (in the absence of a legal representative) or according to the emergency (crisis) provision of social services algorithm.

In particular, according to the Ministry of Health, the Lysychansk Psychiatric Hospital of Luhansk Region was evacuated to Kamiansk and Lviv. The Sloviansk Psychiatric Hospital of Donetsk Region and the Kramatorsk Psychiatric Hospital were also evacuated (70 patients are in Dnipro, the rest about 50 have been discharged home).

<sup>84</sup> See: Psychological service. Ministry of Education and Science of Ukraine. URL: <https://mon.gov.ua/ua/osvita/pozashkilnaosvita/psihologichna-sluzhba> (accessed on: 30.11.2022).

<sup>85</sup> As part of a high-level international conference, the UN in Ukraine published the Analytical Guide on social protection issues with an emphasis on pension provision: press release *The United Nations. Ukraine*. 15 April 2021 URL: <https://ukraine.un.org/uk/124926-v-ramkakh-mizhnarodnoi-konferencii-visokogo-rivnya-oon-vukraini-oprilyudnila-analitichnu> (accessed on: 30.11.2022).

## Recommendations

### 1. To the VRU:

- to speed up consideration and adoption of the draft law of Ukraine “On Amendments to Certain Laws of Ukraine Regarding Certain Features of the Organization of Enforcement of Court Decisions and Decisions of Other Bodies During Martial Law” (registration No. 8064 dated 21 September 2022;
- to adopt amendments to the Criminal Code for the implementation of criminal prosecution of guilty individuals for crimes against humanity.

### 2. To the CMU:

- to ensure legal regulation, development and implementation of the Unified Register of Civilians affected by armed aggression against Ukraine, as well as segregation of data in the Register by categories of such persons, taking into account vulnerability criteria;
- to develop and submit to the VRU a draft law on the legal status of victims of armed aggression against Ukraine and their social guarantees, defining the concept of “a person affected by the armed aggression against Ukraine” and the categorization of victims of armed aggression of the Russian Federation, and a mechanism for compensation for damages, including restitution, compensation, rehabilitation and satisfaction.

3. The Ministry of Health should develop methods of keeping records of persons who have suffered death, injury or damage to their health as a result of the armed aggression of the Russian Federation.

4. Law enforcement agencies should ensure the conduct of an effective investigation into the death (injury) of every civilian in accordance with the requirements of the UN Human Rights Committee (General Comment No. 36 to Article b of the International Covenant on Civil and Political Rights) and the practice of the ECtHR.

5. The Prosecutor General’s Office should carry out, with the participation of international and national experts, a categorization of violations of the laws and customs of war, which are prosecuted under Article 438 of the Criminal Code.

### 6. The Ministry of Reintegration, State Emergency Service should:

- strengthen the search, mapping and removal of mines and explosive remnants of war;
- develop a strategy for the current protection of the civilian population against mine danger;
- develop a strategy (action plan) for the normalization of life of the population in the de-occupied territories.

7. AT “Ukrzaliznytsia” should increase the number of cars equipped for the transportation of persons with disabilities.

8. The Ministries, central executive authorities, RSAs, LSGA should ensure the readiness of the fund of civil defence protective structures, equip them with ramps for use by persons with disabilities.

# **SECTION 4**

**RIGHTS  
OF CITIZENS  
WHO HAVE LEFT  
UKRAINE**

## RIGHTS OF CITIZENS WHO HAVE LEFT UKRAINE

### 4.1. The Situation with the Migration of Ukrainian Citizens Abroad

According to the UNHCR, as of 30 September 2022, the number of Ukrainians in Europe who received the status of temporary protection or protection in similar national protection schemes reached 4,426,745 people. For the month from 30 September, the growth was 242.9 thousand people. Poland (almost 60,000), Germany (about 39,000), the Czech Republic (about 15,000), Great Britain, Romania and the Netherlands (about 11,000 in each country) showed the greatest increase.

Citizens of Ukraine who went abroad in connection with the start of the full-scale hostilities in the territory of the country rely mostly on the assistance of the host state, since in most cases they have lost their sources of income, and assistance from the Ukrainian authorities is not provided to such persons. At the same time, being citizens of Ukraine, they need support and help from their own state. Not remaining aloof, Ukraine takes timely measures to help its citizens abroad, but some problematic issues remain unresolved.

In general, according to the UNHCR data as of 25 October, since the beginning of the full-scale invasion, 14.591 million people left Ukraine, while those who arrived (without taking into account the statistical data for Hungary, the Russian Federation and Belarus and starting only from 28 February) – 7.144 million (in comparison with September there was an increase of 900 thousand)<sup>86</sup>. As practice shows, not all citizens of Ukraine have registered with the consular departments. It is not possible to calculate the actual number of people in a particular country due to ongoing migrations from one country to another or the return of Ukrainians home.

Separately, the UNHCR records data on the number of persons who left for the Russian Federation and Belarus: as of 29 November 2022, it is 2,869.60 thousand people. At the same time, the Russian Federation has data on all people who crossed the border, while the number of people who crossed the border in Belarus is 16.75 thousand people, and 17.29 thousand people are registered in the country, data on crossing the border of Ukraine in the opposite direction are not recorded. It is worth noting that UNHCR's data on the Russian Federation are provided by the official authorities of the Russian Federation, so it is currently impossible to confirm or deny information about the exact number of Ukrainians who are in the territory of the Russian Federation or Belarus.

### 4.2. Drafting Documents

One of the significant problems faced by Ukrainian citizens abroad is issues related to documents. In the first wave of departures abroad, at the beginning of the full-scale war in the territory of Ukraine, Ukrainians were let out of the country with internal passports<sup>87</sup> or even without passports. And already in the country of residence, these persons needed the help of the state to obtain passports of citizens of Ukraine and passports of citizens of Ukraine for travelling abroad. Of course, no consulate was designed to help the hundreds of people who started applying daily.

According to the Ministry of Foreign Affairs, in the period from 24 February to 20 October 2022, foreign diplomatic units received:

- 69,003 requests from citizens of Ukraine to issue passports of citizens of Ukraine for travelling abroad;
- 10,967 appeals from citizens requesting to issue a certificate for return of a Ukrainian citizen to Ukraine.

<sup>86</sup> See: Ukraine Refugee Situation. *Operational Data Portal* | The United Nations High Commissioner for Refugees. URL: <https://data.unhcr.org/en/situations/ukraine> (accessed on: 30.11.2022).

<sup>87</sup> State Border Guard Service: Possibility of crossing the border by citizens of Ukraine with internal passports has been extended. *Governmental Portal*. 19 April 2022 URL: <https://www.kmu.gov.ua/news/derzhprikordonsluzhba-mozhlyvistperetinannya-kordonu-gromadyanami-ukrayini-za-vnutrishnimi-pasportami-prodovzhenno> (accessed on: 30.11.2022).

Thus, according to the Ministry of Foreign Affairs, the current number of employees in foreign diplomatic and consular institutions of Ukraine is not enough, which, of course, is connected with an unprecedented number of Ukrainian citizens who were forced to go abroad at the same time as a result of the armed aggression of the Russian Federation.

All this creates numerous difficulties for our citizens, in particular, the difficulty of getting an appointment at a foreign diplomatic unit; overload of telephone lines (for consultations on consular issues) due to a large number of requests; delay in issuing passports for travelling abroad, and in some cases also in their extension and entering data about children; delay in legalization of documents / affixing of apostille.

The Commissioner receives complaints about consular issues. Thus, a citizen of Ukraine Lidiia M., together with a 15-year-old child, was forced to evacuate from TOT to Georgia and intended to get to Austria. However, she could not leave Georgia, through which she moved in transit, because the child's passport of a citizen of Ukraine for travelling abroad has expired, and the child has not yet received an internal passport.

After the intervention of the Commissioner, the right of the child was restored, the passport of a citizen of Ukraine for travelling abroad was extended.

It is worth noting that the CMU supported the launch of an experimental project on issuing passports abroad by adopting Resolution dated 10 June 2022. No. 678. In particular, in Poland, DMS opened 3 standalone units of SE Document (in Warsaw, Krakow and Gdansk). In addition, the Ministry of Internal Affairs agreed with the Ministry of Foreign Affairs of the location of the standalone units of SE Document in Greece, Estonia, Spain, Italy, Moldova, Germany, Slovakia, Turkey and the Czech Republic.

The work of the standalone units of SE Document will significantly relieve consular offices abroad and help Ukrainian citizens to obtain documents without returning to Ukraine. Instead, such issues regarding other countries remain open.

In connection with the armed aggression of the Russian Federation and the introduction of martial law on the entire territory of Ukraine, the CMU adopted Resolution dated 28 February 2022 No. 170 "Some issues of entering information in the passport of a citizen of Ukraine for travelling abroad", which approved the Temporary procedure for entering information in the passport of a citizen of Ukraine for travelling abroad. This Temporary Procedure defines the procedure for entering information about the extension of its validity in the passport of a citizen of Ukraine for travelling abroad, as well as information about the child in the passports of the parents or other representatives of the child (without the need to obtain a new passport document).

In connection with the adoption by the CMU of the Resolution dated 1 November 2022. No. 1231 "On Amendments to Clause 2 of the Resolution of the Cabinet of Ministers of Ukraine dated 28 February 2022 No. 170", currently the Temporary Order is applied by the State Migration Service in the event of a lack of technical data in its territorial bodies / territorial units for registration (in particular, instead of a lost or stolen), exchange and issuance of a passport of a citizen of Ukraine for travelling abroad using the means of the Unified State Demographic Register, and also in connection with the need for immediate travel abroad, which is caused by the urgent need for treatment of the departing person or the departure of a person who accompanies a seriously ill person, or the death of a relative who lived abroad.

Since embassies and consular institutions have such a technical possibility of drawing up, exchanging and issuing a passport of a citizen of Ukraine for travelling abroad using the means of the Unified State Demographic Register, this change actually worsened the situation of Ukrainians abroad, because today such citizens must obtain a new passport (instead of the previous opportunity to enter

data about the child in their passport or to extend its validity period). And this means that Ukrainians have to pay the cost of making a passport, and then within a period of up to 3 months to make and receive a passport abroad, they have to decide on the issue of living and working in this country and are not able to go further to another country.

All this time, they no longer receive assistance from the host states. Therefore, it is considered appropriate to return to the previous version of the Temporary Procedure for entering information in the passport of a citizen of Ukraine for travelling abroad, returning to embassies and consular institutions of Ukraine abroad the right, as well as the SMS, to enter relevant information in the passport of a citizen of Ukraine for travelling abroad in cases related to the need for immediate travel abroad due to an urgent need to treatment of a departing person, the departure of a person accompanying a seriously ill person, or the death of a relative who lived abroad.

A significant number of citizens of Ukraine faced the impossibility of obtaining a new passport of a citizen of Ukraine, being abroad and not having the opportunity to leave the country of residence due to the risk of losing temporary protection in the host state. This applies separately to citizens of Ukraine – children who have reached the age of 14 and have been abroad since the beginning of the war. Without a valid passport of a citizen of Ukraine, these children do not have the opportunity to obtain a passport for travelling abroad, and, as a result, do not receive protection and social guarantees. These problems can be solved, in particular, by opening standalone units of SE Document in the host states.

The issue of sending to foreign diplomatic units of Ukraine manufactured passports of a citizen of Ukraine and passports of a citizen of Ukraine for travelling abroad, which were ordered in the units of the Ministry of Internal Affairs in the territory of Ukraine for their subsequent issuance abroad, has been problematic for a long time. Therefore, on 28 October 2022, the CMU adopted Resolution No. 1220 “On Amendments to Certain Resolutions of the Cabinet of Ministers of Ukraine regarding documents confirming identity and Ukrainian citizenship,” which resolved this issue. According to the introduced changes, a person can obtain a passport for travelling abroad upon a written application and at their own expense by sending it through a state enterprise managed by the SMS, by international mail to a standalone unit (branch, representative office) of the SE located outside of Ukraine and managed by the SMS. The solution to this issue is a positive one, instead, shifting the financial burden exclusively to Ukrainians who were forced to leave abroad and live only on assistance from the host state is considered excessive. At the same time, this currently works only for Poland and will be relevant for countries where the SE Document is planned to be opened.

Also, there is currently a problem for families whose children were born in the TOT after the occupation. Accordingly, such children may not have birth certificates and other Ukrainian documents.

When abroad, such children become hostages of the lack of documents and cannot move freely. Currently, the only way to solve this problem is to establish such a fact of birth through court proceedings in Ukrainian courts. Using such a mechanism for families who are abroad is very difficult: at a distance, it is necessary to find a lawyer who can be a representative in the court, collect evidence, organize the submission of an application to the court and obtaining a birth certificate on the basis of a court decision.

A way out of this situation could be the procedure provided for by the law to enter data about such children into the passport or identity card for the return of their parents to Ukraine on the basis of documents confirming the fact of their birth issued in the TOT. This approach is consistent with Article 9 of the Law “On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine”, which provides for the possibility of using by Ukraine of documents confirming the fact of birth issued in the TOT.

Citizens of Ukraine who live in the TOT, came of age during the temporary occupation and did not obtain documents certifying their identity and confirming their citizenship of Ukraine also need

attention. Such citizens find themselves in the territory of third countries with a Ukrainian birth certificate, but cannot obtain either a passport of a citizen of Ukraine or an identity card for returning to Ukraine.

The issue of exchange of expired or lost driver's licenses has been partially resolved today. According to Resolution of the CMU No. 165 dated 28 February 2022 "On suspension of the terms of the provision of administrative services and the issuance of permit documents" during the martial law in Ukraine, the terms of work of subjects of the provision of administrative services are suspended in relation to their provision and the terms of issuance of relevant documents by the licensing authorities. Such documents as driver's licenses and registration certificates, the validity of which expired during the period of martial law, continue to be valid throughout the territory of Ukraine. Persons who enjoy temporary protection or adequate protection in EU countries and have lost their driver's licenses or have such licenses that have expired or have been stolen from them from July 2022 can: continue to use driver's license for the entire duration of the temporary protection; present an old-style Ukrainian driver's license issued only in Cyrillic and without an indication of the validity period, without necessarily having an additionally certified translation or an international driver's license; in case of loss or theft of a Ukrainian driver's license, obtain a temporary (for the period of stay under protection) an EU-style driver's license without passing exams – it is enough to verify the validity of the by the EU country of the driver's licence obtained in Ukraine, as well as verify its compliance with foreign standards of physical and mental fitness to driving. However, this mostly applies to driving an own vehicle abroad. In practice, there are seldom cases when Ukrainians with such driver's licenses cannot get a job as drivers, or even more long-distance drivers, and those who worked as drivers lose their jobs. Ukrainian citizens who have gone to other countries do not have the opportunity to exchange or renew their driver's license. To obtain them, Ukrainians must return to Ukraine, which is not always possible for various reasons. Today, the exchange of driver's licenses is carried out only in the city of Warsaw (Poland).

### **4.3. Ensuring the Rights of Children**

Children who went abroad not with their parents, but with their grandmothers or neighbors, acquaintances, are automatically deprived of certain opportunities abroad, since the child must be represented by a legal representative in order to apply for a place in a school or to participate in other legal relations. Since the beginning of the full-scale invasion of the Russian Federation, there have been numerous cases when parents could not go abroad and, saving their children from the war, sent them abroad with relatives, friends or even on their own. In most host states, guardianship is established over such children, as they are considered unattended children, and accordingly, citizens of the host state are appointed guardians (legal representatives). Parents who leave later or wish to take their child cannot do anything without the consent of the guardian (legal representative) and are forced to apply to the court of the host country for family reunification.

Until recently, there was a problem of obtaining a passport by a child who had to be represented by parents or legal representatives. Resolution of the CMU dated 18 October 2022 No. 1185 On amending Resolution of the Cabinet of Ministers of Ukraine dated 28 February 2022 No. 170 amended the Temporary Procedure for Entering Information in the Passport of a Citizen of Ukraine for Travelling Abroad and provides that both a legal representative and a representative acting in the interests of the child on the basis of a power of attorney can submit an application for extending the validity of a passport for travelling abroad. In addition, despite the fact that according to Ukrainian legislation, Ukrainians from the age of 16 are allowed to leave on their own, in most countries a person under the age of 18 is considered a child, and at this age a child can be represented in legal relations only by parents or legal representatives. That is why most countries have a procedure for appointing a guardian.



According to the National Social Security Service, 11,220 orphans, deprived of parental care, and those raised in family-type orphanages, foster families, and guardian families were moved (evacuated) to safe territories of Ukraine and outside Ukraine abroad. Of these, 3,376 orphans and children deprived of parental care were moved (evacuated) abroad. 2,430 children displaced abroad were placed in family-type children's homes, and 420 children were placed in foster families. As of 1 October 2022, the largest number of displaced (evacuated) children outside Ukraine were in Poland – 1,559 (38%); Germany – 760 children (18%), Turkey – 308 (7%), Italy – 281 (7%), Austria and Romania – 256 each (6% each), Switzerland – 183 (4%), the Netherlands – 159 (4%), and Spain – 132 (3%).

There were cases when children went abroad with their mother or grandmother, and then neither the children nor the mother or other relatives contacted the children's father who stayed in Ukraine. Parents do not know if they are alive, how to find them, how to help financially, they have no opportunity to communicate with their children and exercise their parental rights and duties.

#### 4.4. Right to Education

Currently, there is a problem with the education of children who have gone abroad. All children who were forced to change their place of study or residence due to active hostilities can continue their studies in general secondary education institutions of Ukraine remotely. The older the children who went abroad, the more difficult it is for them to study abroad, to pass exams, mostly they do not know the language of the country in which they live. Therefore, the opportunity to continue studying in the Ukrainian education system remotely (at your school in your native language) is the best solution to the problem today. According to the current information provided by the departments (managements) of education and science of the Ukrainian Academy of Sciences, as of 24 October 2022, 6,330 out of 12,912 institutions of general secondary education were conducting distance learning.

The Ministry of Education sent letters to the educational authorities of all countries where children from Ukraine are located, with a request to promote education according to Ukrainian standards. In most states, there are only preparatory classes for Ukrainians. The exception is only completely newly formed Ukrainian classes with the Ukrainian language of instruction in accordance with national programs and textbooks. Such classes operate in Estonia and Latvia.

Ukrainian schools in foreign countries are unique educational institutions. According to the Osvitioriia public union, at the end of September 2022, there were nine of them: in Warsaw, Wroclaw, Krakow (Poland), Berlin (Germany), Vilnius (Lithuania), Copenhagen (Denmark), Istanbul (Turkey), Stockholm (Sweden) and Utrecht (Netherlands). Ukrainian classes or Ukrainian schools abroad can be created, but this must be an initiative of the Ukrainian state, funding from Ukraine and obtaining the appropriate licenses in the host state.

Most countries take care of Ukrainian children who want to study in a distance format (for example, they provide gadgets and workplaces). Under the support program of the Ministry of Education of Austria, computers donated by legal entities and private individuals were repaired and provided free of charge to Ukrainian schoolchildren for use. According to the Federal Law on Financing the Digitalization of School Education, pupils from Ukraine also have the opportunity to use tablets for educational purposes for a limited period under the same conditions as Austrian schoolchildren. Pupils in Poland are now also provided with laptops. In Cyprus, specially equipped classrooms for online education of Ukrainian children have been created in schools of all educational districts. Germany, Austria and Italy at the highest level provide synchronous online learning in the mode of video conferencing directly in schools. The education authorities of most countries facilitate pupils' access to online educational platforms. For example, in Finland, you can find links to supporting materials posted on special websites. The German-language Eduthek platform offers a variety of Ukrainian-language educational materials for distance learning.

The position of the governments of France and the Netherlands is special, where they hold the opinion that this format of education hinders social integration, therefore, distance learning Ukrainian is allowed only at home in free time. In Luxembourg, pupils are encouraged to attend Ukrainian language classes after completing the main classes. And, for example, in Sweden and Serbia, there is no help from the host state in maintaining contact with the native country<sup>88</sup>.

Today there is a question of financing educational programs for Ukrainian children. They are financed abroad at the expense of the governments of the countries where Ukrainians are located, or at the expense of private individuals or such international organizations as the Norwegian Refugee Council, and require assistance from the Ukrainian state.

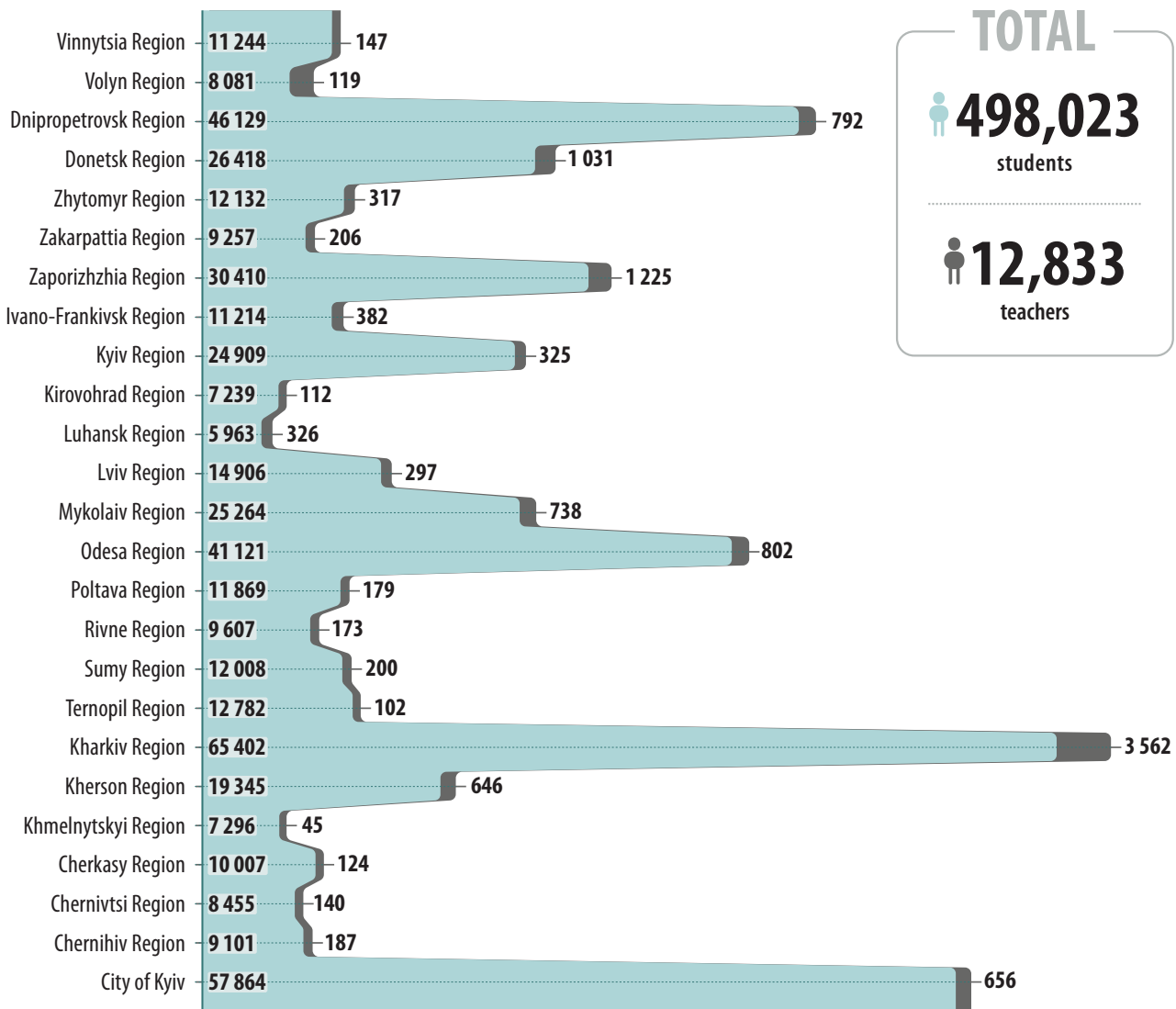
Children who study in a local school and in their Ukrainian school remotely, actually receive a double load and study in a Ukrainian school in the time free from studying in a local school. The majority of Ukrainian schools provided for the possibility of teaching in another shift, adding workload to Ukrainian teachers who divide the class between children who are in Ukraine and those who have gone abroad.

Another problem is that children abroad can either go to local schools, or go to local schools and continue their education online in their Ukrainian schools, or study online only in their Ukrainian school remotely, or not really study at any school. Currently, there is actually no control over the educational process, and there is no relevant competence for checking abroad in the state bodies of Ukraine. Checks are carried out only by local authorities in countries where children must attend local schools. For example, in France, a representative of the municipality can check where the child is every day, and if he misses classes at school for more than 3 days, he will definitely come home with a check. In the case of the absence of the results of the certification of a Ukrainian schoolchild in a local school or failure to participate in the educational process, the country's authorities take measures in accordance with their national legislation. If it turns out that the child is not certified in the local school or is not included in the educational process at all, measures can be taken in accordance with the law. At the same time, if the parents did not enrol the child in a local school, it is not always possible to find out. It would be appropriate to establish a process of checking children's attendance of classes abroad at the level of relevant agreements. It should be noted that according to the Ministry of Education, the following number of children have gone abroad since the beginning of full-scale hostilities in the territory of Ukraine (see diagram).

#### **4.5. Receipt of Pension and Social Benefits by Ukrainians Abroad**

The issue of receiving pensions and social benefits by Ukrainians abroad remains open. This possibility exists only in the case of concluding a bilateral contract / bilateral agreement between Ukraine and the host state. In this case, citizens who went abroad due to the war in Ukraine will be charged monthly pensions and social assistance by the PFU and social protection authorities, if the citizens received these payments on a bank card before leaving. On the other hand, the problem with citizens who received pension and social benefits in Ukraine not by card, but through JSC "Ukrposhta" remains unresolved. The currently proposed system of receiving pension payments to an account in JSC CB "Privatbank", which can be opened remotely, without a visit to an authorized bank, through the bank's official website or mobile application with video verification of the client, remains inactive in practice. Pensioners who did not open an account in Ukrainian banks before the war will not actually be able to open one in another country. Also, such persons do not always know how to use or do not have an electronic device on which they could do it.

<sup>88</sup> A. Miroshnikova How are Ukrainian schoolchildren taught abroad? Osvitortia. URL: <https://osvitoria.media/opinions/yak-navchayut-ukrayinskyh-shkolyariv-za-kordonom> (accessed on: 30.11.2022).



\* Data in Kherson region is determined by indicators of 368 secondary education institutions, and there is no connection with 16 secondary education institutions.

Data in Luhansk region is determined according to preliminary information, secondary education institutions of the region are located on the territories occupied by Russian troops, there is no information about them.

Data in Zaporizhzhia region without taking into account 163 secondary education institutions, with which there is no connection.

An urgent need is the establishment of a system of payment of pensions and social payments with the involvement of local systems of the host states.

Today it is problematic to arrange payments in connection with the birth of a child for women who have given birth abroad. According to the Law on State Aid for Families with Children, families with children have the right to receive state aid at birth, as well as a one-time natural aid for a baby pack, regardless of the place of residence of families. There were a significant number of pregnant women or women who gave birth abroad among Ukrainians. Resolution of the CMU dated 27 December 2001 No. 1751 "On Approval of the Procedure for Appointment and Payment of State Aid to Families with Children" stipulates that the documents required for assistance in connection with the birth of the child shall be submitted personally by the person applying for assistance. However, such a statement should be filed only within 12 months from the birth of the child. There are no changes that would take into account the current situation and the issue of the indefinite stay of Ukrainian women abroad.

The ability to file an application and documents by submitting an electronic application using an official website of the Ministry of Social Policy, integrated with its information systems of executive authorities and LSGA or through a single state Webportal of electronic services does not solve the problem, since these procedures can not be used by all citizens of Ukraine abroad. The following should be done for this:

- 1) Birth certificate was issued by a foreign diplomatic unit of Ukraine and the same institution entered birth information in a single state demographic register;
- 2) the applicant had a qualified electronic signature provided by the Ukrainian provider of electronic trust services that it is impossible to obtain abroad.

#### 4.6. Social Assistance from the Host States

Social housing in most host states abroad is gone, and many help programs are being reduced. For example, in Poland, until June, 40 zlotys a day was given to the owners of housing, in which Ukrainians lived (a program of compensation for hosting Ukrainians “40+”). Today, such assistance is received only for hosting certain categories of Ukrainians – for large families, pensioners or persons with disabilities.

In the Polish project, the allocation of free housing for Ukrainians implemented by local authorities together with the Caritas International Charitable Foundation provides for clear standards of free housing in Poland: the area of apartments should be 40–50 square meters. By the time of settlement, such housing will be repaired and provided with new furniture and household appliances. The authorities of each region will have the right to independently determine which of the Ukrainians will receive the apartment and on what conditions. Ukrainians will be able to live for 2 years on a free basis. Upon their departure to Ukraine, this housing will be used by the Voivodeship authorities who are most needed in the interests of local residents<sup>89</sup>.

All Ukrainians who have received temporary shelter of those living in Slovakia and have low income have the right to financial assistance from the state to the same extent and under the same conditions as the citizens of that country. If citizens of Ukraine wish to receive the main assistance, they must engage in volunteer activities or participate in public services or perform public works of a small volume within 32 hours starting from the month following the month in which they were first granted financial assistance. Volunteer work can be cleaning in parks, work in support centres, etc.

The conditions of stay of Ukrainians in the Czech Republic have recently changed: Currently, all arriving Ukrainians can receive assistance of 5,000 crowns without any additional conditions (it is necessary to obtain a temporary protection visa). However, in order to obtain such an amount within the next 5 months, a citizen of Ukraine must prove the complexity of his financial situation, that is, to confirm the status of the unemployed. In the case of providing a person with free housing, daily repeated food, hygienic accessories, such a person will not have the right to receive monthly payments for a total amount of 5,000 crowns, as he or she is already receiving basic assistance.

About 60,000 people from Ukraine arrived in Switzerland and received the S status, which provides for social assistance and the opportunity to find a job in the country. The authorities are currently introducing harder conditions for social assistance for Ukrainians. Previously, the assistance was almost EUR1,600 a month, but since 11 August, the payment procedure was changed. From now on, the amount of cash assistance will be determined individually.

Money withdrawn by persons with S status from bank accounts or other assets in Ukraine are considered part of income, respectively, Ukrainians will receive less assistance. They also count the income that Ukrainians receive in Switzerland<sup>90</sup>.

<sup>89</sup>I. Mishchenko Ukrainians will be given free housing in Poland. *Anti-crisis media centre*. 25 August 2022 URL: <https://acmc.ua/ukrayinczyam-nadadut-bezkoshtovne-zhytlo-u-polshhi/> (accessed on: 30.11.2022).

<sup>90</sup>Graffyová A. Money assistance to Ukrainians in Slovakia: New changes and requirements. *News from Slovakia*. 13 September 2022 URL: <http://surl.li/dolfd> (accessed on: 30.11.2022).

The Housing Program for Ukraine in the United Kingdom operated until September 2022, and more than 100,000 Ukrainians found housing under this program<sup>91</sup>.

Unfortunately, the war in Ukraine is ongoing. It is accompanied by massive attacks on critical infrastructure, including the country's power systems. Therefore, in the winter, a new wave of moving Ukrainians abroad is possible.

The Ukrainian authorities should assist Ukrainians in solving their issues abroad and help not interrupt legal connection with Ukraine. We should also keep in mind that some citizens are ready to return to Ukraine, but the obstacle is the destruction of their home or its location where active fighting is underway or occupation is ongoing.

At the same time, according to the Ministry of Foreign Affairs, from 24 February to 19 October 2022, a certain dynamics of registration of a person's certificates for return to Ukraine is observed.

#### 4.7. Employment

Employment is still a problem for Ukrainian citizens abroad, especially if a person does not know the language of the host state. In addition, most of those who left are women with children. They actually cannot get a job and go to work until their children start attending preschool or school education.

In order to simplify the employment of people who escape from the war in Ukraine and look for work in the EU, an online tool from the EU to find a job that helps Ukrainians to employ. The EU Talent Pool Pilot<sup>92</sup> helps to identify and define the applicants' skills, and facilitates the selection of employers in the EU. It brings together public employment services, private employment agencies and employers from all over the EU. Persons who enjoy temporary protection or proper protection in accordance with national legislation will be easier to find a job: They will be able to use the EU Talent Pool Pilot to create a CV, present their skills and professional experience, and have an interest in finding vacancies from more than 4,000 employers.

It is one of the numerous tools that help member states solve problems related to the integration into the labour market of people who escape from war in Ukraine. Finding a job, they will be able to gain greater financial independence, to better integrate, preserve and improve their skills for future reconstruction of Ukraine, as well as reduce the burden on public authorities and host communities.

At the same time, some Ukrainians have faced a dilemma of returning to Ukraine or loss of workplace in their country. In particular, this applies to the teachers with whom employment contracts were suspended and were obliged to return to Ukraine before the beginning of the 2022/2023 academic year. There are precedents when such persons continue to perform their work duties in remote format, as they have performed, but the management of educational institutions raises the issue of their return home under the threat of dismissal.

<sup>91</sup> Housing Program for Ukraine: Questions and answers: directory / Department for Levelling Up, Housing and Communities. Published on 14 March 2022: Last updated on: 29 July 2022. URL: <https://www.gov.uk/guidance/homes-forukraine-scheme-frequently-asked-questions.uk> (accessed on: 30.11.2022).

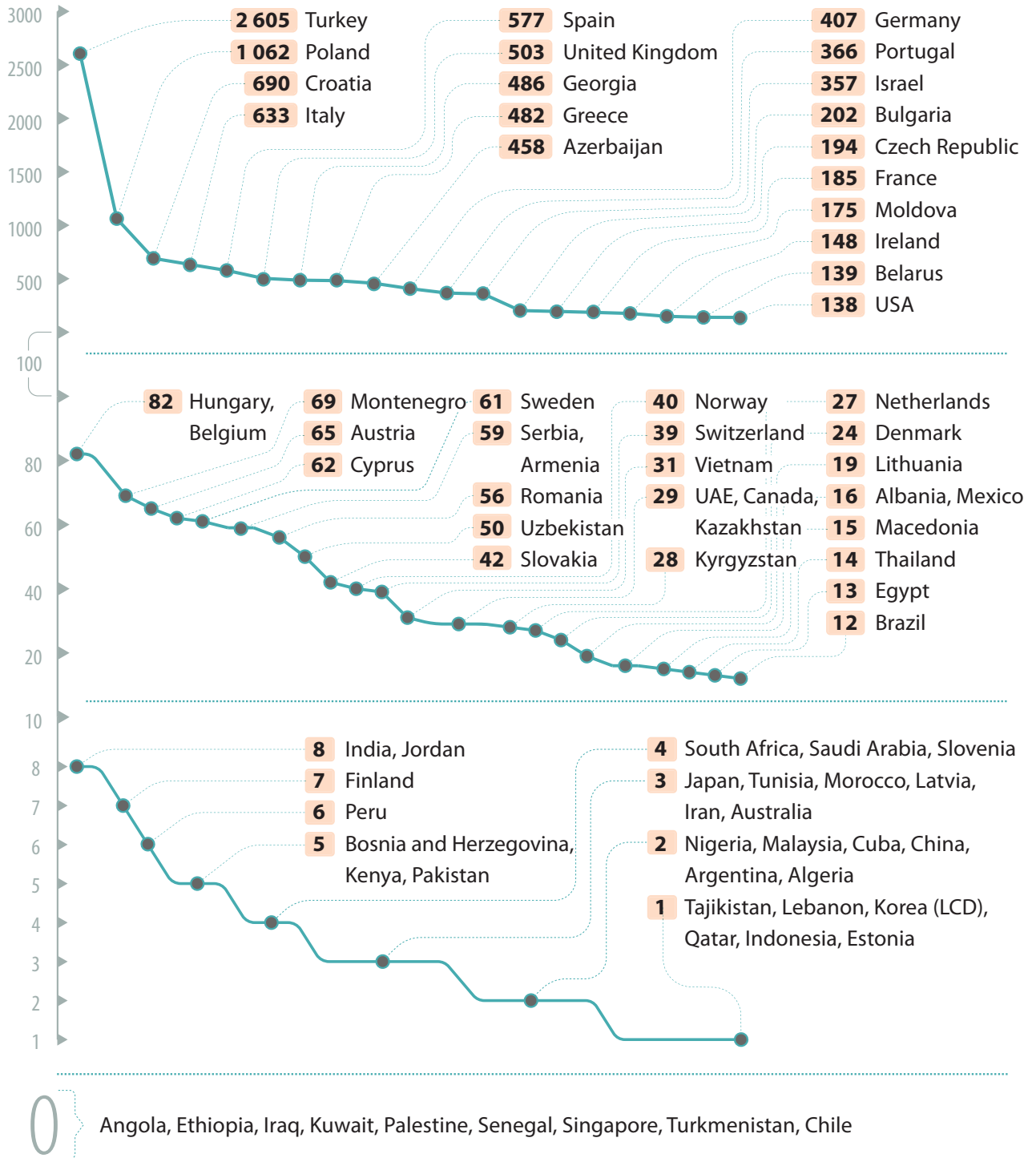
<sup>92</sup> Talent Pool Pilot. *European Commission*. URL: [https://eures.ec.europa.eu/viprobuvalniy-proekt-fond-talantiv-es-ukrainska\\_en](https://eures.ec.europa.eu/viprobuvalniy-proekt-fond-talantiv-es-ukrainska_en) (accessed on: 30.11.2022).

## INFORMATION

### on the total number of issued IDs for returning to Ukraine

in the period from 24 February to 21 October 2022

SECTION 4



## Recommendations

### 1. To the CMU:

- to make changes to the Temporary Procedure for entering information into the passport of a citizen of Ukraine for travelling abroad approved by Resolution of the CMU dated 28 February 2022 No. 170, by which to return the right to use it to embassies or consular units of Ukraine;
- to give Ukrainian citizens the opportunity to apply for assistance in connection with the birth of a child who has a foreign birth certificate from abroad

2. The Ministry for Reintegration, the Ministry of Social Policy should introduce collection and evaluation of information on the needs of Ukrainian citizens abroad in cooperation with the Ministry of Foreign Affairs.

3. The Ministry of Internal Affairs, Ministry of Foreign Affairs, the State Migration Service should increase the number of standalone units of SE Document in countries with the largest number of citizens of Ukraine.

4. The Ministry of Internal Affairs, the Ministry of Foreign Affairs, the Main Service Centre of the Ministry of Internal Affairs should introduce the possibility of remote exchange lost or stolen driving licences in the standalone units of SE Document or in consular institutions of Ukraine abroad for the period of martial law in Ukraine.

### 5. To the MFA:

- to develop the issue of increasing the number of diplomatic and consular staff for the period of martial law;
- to work out, together with the host states, the issue of reviewing approaches to establishing guardianship of unattended Ukrainian children who are unattended children under the legislation of the country of stay, providing for the procedure for child's consent in respect of the person who is appointed by his legal representative abroad and simplifying the procedure of reunification of the family in respect of such children with parents who are not deprived of parental care in Ukraine.

### 6. To the Ministry of Social Policy, the Ministry of Foreign Affairs, the National Social Security Service:

- to strengthen the consular supervision of displaced (evacuated) abroad orphaned children and children deprived of parental care;
- to establish a system of cooperation with the governments of the host states in respect of citizens of Ukraine with disabilities, including the assignment of guardians, custodians, attending citizens of Ukraine with disabilities who were appointed in Ukraine of the scope of rights, duties and responsibilities for such citizens of Ukraine with disabilities corresponding to the legislation of the country of stay.

# **SECTION 5.**

**DEPORTATION  
AND FORCED  
DISPLACEMENT  
OF PERSONS  
TO THE RUSSIAN  
FEDERATION  
AND TOT**



## DEPORTATION AND FORCED DISPLACEMENT OF PERSONS TO THE RUSSIAN FEDERATION AND TOT

### 5.1. Legal Regulation of Prohibition of Deportation and Forced Displacement, Application of These Prohibitions in the Context of Russian Aggression Against Ukraine

The parties of the IAC may not fully or partially deport or forcefully displace the civilian population, unless it is required for guaranteeing the safety of the respective civilians or for urgent reasons for military nature<sup>93</sup> Deportation and forced displacement of the population are recognized as grave violations of the IHL, that is, military crimes.

Deportation in the context of armed conflict should mean the forcible displacement of Ukrainian citizens outside the TOT, and forced displacement should mean the forced displacement of civilians persons from the area of their permanent residence, which was occupied or over which actual control was established, to the territory of another occupied area, i.e. forced displacement within the TOT<sup>94</sup>. In the context of the armed aggression of the Russian Federation against Ukraine, deportation is the forced displacement of civilians from the internationally recognized territory of Ukraine into the territory of the Russian Federation in its internationally recognized borders, and the displacement shall mean the forced displacement of Ukrainian citizens within the AR the Crimea and Sevastopol) or areas under its actual control (functional occupation).

The term “forced” should not be interpreted restrictive – only as the use of physical force. Coercion also includes “the threat of the use of force or coercion caused, for example, by fear of violence, coercion, detention, psychological depression or abuse of power against such a person or another person, or through the use of a coercion”<sup>95</sup>. It was this situation that was immediately created by the Russian Federation.

Both deportation and forced displacement are related to the concept of the occupied territory. Classical understanding of occupation<sup>96</sup> in modern conditions is interpreted wider, which allows to spread some norms of IHLs provided for the protection of civilians in the occupied territories, also on

<sup>93</sup> This provision is enshrined in the first paragraph of Article 49 of the Geneva Convention for the Protection of the Civil Population during the 1949 war and Article 147 of the same Convention, which is recognized as a grave violation of the IHL. It is also recognized as the usual norm (norm 129 Displacement. *IHL database. Customary IHL* / International Committee of the Red Cross. URL: [https://ihl-databases.icrc.org/customary-ihl/rus/docs/v1\\_rul\\_rule129](https://ihl-databases.icrc.org/customary-ihl/rus/docs/v1_rul_rule129) (accessed on: 30.11.2022)).

<sup>94</sup> For the first time, the explanation was provided in the case of the International Criminal Tribunal for the former Yugoslavia in the case of the prosecutor against Radislav Krstic (*Prosecutor v. Radislav Krstic (Trial Judgement)*, International Criminal Tribunal for the former Yugoslavia (ICTY), 2 August 2001, paragraph 521. URL: <https://www.refworld.org/cases,ICTY,414810d94.html> (accessed on: 30.11.2022)).

<sup>95</sup> *Prosecutor v. Milorad Krnojelac (Trial Judgement)*, IT-97–25-T, ICTY, 15 March 2002, paragraph 475. URL: <https://www.refworld.org/cases,ICTY,414806c64.html> (accessed on: 30.11.2022).

<sup>96</sup> According to Article 42 of the Annex to the Hague Convention on the Laws and Customs of War on Land in 1907. “The territory is recognized as occupied if it is actually under the authority of the enemy army. The occupation extends only to the territory where such power is established and capable of performing its functions.” The concept of effective control is used to determine whether the territory under the rule of the enemy army is used. Effective control is a set of three elements: the armed forces of a foreign state are physically present without the consent of the current local government at the time of the invasion; local sovereign cannot exercise its power because of the presence of foreign forces; occupation troops have the opportunity to exercise their own power in the territory or parts of it. According to the classic doctrinal approach, the lack of one of these elements is the result of the lack of recognition of occupation (Ferraro T., Cameron L. Article 2: Application of the Convention. *Commentary on the First Geneva Convention, 2016* / International Committee of the Red Cross (ICRC). § § 302–304. URL: [https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#158\\_B](https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518#158_B) (accessed on: 30.11.2022)).

situations where effective control of the territory has not yet been established, for example, during the invasion of troops<sup>97</sup>.

Such a norm is the prohibition of deportation and compulsory movement of the civilian population. It would be strange to assume that enemy troops may deport the population during the invasion, and when the occupation is already carried out, they are forbidden to do so. Thus, it does not matter from which territories of Ukraine deportation (forced displacement) was carried out: whether it was the territory of Kharkiv Region, some districts of which were occupied quickly, or the territory of Mariupol, over which Russian troops could not have established effective control due to long-term resistance of Ukrainian troops.

According to the ICRC comment to the Geneva Convention for the Protection of Civilian Population during the War, evacuation for the safety of the population or good reasons of military nature is possible only deep into the occupied territory. The displacement of civilians outside the occupied territory is allowed only if it is practically impossible to export the population deep into the territory and this population is in danger (for example, from intensive bombing of the opposite party)<sup>98</sup>. It should be emphasized that citizens of Ukraine were often forcibly deported to the territory of the Russian Federation from those districts that were immediately captured by Russian troops and where there were no hostilities, and therefore there were no grounds for evacuation, in particular, in the north-eastern areas of Kharkiv region<sup>99</sup>.

In any case, the occupied state is forbidden to hide information about the evacuated population and prevent access to them by representatives of the patron state<sup>100</sup>. In the conditions of armed conflicts, if the patron state is not appointed, its substitute may be ICRC, and other humanitarian organizations may also be engaged. Currently, none of the international organizations has comprehensive data on evacuated or deported civilians from Ukraine (their names, composition, etc.), where they are, they have no access to them, can not visit and verify that none of these, according to the Russian Federation, evacuated persons were not forcibly deported.

Finally, the Geneva Convention for the Protection of Civilian Population during the War requires that evacuated persons be returned to their homes as soon as the threat of their safety or urgent military reasons disappears. The grounds for non-return can be neither the continuation of the armed conflict nor the fact that the territory has not yet been de-occupied. In the Ukrainian context, the territory of Kharkiv Region is almost all de-occupied, but the Russian Federation does not provide the data of persons displacement from its districts.

The ICC Roman Statute codifies illegal deportation or displacement as a military crime in Article 8(2) (a)(vii), or as a crime against humanity under Article 7(1)(d) if this act was committed "as part of large-scale or systematic attack against any civilian population, and such an attack is made consciously."<sup>101</sup>

<sup>97</sup> In the comment to the Geneva Convention for the Protection of Civilian Population during the War it is stated that "regarding certain persons, the application of the Fourth Convention does not depend on the existence of an occupation in the meaning of Article 42 of the Hague Convention of 1907", and it is still stated that even a patrol, penetrating into the territory of the enemy and not staying there, must respect the rule on the ban on deportation (see: The Geneva Conventions of 12 August 1949, Commentary. Fourth Geneva Convention Relative to the Treatment of Civilian Persons in Time of War / J.S. Pictet (ed.). Geneva: ICRC, 1958. P. 60. URL: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=030537C0A8EE01DFC12563CD0042A6BE> (accessed on: 30.11.2022)).

<sup>98</sup> The Geneva Conventions of 12 August 1949, Commentary. Fourth Geneva Convention Relative to the Treatment of Civilian Persons in Time of War / J.S. Pictet (ed.). Article 49. URL: <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=523BA38706C71588C12563CD0042C407> (accessed on: 30.11.2022).

<sup>99</sup> "We Had No Choice". "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia. *Human Rights Watch*. September 1, 2022. URL: <https://www.hrw.org/report/2022/09/01/we-had-no-choice/filtration-and-crimeforcibly-transferring-ukrainian-civilians> (accessed on: 30.11.2022).

<sup>100</sup> In accordance with Part 4 of Article 49 of the Geneva Convention for the Protection of Civilian Population during the War.

<sup>101</sup> Under Article 7 (2) (D), deportation or forced displacement of the population means "forced displacement of the respective persons through eviction or other compulsory actions from the territory in which they legally stay, in the absence of grounds allowed by international law."

In order to qualify the act as a war crime, it is not necessary to establish signs of its extensive or systematic nature – a separate case of individual illegal deportation (forced displacement) in the case of committing it in the context of an armed conflict with an awareness of such context by the perpetrator is a war crime. It is important that crimes against humanity and war crimes are not mutually exclusive categories, and therefore one person can commit a military crime (in the case of objective and subjective contextual connection of acts with armed conflict), and a crime against humanity (in the case of its contextual connection with large-scale or systematic attacks on civilians). Such double qualification is now important to the ICC in the framework of Ukraine's cooperation and this court<sup>102</sup>.

Within the framework of criminal prosecution for this act in the national jurisdiction of Ukraine, it should be qualified under Article 438 of the Criminal Code as "other violation of the laws and customs of war, which is provided for by international treaties ratified by the Verkhovna Rada of Ukraine"<sup>103</sup>. In the absence of criminalization of crimes against humanity in national criminal law, it is impossible to qualify the deportation or forced displacement of the population as a crime against humanity, even in the conditions of proving common and/or systematic nature such actions. Considering the existing facts, we can conclude that the deportation of civilians (especially children) from the occupied territories of Ukraine occurs precisely on such a scale and is systematic.

## 5.2. Factual Circumstances That Testify to the Deportation and Forced Displacement of Ukrainian Citizens

From the first weeks of the full-scale invasion of the territory of Ukraine, the Russian Federation created coercive conditions (because of the threat of use of force or coercion), in which civilians did not have another choice than to go to/through the Russian Federation.

Citizens of Ukraine, who found themselves in the captured territories and wanted to go to the controlled territory of Ukraine, were forced to break through the front line, on the way to which the Russian army created dozens of checkpoints and in most cases fired them. For those who decide to leave on their own, the path to/through the Crimea and Sevastopol looked safer, and in those who were displaced through the so-called Russian "evacuation" corridors, there was no choice at all<sup>104</sup>.

Creating conditions where the civilian population is afraid of violence or the threat of detention or abuse of power, or other forms of psychological violence, is coercion to deportation or forced movement<sup>105</sup>. It was this situation that took place in the territories captured after 24 February 2022. This condition has already been recorded in the first months of the invasion by many international non-governmental organisations<sup>106</sup> and covered as probably in the reports of international

<sup>102</sup> Ukraine did not ratify the Roman Statute of the ICC, but recognized its jurisdiction by Ad HOC, applying for Article 12 (3) of the Statute (see: Ukraine *International Criminal Court*. URL: <https://www.icc-cpi.int/ukraine> (accessed on: 30.11.2022)). The Russian Federation did not ratify the Statute and did not recognize its jurisdiction, but this is not an obstacle to the beginning of the investigation and criminal prosecution of the guilty citizens of the Russian Federation for their probably committed war crimes, crimes against humanity and genocide.

<sup>103</sup> In this case, such a treaty and its relevant articles will be Articles 49 and 147 of the Geneva Convention for the Protection of Civilian Population during the War (the Russian Federation is a party to this Convention)

<sup>104</sup> Displacement to the occupied Crimea of Ukrainian citizens from the newly occupied territories and districts, where hostilities are going on / Mission of the President of Ukraine in the Autonomous Republic of Crimea. URL: <https://cutt.ly/RCBxUWE> (accessed on: 30.11.2022).

<sup>105</sup> *Prosecutor V. Milorad Krnojelac* (Trial Judgement), IT-97-25-T, ICTY, 15 March 2002, paragraph 475.

<sup>106</sup> "We Had No Choice". "Filtration" and the Crime of Forcibly Transferring Ukrainian Civilians to Russia. *Human Rights Watch*. September 1, 2022.

government organizations (in particular, the first and second reports of experts of the OSCE Moscow Mechanism)<sup>107</sup>.

With each subsequent month, the number of Ukrainian civilians deported from TOT in the Russian Federation was only increasing. According to UNHCR, as of 8 November 2022 the border with the Russian Federation was crossed by 2,852,395 citizens of Ukraine<sup>108</sup>. According to the information of the Ministry of Defence, according to the Border Guard Service of the FSB of the Russian Federation, as of mid-August 2022, 3,260,000 people arrived on the uncontrolled section of the Russian-Ukrainian border, including 518,500 children. There is no free access to these persons by international organizations.

In its Resolution adopted on 12 May 2022, the UN Human Rights Council called on the Russian Federation “to provide representatives and employees of international human rights and humanitarian institutions, including specialized agencies of the United Nations, with unimpeded, timely, immediate, unlimited and safe access to persons who have been displaced from the conflict areas of Ukraine and which are held in the territory of the Russian Federation or in areas controlled or occupied by the Russian Federation and give the respective parties an exhaustive list of such displaced persons”<sup>109</sup>.

Since March 2022, humanitarian corridors were opened from the territories of Ukraine in the course of the Russian invasion, most of which were connected to the territories under the control of the Russian Federation, in particular with the occupied territories of Donetsk and Luhansk Regions, AR of Crimea and Sevastopol. The so-called “evacuation” towards the Russian Federation is also related to the situation on Russian checkpoints, where all civilians who wanted to evacuate to the territory under the control of the Government of Ukraine were sent back with reasoning that it was impossible to enter Ukraine or that all the territory there was already occupied or destroyed (there were different options). Citizens were directly told that the only way of departure was the territory towards the Russian Federation.

Besides, any “evacuation” towards the Russian Federation or temporarily occupied territories was accompanied by undergoing the so-called “filtration measures” (in particular, in the village of Bezimenne of Donetsk region). The filtration procedure itself, according to the conclusions of international government and non-governmental organisations, is a serious violation of human rights<sup>110</sup>. In addition, there is no information about the fate of persons who have not passed the “filtration”. There are cases where such persons were moved to the territory of certain areas of Donetsk and Luhansk Regions, occupied before 24 February 2022, where they may be threatened with the extrajudicial execution, torture and deprivation of freedom in violation of the fundamental norms of international law.

<sup>107</sup>The first and second Reports of the OSCE Moscow Mechanism’s mission of experts entitled ‘Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity formed according to the Moscow mechanism of the OSCE, see, respectively subsection IV(E)(5)(f) of the first Report of the OSCE Moscow Mechanism’s mission of experts entitled ‘Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine Since 24 February 2022’. *Organization for Security and Co-operation in Europe*. 13 April 2022. URL: <https://www.osce.org/odihr/515868> (accessed on: 30.11.2022)) and subsection IV(E)(5)(f) of the first Report of the OSCE Moscow Mechanism’s mission of experts entitled ‘Report On Violations Of International Humanitarian And Human Rights Law, War Crimes And Crimes Against Humanity Committed In Ukraine (1 April – 25 June 2022)’. *Organization for Security and Co-operation in Europe*. 14 July 2022. URL: <https://www.osce.org/odihr/522616> (accessed on: 30.11.2022)).

<sup>108</sup> See: Ukraine Refugee Situation. *Operational Data Portal* | The United Nations High Commissioner for Refugees. URL: <https://data.unhcr.org/en/situations/ukraine> (accessed on: 30.11.2022). This figure does not reflect the direction of deportation, but the figure highlights the number of people whose information should be verified for the evacuation, as claimed by the Russian Federation, and probable deportation.

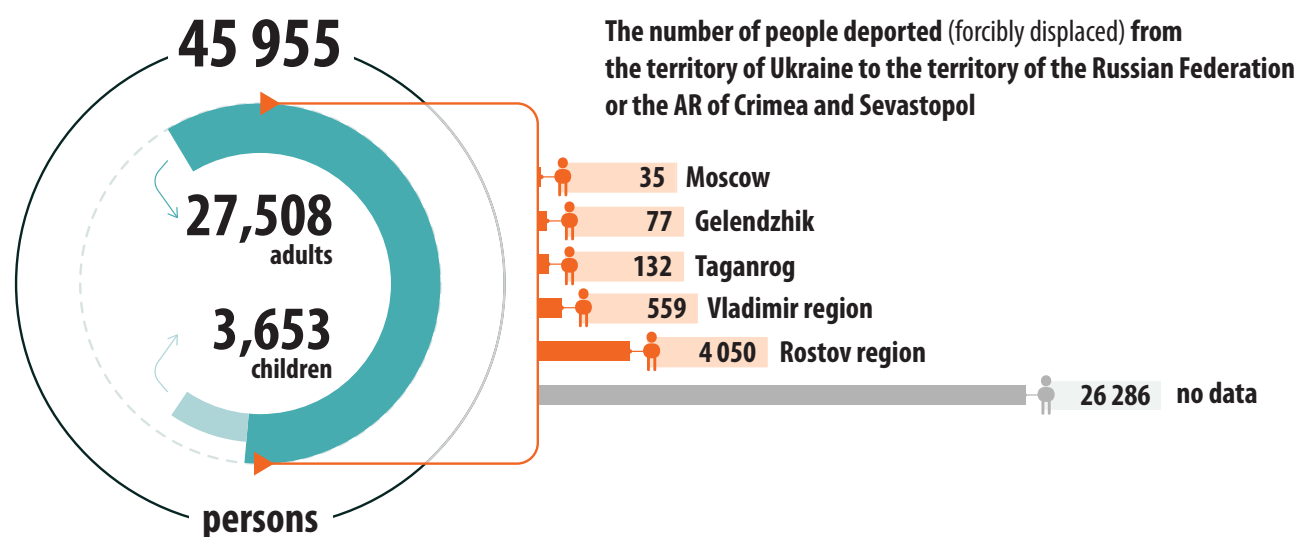
<sup>109</sup>The deteriorating human rights situation in Ukraine stemming from the Russian aggression: A/HRC/S-34/L.1. General Assembly, Human Rights Council, Thirty-fourth special session, 12 May 2022. URL: <https://undocs.org/Home/Mobile?FinalSymbol=A%2FHRC%2FS-34%2FL.1> (accessed on: 30.11.2022).

<sup>110</sup> “We Had No Choice”. “Filtration” and the Crime of Forcibly Transferring Ukrainian Civilians to Russia. *Human Rights Watch*. September 1, 2022.

According to the Ministry of Defence, the “filtration” process at “filtration posts” of the TOT of Donetsk, Luhansk, Kherson and Zaporizhzhia Regions can last from several hours to 20 days. Under these conditions, there are “filtration posts” of open (for the passing of fast “filtration procedure”) and closed type (with fenced guarded area, with a many-day “filtration procedure”). The closed-type filtering post is enclosed by barbed wire and is guarded by servicemen with automatic weapons. Free exit from such territory is forbidden.

According to NIB, for the period from 24 February to 1 November 2022 the number of people deported (forcibly displaced from the territory of Ukraine to the territory of the Russian Federation or the AR of Crimea and Sevastopol) is 45,955 people in total, of which 37,855 adults and 8,140 children. This information is based on daily messages of the authorities of all levels, reports of relatives and loved ones who are looking for their relatives, and partly on information from open sources. However, it should be borne in mind that this information is currently incomplete and unconfirmed due to the lack of complete data from the TOT and the lack of coordination with the occupying state – the Russian Federation.

Of all 45,955 people, 27,508 adults and 3,653 children were moved to the Russian Federation, of which to Moscow – 35, to Taganrog – 132, Gelendzhik – 77, to Rostov region – 4,050, Vladimir region – 559 people. The location of the other 26,286 forcibly displaced persons is unknown.



It should be noted separately that forced deportation is applied to children who are most vulnerable in this situation. It is impossible to establish the exact number of injured children due to active fighting and temporary occupation of part of the territory of Ukraine.

The story of Mariupol resident Kira Obedynska, the daughter of the former captain of the water polo national team of Ukraine Yevhen Obedynskyi, became known throughout the world. The fact that the Russians took out a 12-year-old Kira to occupied Donetsk became known on 30 March. The invaders abducted Kira while she was escaping from Mariupol. Her father, Yevhen Obedynskyi, was killed by the Russian military when he was on duty on the balcony of his apartment to report a fire or destruction from shelling. She and a group of people tried to escape from Mariupol. Then one child exploded on a landmine, and Kira was injured by fragments; she was taken to hospital, from where she was able to get in touch with her relatives. Thanks to the joint efforts of state authorities with the assistance of international organizations, Kira managed to return to relatives.

Another similar example is the displacement of 13 children with various congenital defects who studied at the Kupiansk Boarding School (Kharkiv region) to TOT in Luhansk region to the city Perevalska on 8 September 2022 by Russian military.

The information about children who were deported (forcibly displaced) is updated daily on the Children of War Webportal<sup>111</sup>. As of 11 November 2022, there was information on 11,028 children deported (forcibly displaced) on the portal. According to the information on the Webportal, as reported by the Russian Federation, the number of children displaced to the Russian Federation can be 705,000.

Throughout the full-scale invasion, cases of disappearance of children during shelling and fighting, especially in large cities, are recorded. Also, children lose their parents and relatives, remaining orphans. Some of these children are moved to some district of Donetsk and Luhansk Regions occupied before 24 February 2022, but occupation administrations do not attempt to find their parents or living relatives. The OSCE Moscow Mechanism Mission has collected reports about 2,000 children from various orphanages and children's institutions, which were probably moved to the Russian Federation, although they have live relatives and were in these institutions only for medical care<sup>112</sup>. In addition to unattended children, children who do not have documents are especially vulnerable – in the case of moving to the Russian Federation, they have virtually no chance of legalizing and leave the country.

According to UNICEF, there were more than 90,000 children in Ukrainian orphanages, boarding schools and other teenage facilities before the full-scale Russian invasion, almost half of them are children with disabilities<sup>113</sup>. UNICEF believes that adoption should never occur during or immediately after emergencies. Children who are parted from their parents during an extraordinary humanitarian situation cannot be considered orphans. All opportunities for family reunification must be provided.

The adoption procedure should be an exception during armed aggression, in particular, the UN Convention on the Rights of the Child of 1989 emphasizes that when seeking a solution to the problem of a child who is temporarily or permanently deprived of his family, "due consideration must be given to the desirability the continuity of raising a child, his ethnic origin, religious and cultural affiliation and native language."

Actions aimed at deportation of children took place both at the beginning of the full-scale invasion and continue to happen now. In particular, representatives of the authorities of the Kherson Region reported numerous cases where Russian occupation forces in Kherson Region, under the pretext of "evacuation", took children from orphanages to the Russian Federation, and moved them to the Crimea and Sevastopol<sup>114</sup>. Reports of forced displacement of children to Crimea and Sevastopol were also made by the Ukrainian Parliament Commissioner for Human Rights Dmytro Lubinets on 21 October

<sup>111</sup> Children of War: Webportal. URL: <https://childrenofwar.gov.ua> (accessed on: 30.11.2022).

<sup>112</sup> Subsection V(C)(2) of the Report of the OSCE Moscow Mechanism's mission of experts entitled 'Report on Violations of International Humanitarian and Human Rights Law, War Crimes and Crimes Against Humanity Committed in Ukraine (1 April – 25 June 2022). Organization for Security and Co-operation in Europe. 14 July 2022).

<sup>113</sup> Two months of the war in Ukraine led to the "crisis of protecting children of extraordinary scale" – a statement during a UNICEF briefing in the Geneva Palace on the situation with children in Ukraine. UNICEF, 6 May, 2022 URL: <https://www.unicef.org/ukraine/press-releases/war-ukraine-creating-child-protection-crisis> (accessed on: 30.11.2022).

<sup>114</sup> Head of the Kherson Regional Military Administration Ya. Yanushevych reported on 21 October 2022 that Russian occupation forces took to temporarily occupied Simferopol 46 pupils of the Kherson Regional Children's House, all children under 5 years old (URL: <https://t.me/khersonskaODA/1350> (accessed on: 30.11.2022)). On the air of the national marathon the same day, a similar violation was reported by the deputy of the Kherson Regional Council S. Khlan (URL: [https://www.youtube.com/watch?v=Bd0NS43f\\_50](https://www.youtube.com/watch?v=Bd0NS43f_50) (accessed on: 30.11.2022)).

2022<sup>115</sup>, and Head of the Office of the President of Ukraine Andrii Yermak on 23 October 2022 on the displacement of disabled children from the Oleshky Boarding School<sup>116</sup>.

The displacement of children from Oleshky of Kherson region is also confirmed by the mayor<sup>117</sup>.

The city of Oleshky was completely occupied from the first days of the large-scale invasion. Occupation troops did not give the green corridor for the evacuation of pupils of the Oleshky Children's House for the territory controlled by Ukraine. Instead, without the consent of parents and legal representatives, 28 children with special needs were taken to the TOT in Crimea, and later to the Russian Federation.

On the fact illegal displacement of these children, the Commissioner appealed to law enforcement agencies, in particular to the Prosecutor General's Office, to open criminal proceedings, as well as to take all possible measures to return children to Ukraine.

Deportation (forced displacement) of Ukrainian children to the Russian Federation, provided that certain so-called contextual<sup>118</sup>, signs are proved, can be qualified as genocide. According to the definition of the UN Convention on the Prevention of Genocide Crime of 1948 (valid for Ukraine), genocide is actions taken with the intention of destroying, in whole or in part, any national, ethnic, racial or religious group as such. The list of genocide actions is exhaustive, and it includes, in particular, to the forced displacement of children from one human group to another. The transfer of children from one group to another has already been recognized as genocide in Australia, Argentina and Guatemala.

<sup>115</sup> Ombudsman D. Lubinets reported that 16 Ukrainian children aged 6 to 17 will be stolen in accordance with the so-called "order" of the occupation authority "On the evacuation of children" from the city of Oleshky in Kherson region and taken to "treatment" to the clinical psychiatric hospital No. 5 in the village of Strogonovka near Simferopol in the temporarily occupied AR of Crimea (see: Commissioner: The Russian Federation continues to abduct children from the newly occupied territories of Ukraine. Ukrainian Parliament Commissioner for Human Rights. 21.10.2022. URL: [https://www.ombudsman.gov.ua/news\\_details/upovnovazhenij-rosijska-federaciya-prodovzhuye-vikradati-ditej-znovookupovanih-teritorij-ukrayini](https://www.ombudsman.gov.ua/news_details/upovnovazhenij-rosijska-federaciya-prodovzhuye-vikradati-ditej-znovookupovanih-teritorij-ukrayini) (accessed on: 30.11.2022).

<sup>116</sup> Head of the Office of the President of Ukraine A. Yermak reported that the occupiers are forcibly removing children with disabilities living in Oleshky orphanage. As of 22 October 12 pupils of this institution were taken to the Autonomous Republic of Crimea (URL: <https://t.me/ermaka2022/1512> (accessed on: 30.11.2022)). These data are confirmed in the telegram channel of the so-called "administration" of Oleshky, created by the Russian occupation forces, where on 21 October 2022 it was published that "children from the local boarding school were taken to the occupied Crimea for rehabilitation" (URL: [https://t.me/VGA\\_Alyoshki/1194](https://t.me/VGA_Alyoshki/1194) (accessed on: 30.11.2022)).

<sup>117</sup> Mayor Ye. Ryshchuk in the comment to The Azov News stated: "10–15 busses with children a week in the Oleshky community were transported by buses in that direction. The situation has happened, we have a boarding school, there are seriously ill children. On that week, 82 children were taken, 16 of them were already taken in an unknown direction" (O. Yankovsky "Forced displacement" from occupation. Why do Russians need Ukrainian children? Radio Svoboda, Azov News. 28 October 2022 URL: <https://www.radiosvoboda.org/a/novyny-pryazovya-deportatsiya-ditej-rosiya/32104386.html> (accessed on: 30.11.2022)).

<sup>118</sup> Among such elements, the intent of the performer should be distinguished separately or partially such a national (ethnic) group as Ukrainians, and that such action took place in the context of a clear line of similar behaviour directed against such a group. It should be noted that, according to the practice of the UN International Court in Bosnia and Herzegovina against Serbia and Montenegro, "in order for genocide in the context of the attack on part of the group to be considered as having taken place, this attacked part should be "sufficiently significant to have an impact on the group as a whole." But at the same time, genocide can be established if the intention is to destroy the group within a limited geographical territory depending on the capabilities available to the offender (see: Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, ICJ, 26 February 2007, ICJ Reports 43, paragraphs 198–199).

The identical definition is contained in Article 6 of the ICC Roman Statute<sup>119</sup>. In this case, the citizenship of the perpetrators does not matter. For proving all contextual features of genocide, forced displacement of children from Ukraine in the Russian Federation may entail the responsibility of guilty individuals within the framework of international jurisdiction of the CCU or criminal prosecution under Article 442 of the Criminal Code within the national jurisdictions on the basis of universal jurisdiction).

The displacement of children of the Ukrainian nation and/or Ukrainian ethnic group, which has a common language and culture<sup>120</sup>, from TOT to the Russian Federation with their subsequent adoption by Russian families or upbringing in the conditions of the Russian education system<sup>121</sup> will cease their communication and study of Ukrainian, culture, history, traditions – will essentially lead to their complete conversion from Ukrainians into Russians<sup>122</sup>, changing their national and ethnicity, and, accordingly, will be “genocide” in nature<sup>123</sup>.

Such as international crime such as genocide requires careful collection of evidence, and this is especially true of data that may indicate genocidal intention and scale. Therefore, it is necessary to carefully document and collect evidence of the facts of deportation of Ukrainian children, as well as to take into account the positions of official representatives of the Russian Federation on the goals and consequences of displacing children from Ukraine to the Russian Federation.

### 5.3. Measures Taken by Ukraine to Protect the Rights of Deported (Forcibly Displaced) Persons

In order to facilitate the coordination of the activities of central and local executive authorities, other state bodies, LSGA, military formations forces in accordance with laws, law enforcement agencies and NGOs on the issues of displacement of Ukrainian citizens from the TOT, including the Autonomous Republic of Crimea and Sevastopol, through the territory of other countries into the territory of Ukraine, assistance in returning to Ukraine, Resolution of the CMU dated 18 October 2022 No. 1187 established the Coordination Headquarters for ensuring the departure of citizens of Ukraine from the territory of Ukraine temporarily occupied by the Russian Federation, in particular the Autonomous Republic of Crimea and Sevastopol, through the territory of other countries into the territory of Ukraine, and assistance in returning to Ukraine.

<sup>119</sup> The Roman Statute of the ICC is not ratified by Ukraine, but the court jurisdiction of the armed conflict was recognized by Ukraine in a special statement of the Verkhovna Rada of Ukraine “On recognition by Ukraine of the jurisdiction of the International Criminal Court on Crimes against Humanity and Military Crimes by Higher Officials of the Russian Federation and “DPR” and “LPR”, which led to particularly grave consequences and mass murders of Ukrainian citizens” (Resolution of the VRU No. 145-VIII of 04.02.2015).

<sup>120</sup> Definition of the Nation, Ethnicity, Races are not clear in international law, although the attempts were made by the International Criminal Tribunal against Rwanda in the case of “Prosecutor against Jean-Pul Akayesu” (For details, see: *Prosecutor v. Jean-Paul Akayesu (Trial Judgement)*, International Criminal Tribunal for Rwanda, 2 September 1998, ICTR-96-4-T).

<sup>121</sup> As the Venezuela’s representative noted in the conclusion of the text of the Convention on the Rights of the Child, “forced transfer of children to the group where they will receive education other than the education of their own group, and will have new customs, a new religion and possibly a new language, is in practice equivalent to destruction of their group whose future depends on this generation of children” (see: UN Document A/AC6/SR83 (1948), 195. *Human Rights and Equal Opportunity Commission*. No 75. At 271).

<sup>122</sup> In particular, the speech of Maria Lvova-Bielova, the Commissioner for the Right of the Russian Federation, in the Public Chamber of the Russian Federation on 27 September 2022 argues that children displaced from Ukraine are arranged in Russian families, begin to consciously and deliberately change their outlook, traditions, language, refusing to return them to Ukraine (see: BBC News. Russian service. September 28, 2022. URL: <https://t.me/bbcussian/35346> (accessed on: 30.11.2022)).

<sup>123</sup> According to Raphael Lemkin, the creator of the term “genocide”, the purpose under such conditions is “Disintegration of political and social institutions of culture, language, national feelings, religion and economic existence” and thus the transfer of children is “genocide because it is aimed at destruction the “cultural unit” that the Convention seeks to preserve” (see: Lemkin R. *Axis Rule in Occupied Europe / Carnegie Endowment for International Peace*. Washington, 1944. P. 79). The cultural unit in the Convention means a national, ethnic, racial or religious group as such.



Organizational, information and logistical support of its activity are entrusted to the Ministry for Reintegration.

In addition, coordination of measures to ensure return to the territory of Ukraine, in which public authorities exercise their powers in full, citizens of Ukraine, in particular children, forcibly displaced (deported) to the TOT or to the territory of the Russian Federation, other states, is carried out by the Ministry for Reintegration.

Instead, according to NIB, the proper managers of information on persons who have left or were deported from TOT to the territory of the aggressor state, as well as the number of persons who are forcibly mobilized or conscripted in the TOT to military service on the side of the aggressor, are MID of MoD, SBU, Ukraine's external intelligence service, other intelligence and law enforcement agencies.

The Prosecutor General's Office reports that together with NIB and the National Police it is performing the work on identification of deported children. And as suggested by the information of the National Police, at the end of July the prosecutor's office changed the jurisdiction in these criminal proceedings and further investigation was entrusted to the SBU. Such uncertainty indicates the lack of proper coordination between all these agencies and the absence of a single body that will deal with this issue.

According to the SBU, the service provides information on the citizens of Ukraine, which were deported to the territory of the Russian Federation or forcibly displaced to the TOT. As of 2 November 2022, their number was 1,550 adults and 279 children, according to the SBU. This amount significantly differs from data of the NIB: for the period from 24 February to 1 November 2022 the number of people deported (forcibly displaced from the territory of Ukraine to the territory of the Russian Federation or the AR of Crimea and Sevastopol) of people in total is 45,995, of which 37,855 adults and 8,140 children.

The Prosecutor General's Office reported that since 24 February 2022, 33 criminal offences were registered by the law enforcement agencies of Ukraine on the facts of forced displacement and deportation. As of 1 November 2022, 8,700 Ukrainian children were deported / displaced to the territory of the Russian Federation and Belarus, of which 96 were returned to the territory of Ukraine and European countries. At the same time, according to the National Police, from 24 February to 2 November 2022, 33 criminal proceedings were initiated by investigators on the facts of deportation from the territory of Ukraine of 5,561 children.

Resolution of the CMU No. 1201 dated 21 October 2022. "On Implementation of the Experimental Project on Registration of Certificate of Return to Ukraine in Ukraine" provides that in the absence of consular institutions of Ukraine in the Russian Federation, which were forced to stop their work after 24 February 2022, Ukrainians who, for various reasons, found themselves in the Russian Federation and lost documents, can restore them at the request of their relatives or Ministry for Reintegration to the SMS. The Resolution also concerns the protection and restoration of documents for Ukrainian children in the Russian Federation. The problem is still the way to transfer these documents to Ukrainians in the Russian Federation; it will probably be resolved upon completion of negotiations with partners of Ukraine on the definition of a country whose diplomatic institutions in the Russian Federation will be able to provide consular services to Ukrainians who still remain there, or through agreements with international organizations that continue their activities in the Russian Federation. Human rights organizations of Ukraine have praised this resolution<sup>124</sup>.

<sup>124</sup> A. Lunova. The Government's experiment is a chance for deported Ukrainians to return home / Centre for Human Rights ZMINA. 14 November. 2022 URL: <https://zmina.info/columns/eksperyment-vid-uryadu-shans-dlya-deportovanyhukrayincziv-povernutysya-dodomu1/> (accessed on: 30.11.2022).

## Recommendations

### 1. To the CMU:

- to ensure stable coordination of ministries and other central executive authorities, international and national organizations on the return of deported (forcibly displaced) persons, as well as recording such facts;
- to ensure the collection of data on civilians who are deported to the Russian Federation or forcibly displaced in connection with armed aggression;

### 2. To the Prosecutor General's Office, SBU, National Police:

- to strengthen the coordination to ensure the prosecution of persons guilty of deportation (forced displacement) with keeping separate statistics of such criminal proceedings and the register of affected persons in the framework of these proceedings;
- to ensure an increase in the level of knowledge and skills of employees in the qualification of deportation (forced displacement) as a war crime and to collect the necessary evidence in order to increase the effectiveness of their criminal prosecution.

### 3. The Ministry for Reintegration, the Ministry of Foreign Affairs, the Ministry of Internal Affairs, SMS should Provide:

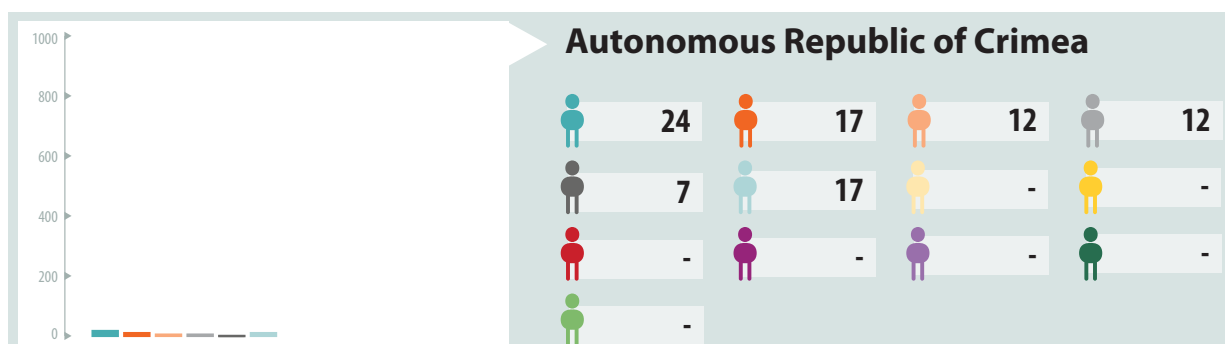
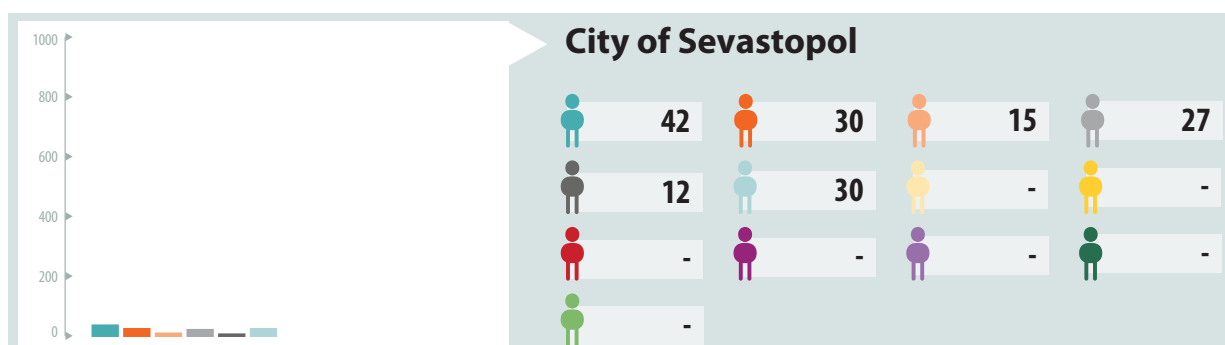
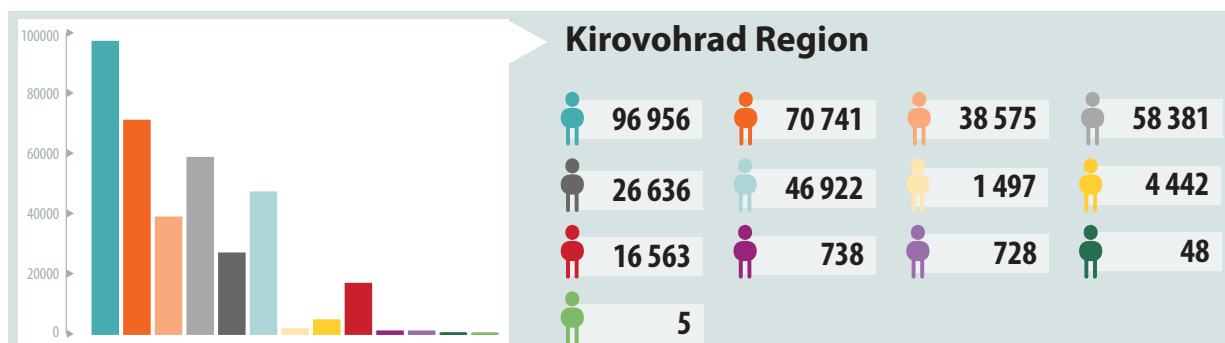
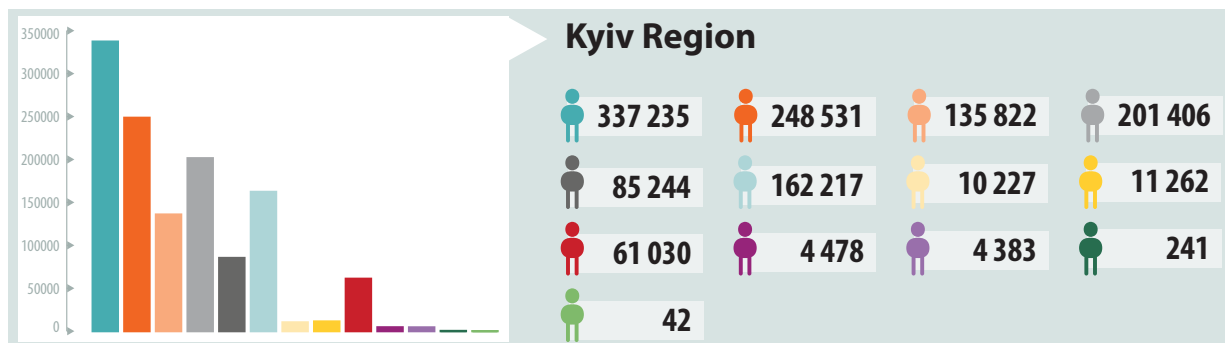
- dissemination of information on the causes and consequences of deportation (forced displacement);
- engagement of international organizations and other mediators in the process of identifying persons deported in the territory of the Russian Federation and persons forcibly displaced to the TOT, in order to ensure their freedom to return to the territory controlled by Ukraine or move to other states;
- development of effective measures for the return of children deported to the Russian Federation to the territory of Ukraine, as well as the restoration of lost documents and their issuance to children born after 24 February 2022 at the TOT;
- development of an algorithm aimed at obtaining data on the location of deported (forcibly displaced) persons, as well as establishing communication with such persons, obtaining information on the conditions of their keeping and ensuring their awareness of the right to return to Ukraine or to move to other states.

# ANNEXES



# Information on registered IDPs by regions

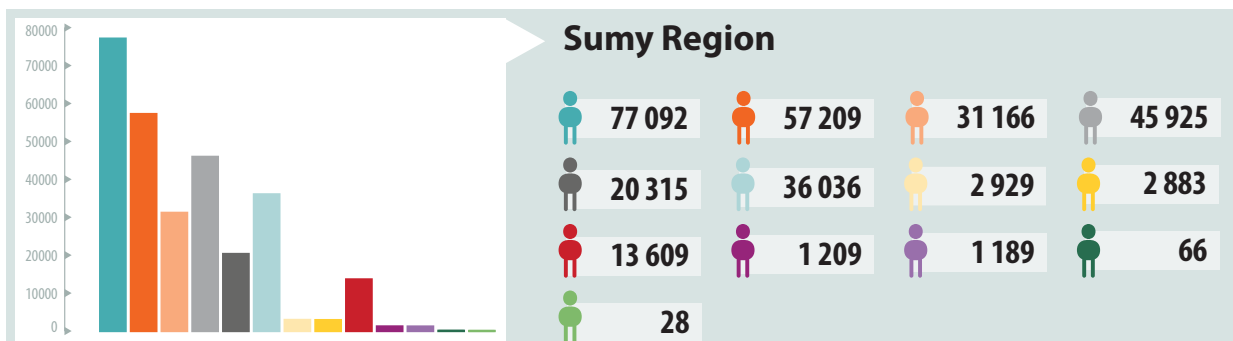
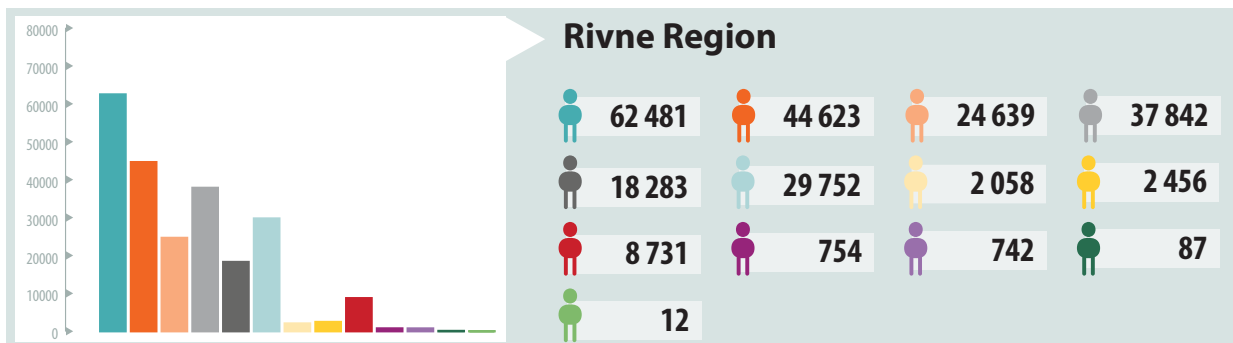
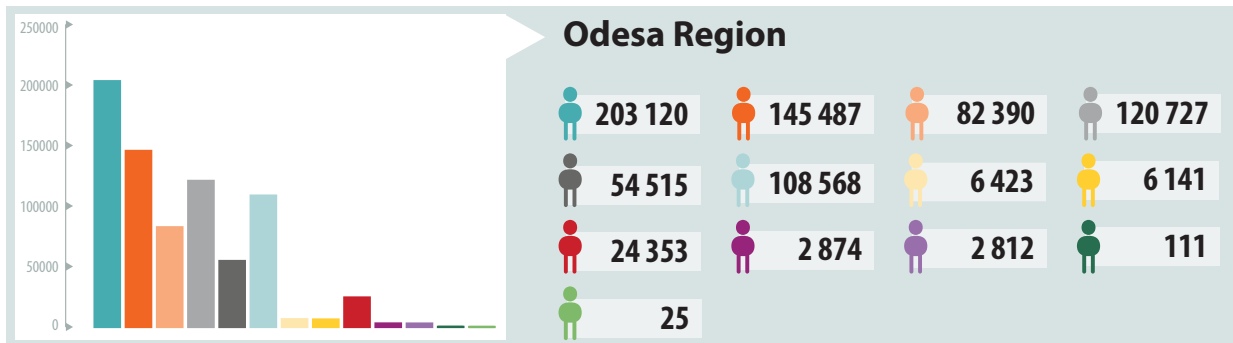
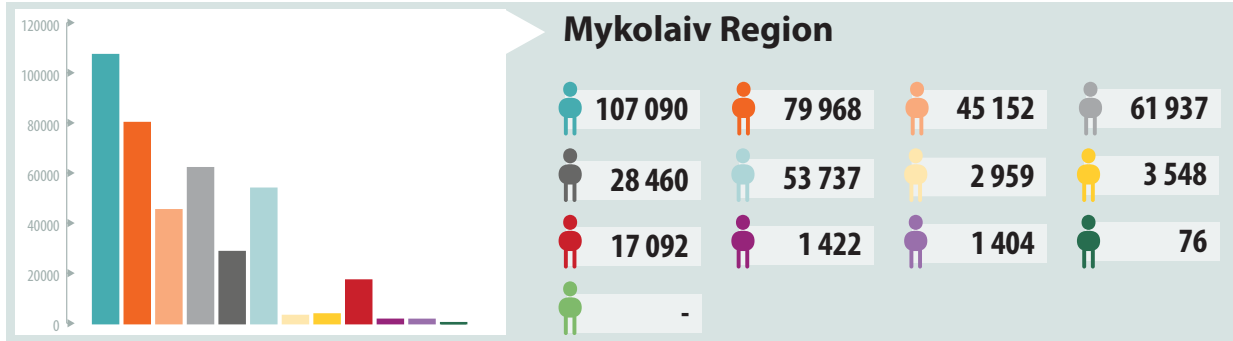
as of 11 November 2022



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- Families of single parents

## Information on registered IDPs by regions

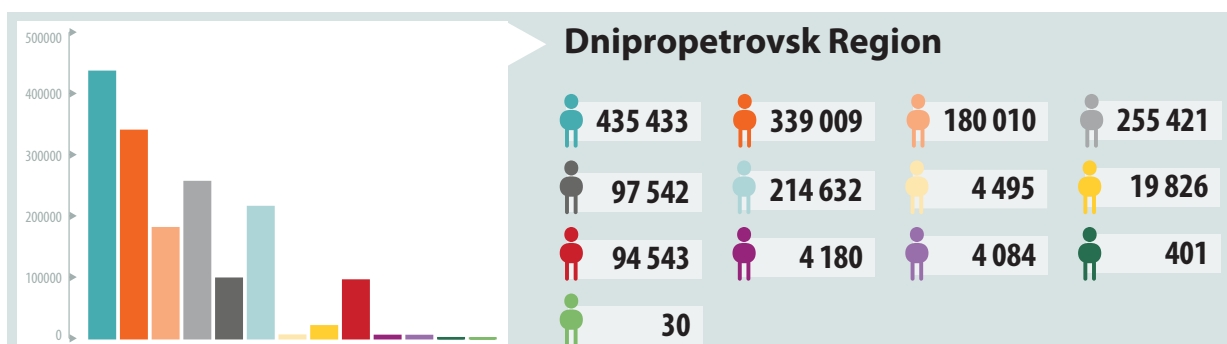
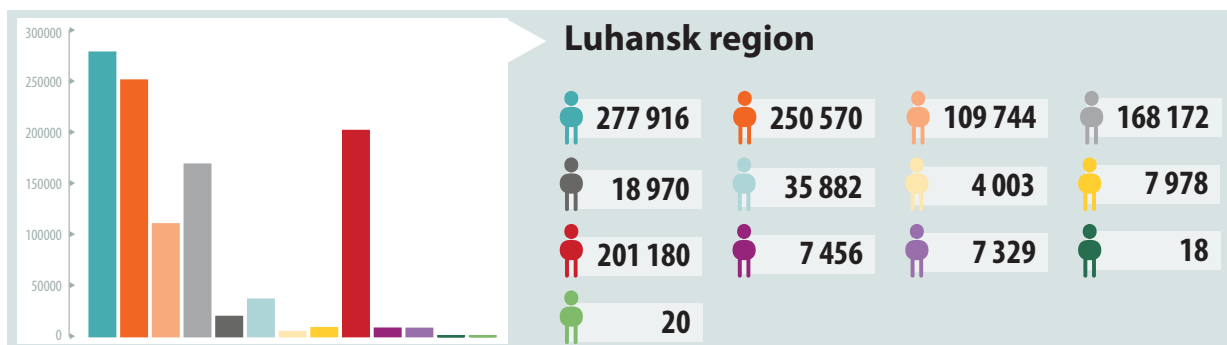
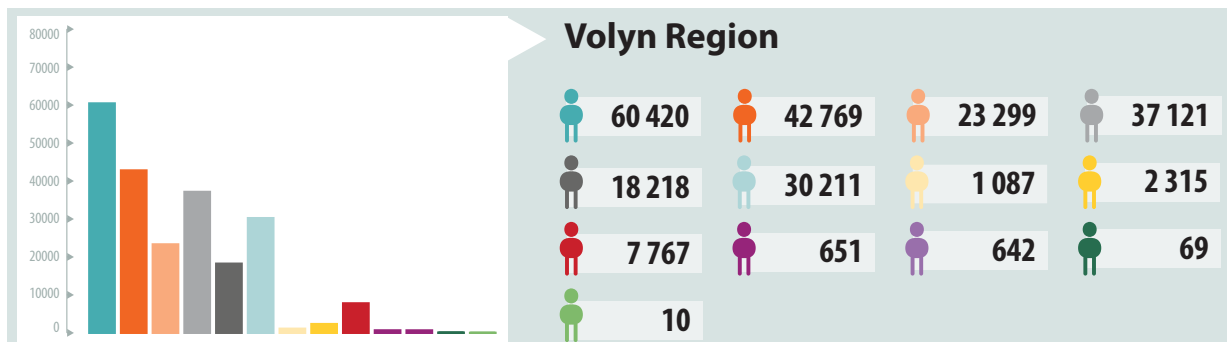
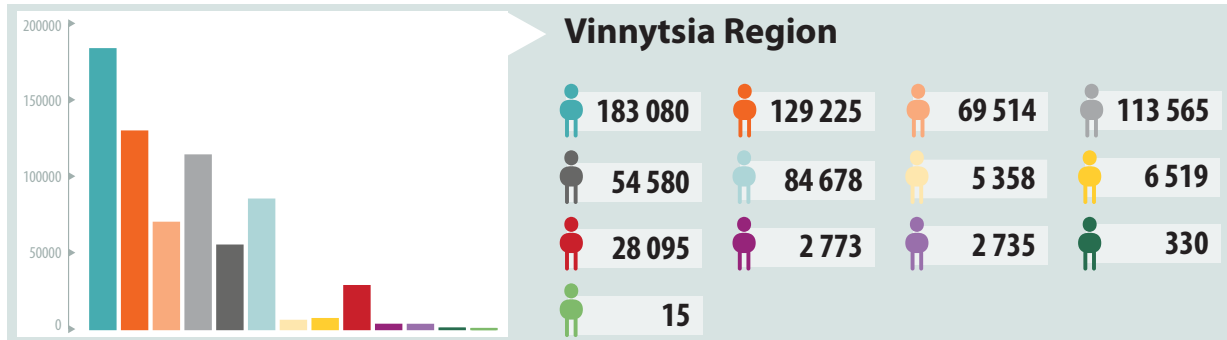
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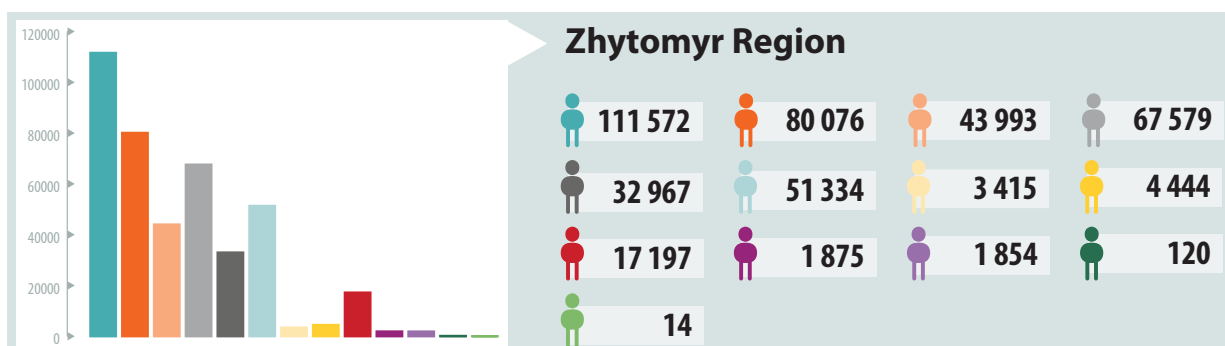
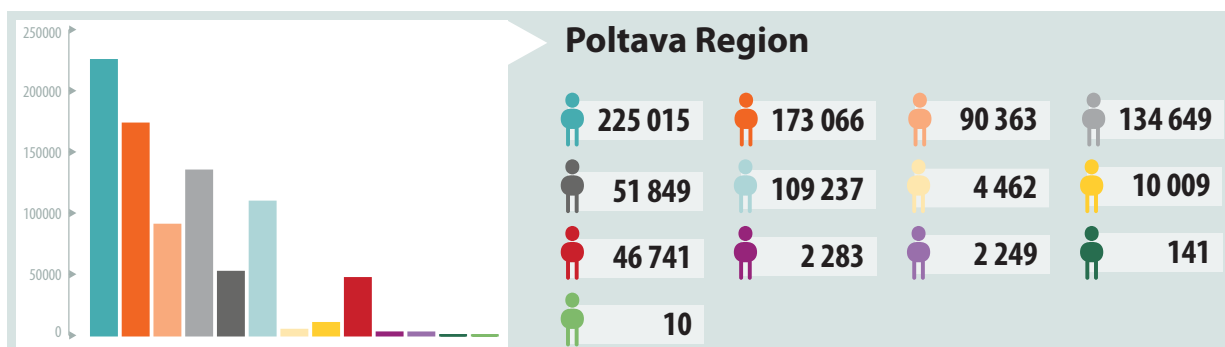
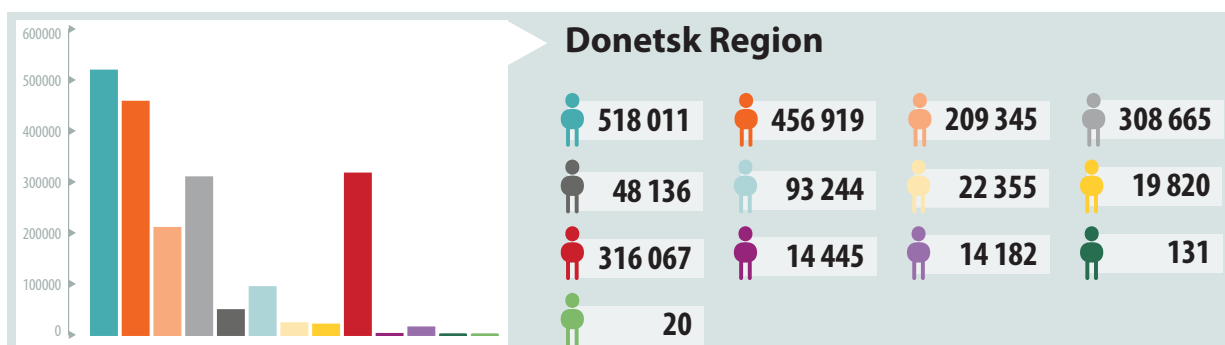
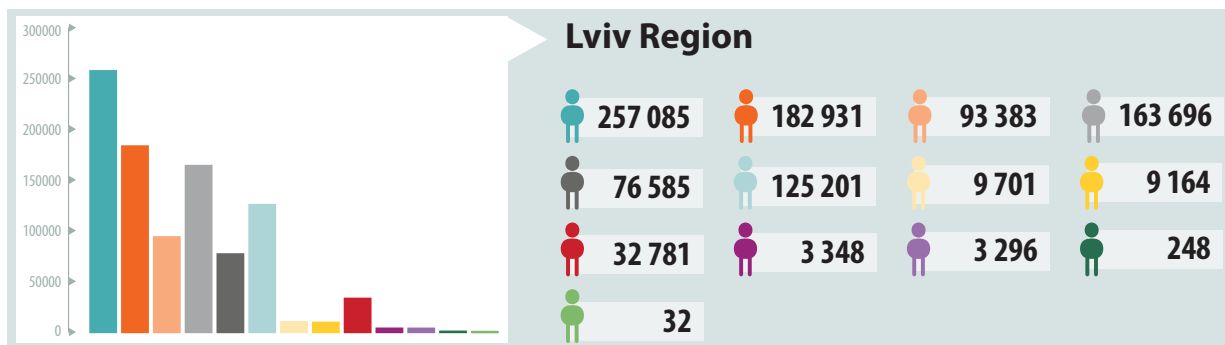
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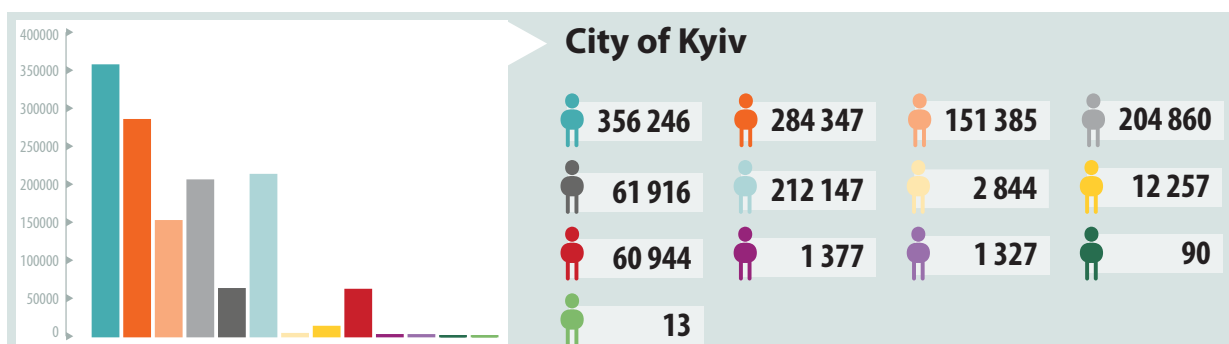
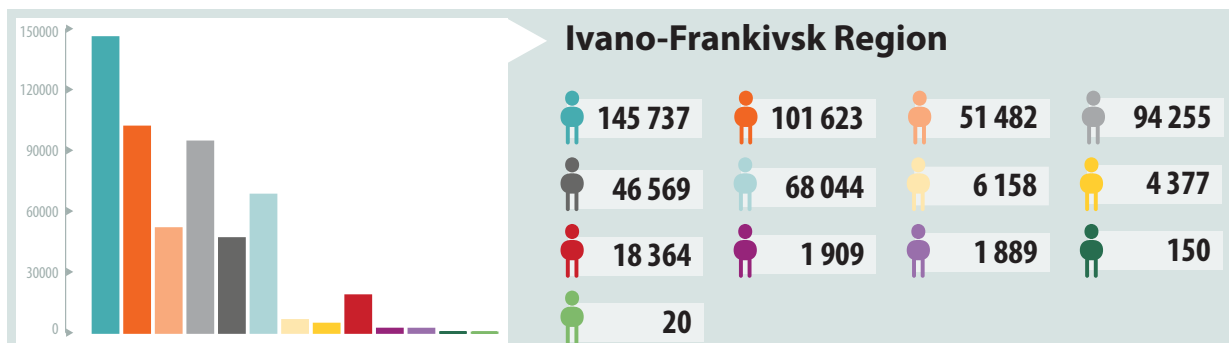
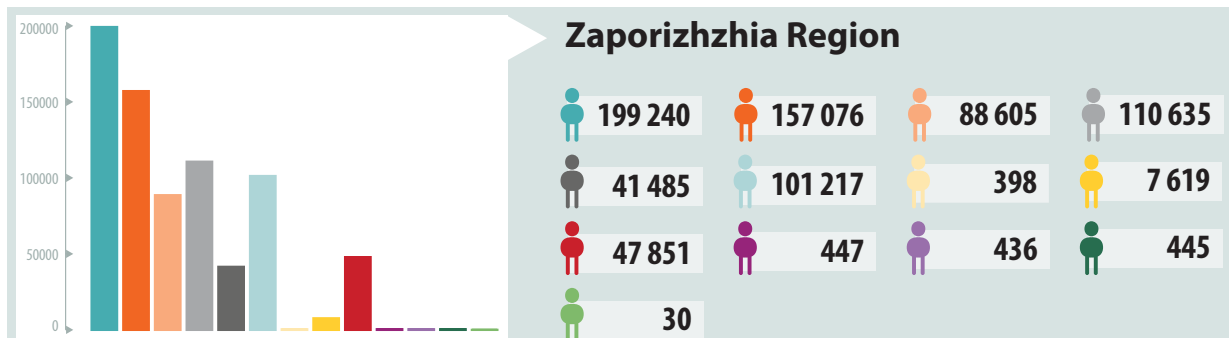
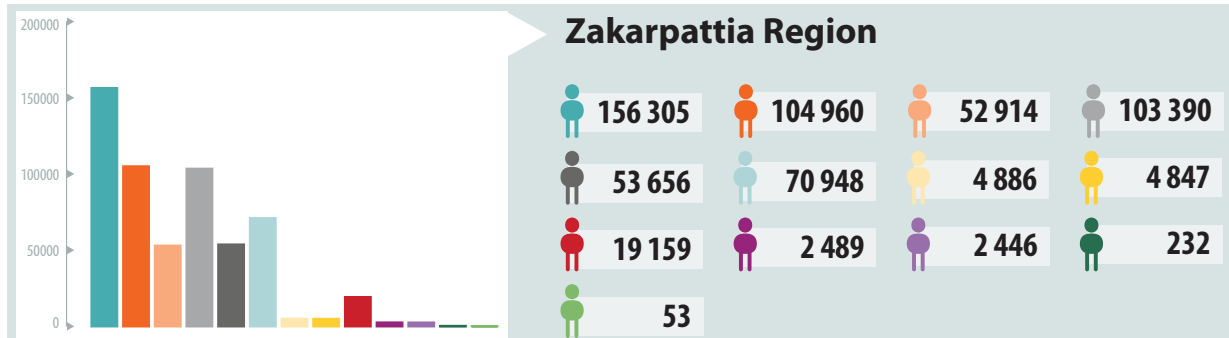


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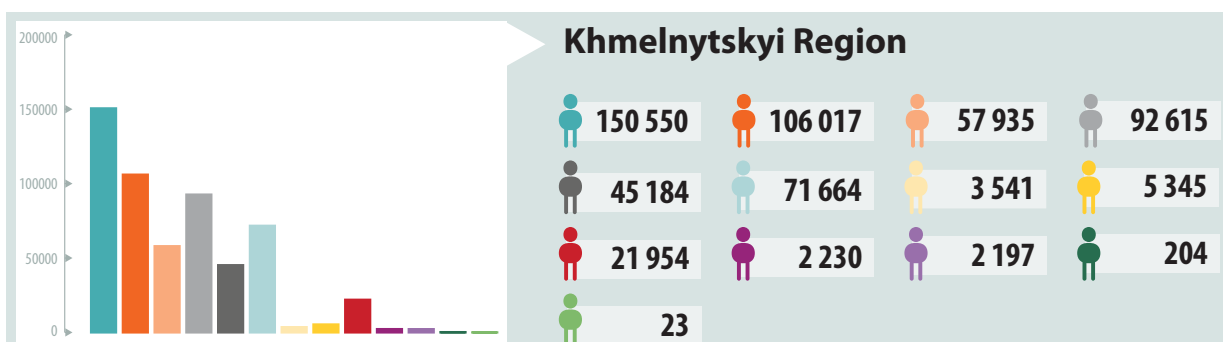
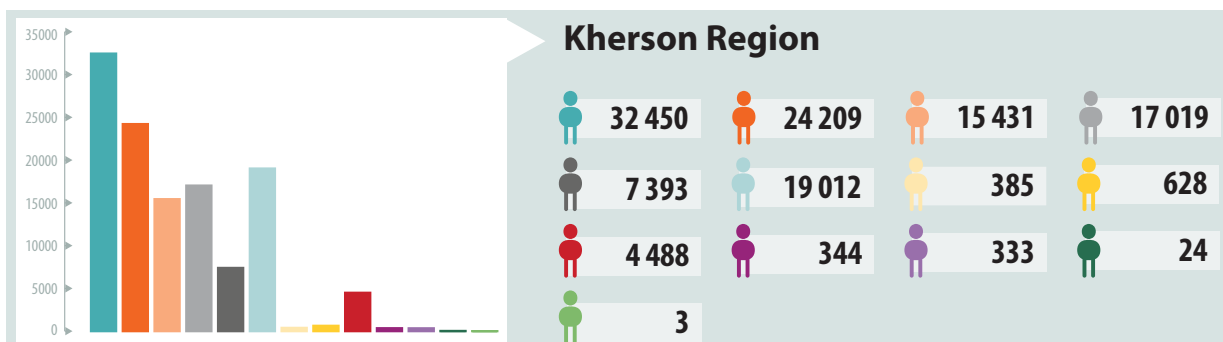
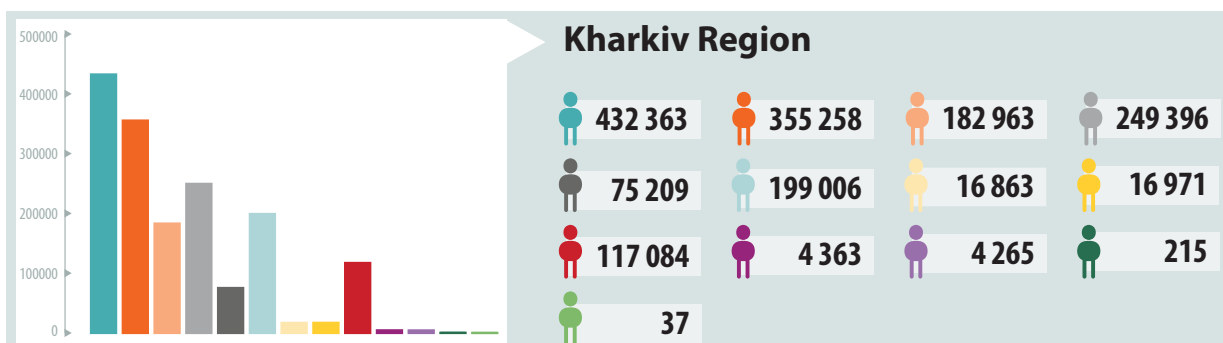
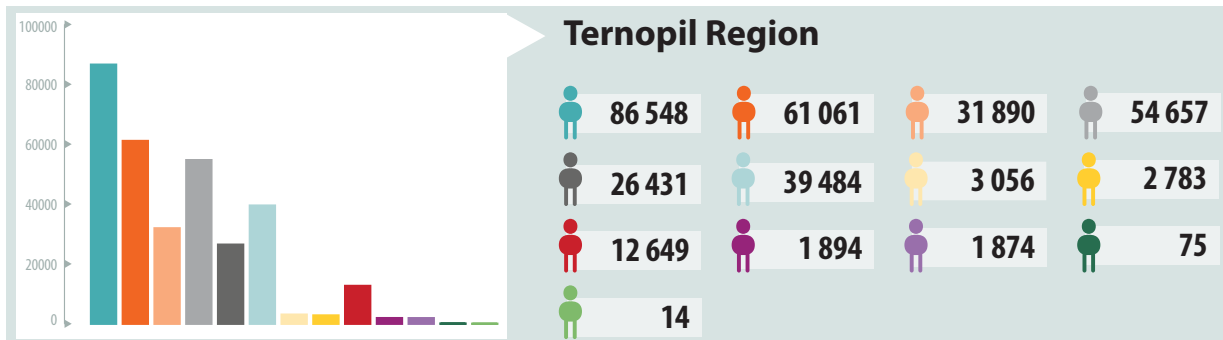
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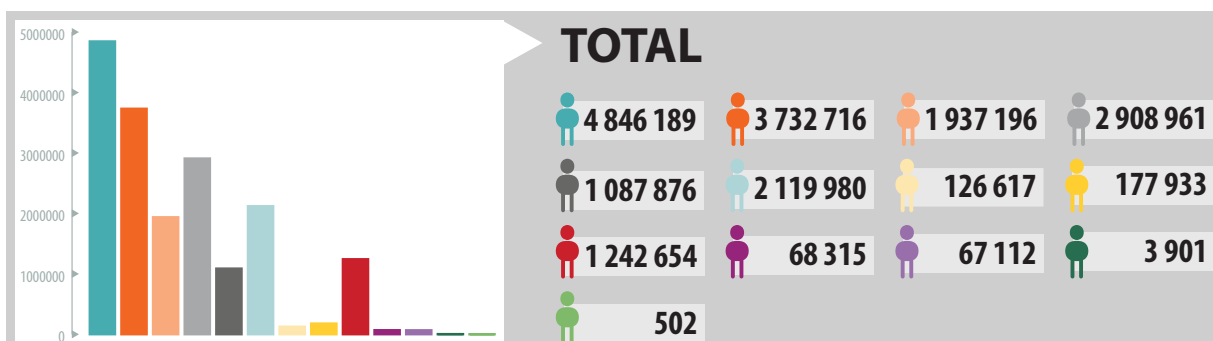
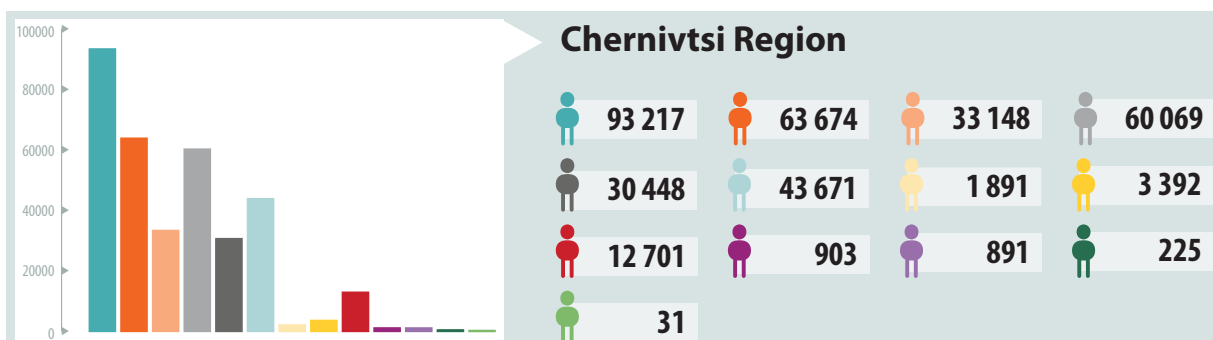
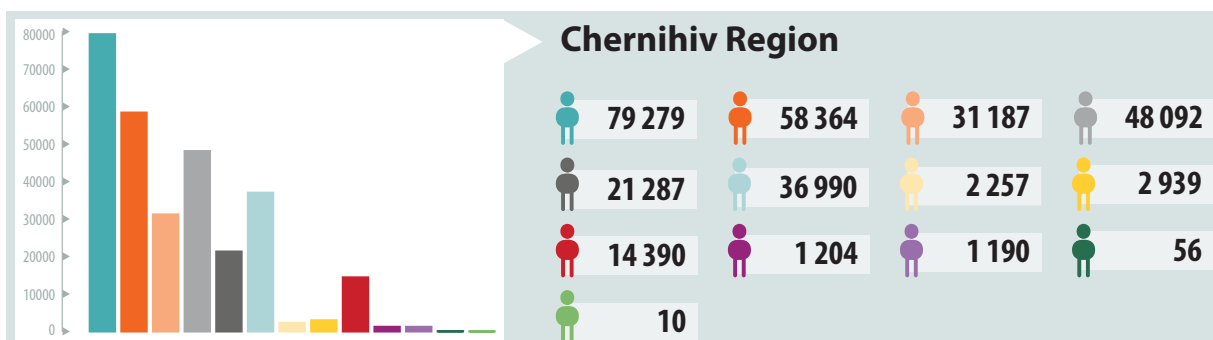
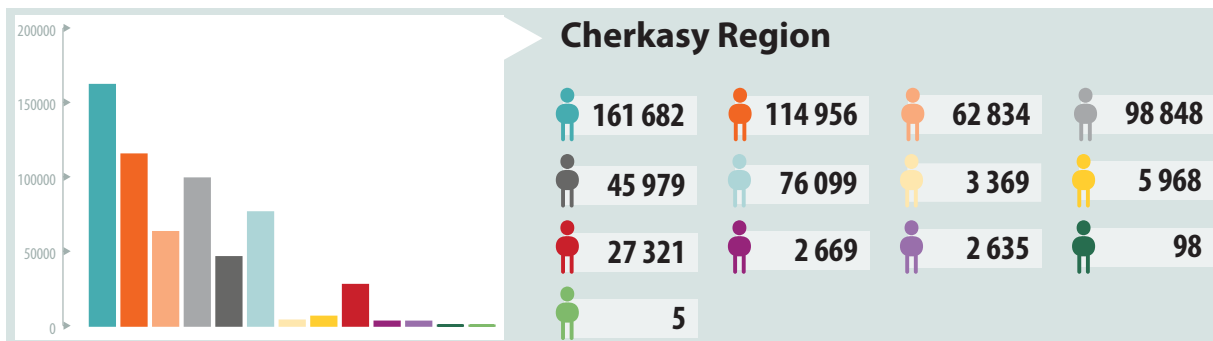
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# Information on registered IDPs by regions

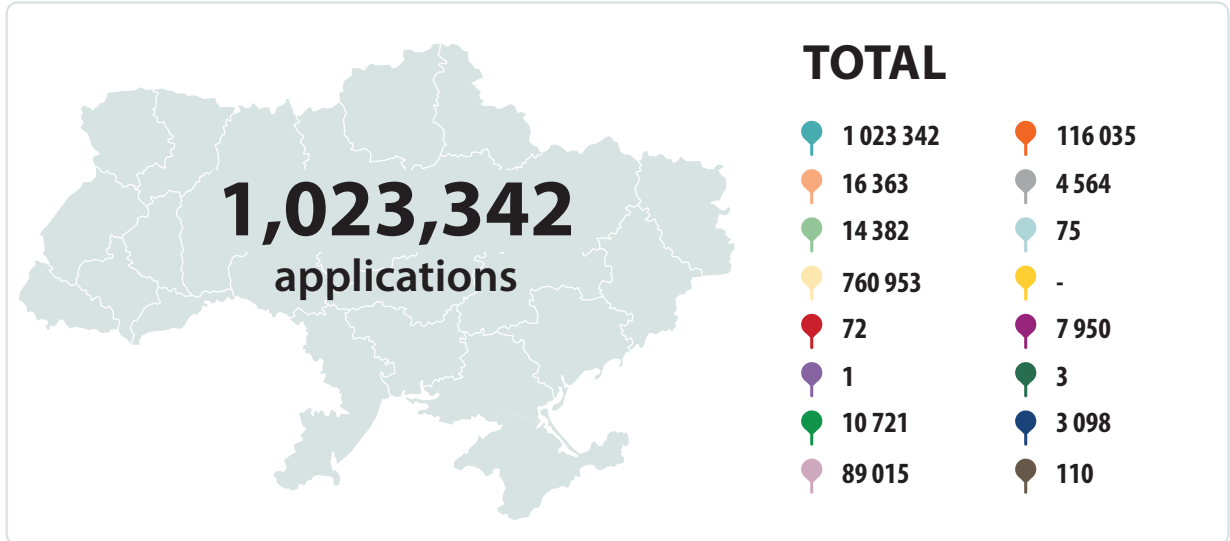
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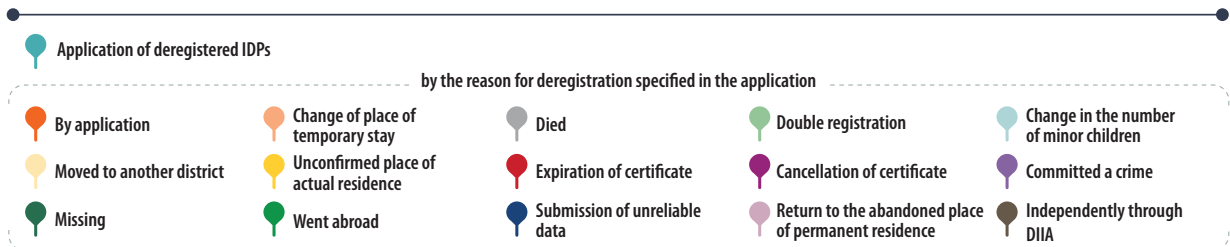
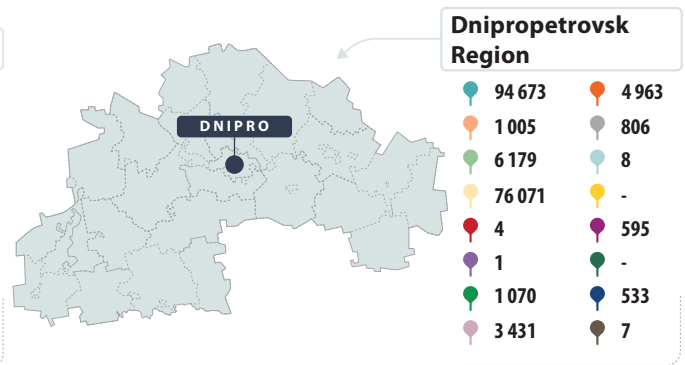
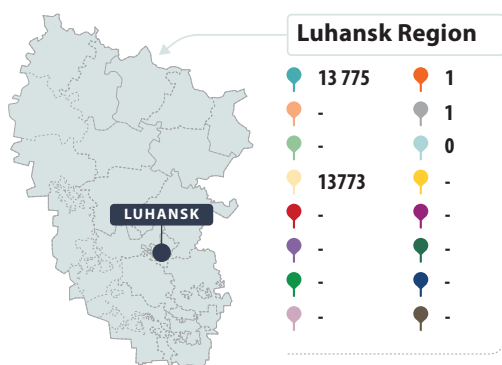
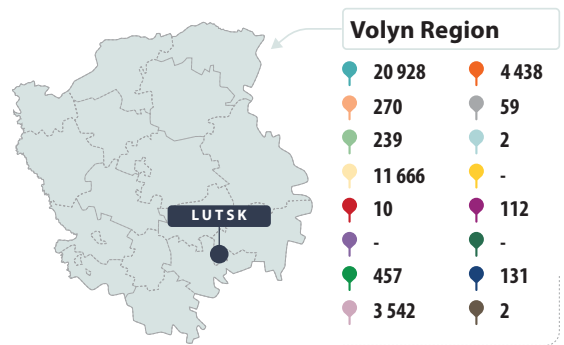
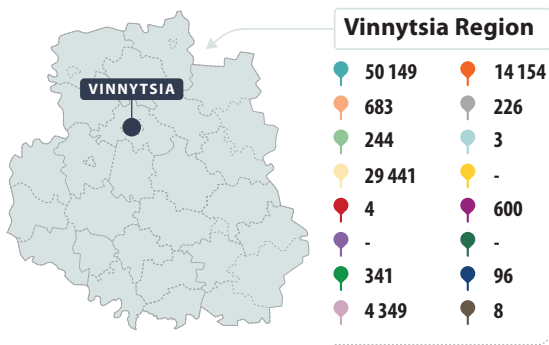
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# Information on deregistered IDPs by regions

from 24 February to 20 October 2022

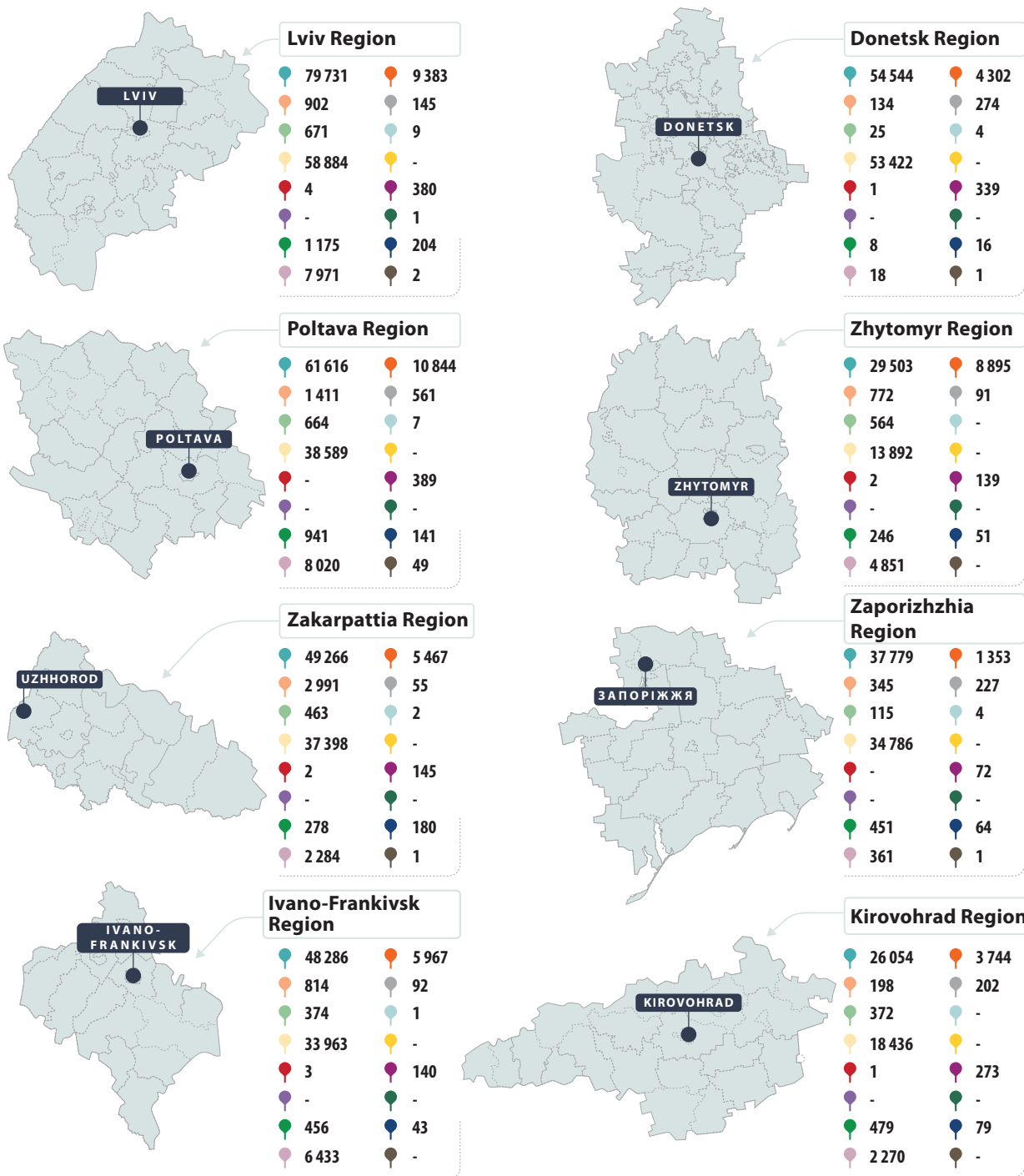


ANNEXES



# Information on deregistered IDPs by regions

from 24 February to 20 October 2022



Application of deregistered IDPs

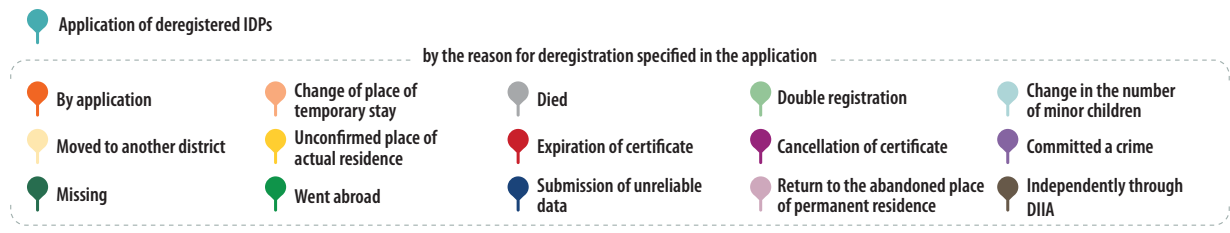
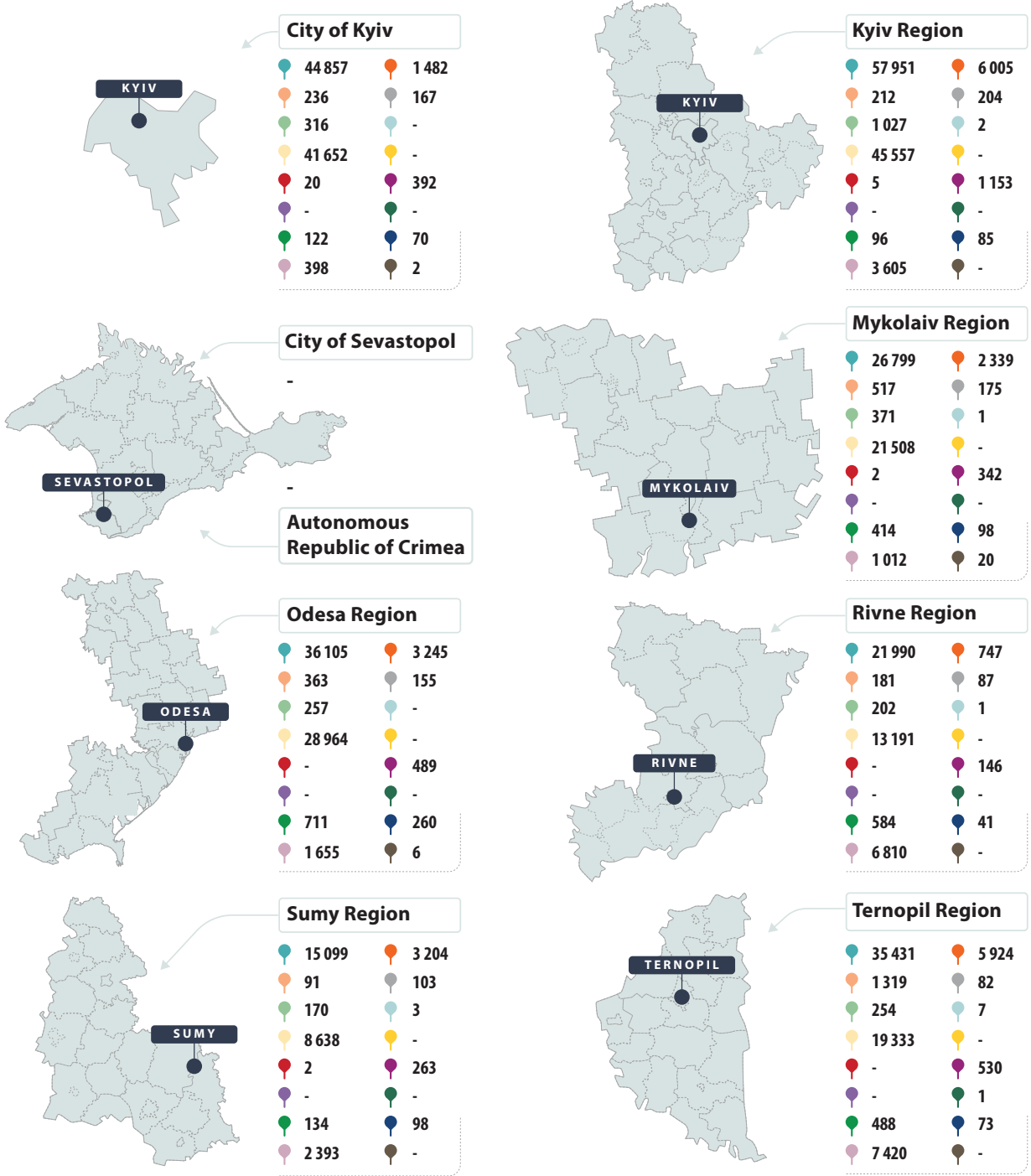
by the reason for deregistration specified in the application

- By application
- Change of place of temporary stay
- Died
- Double registration
- Change in the number of minor children
- Moved to another district
- Unconfirmed place of actual residence
- Expiration of certificate
- Cancellation of certificate
- Committed a crime
- Missing
- Went abroad
- Submission of unreliable data
- Return to the abandoned place of permanent residence
- Independently through DIIA

# Information on deregistered IDPs by regions

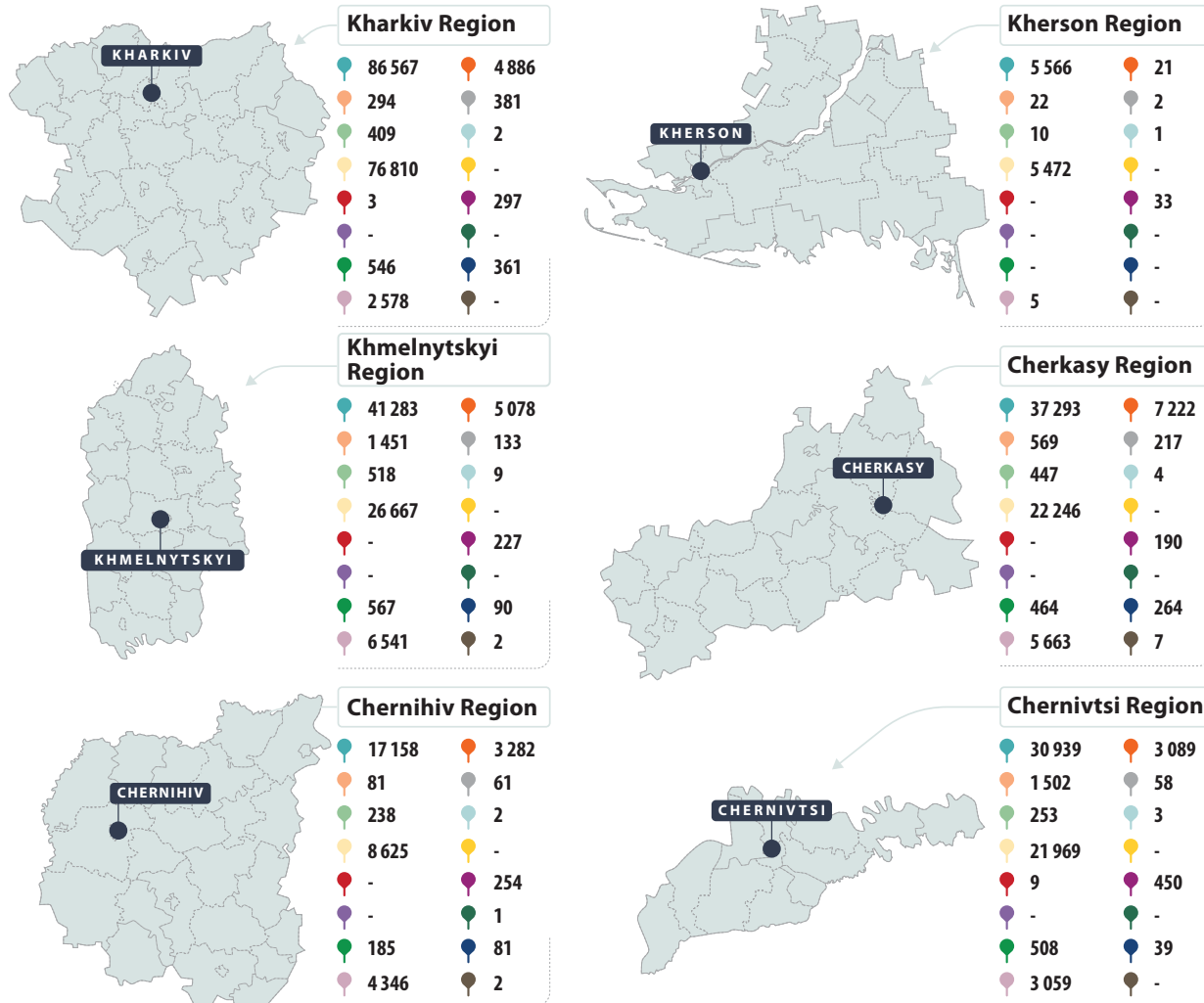
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ANNEXES

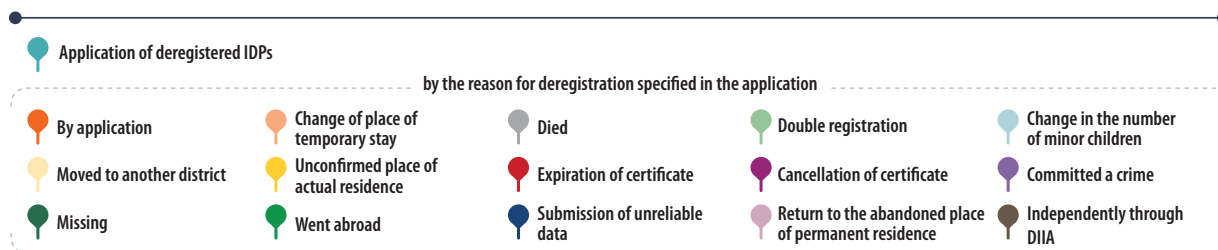


# Information on deregistered IDPs by regions

from 24 February to 20 October 2022



ANNEXES



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[hryzlova@ombudsman.gov.ua](mailto:hryzlova@ombudsman.gov.ua)
- ☎ (0322) 55-09-50

## VOLYN Region

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- ✉ [protsen.lyudmila@gmail.com](mailto:protsen.lyudmila@gmail.com)
- ☎ (063) 665-44-26

## ODESA Region

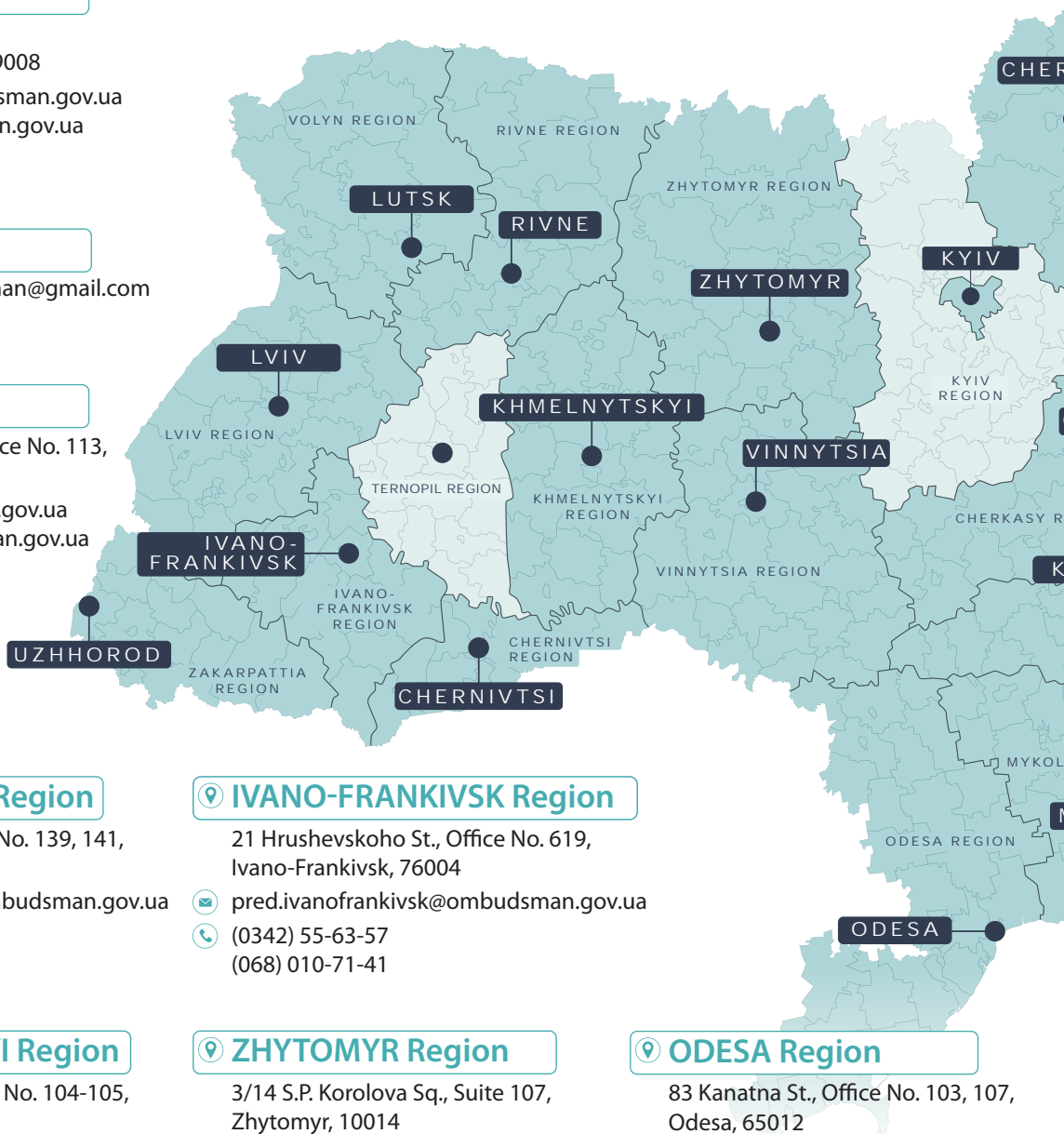
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### POLTAVA Region

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-  [nosenko@ombudsman.gov.ua](mailto:nosenko@ombudsman.gov.ua)
-  (0532) 56-49-08



### KHARKIV Region

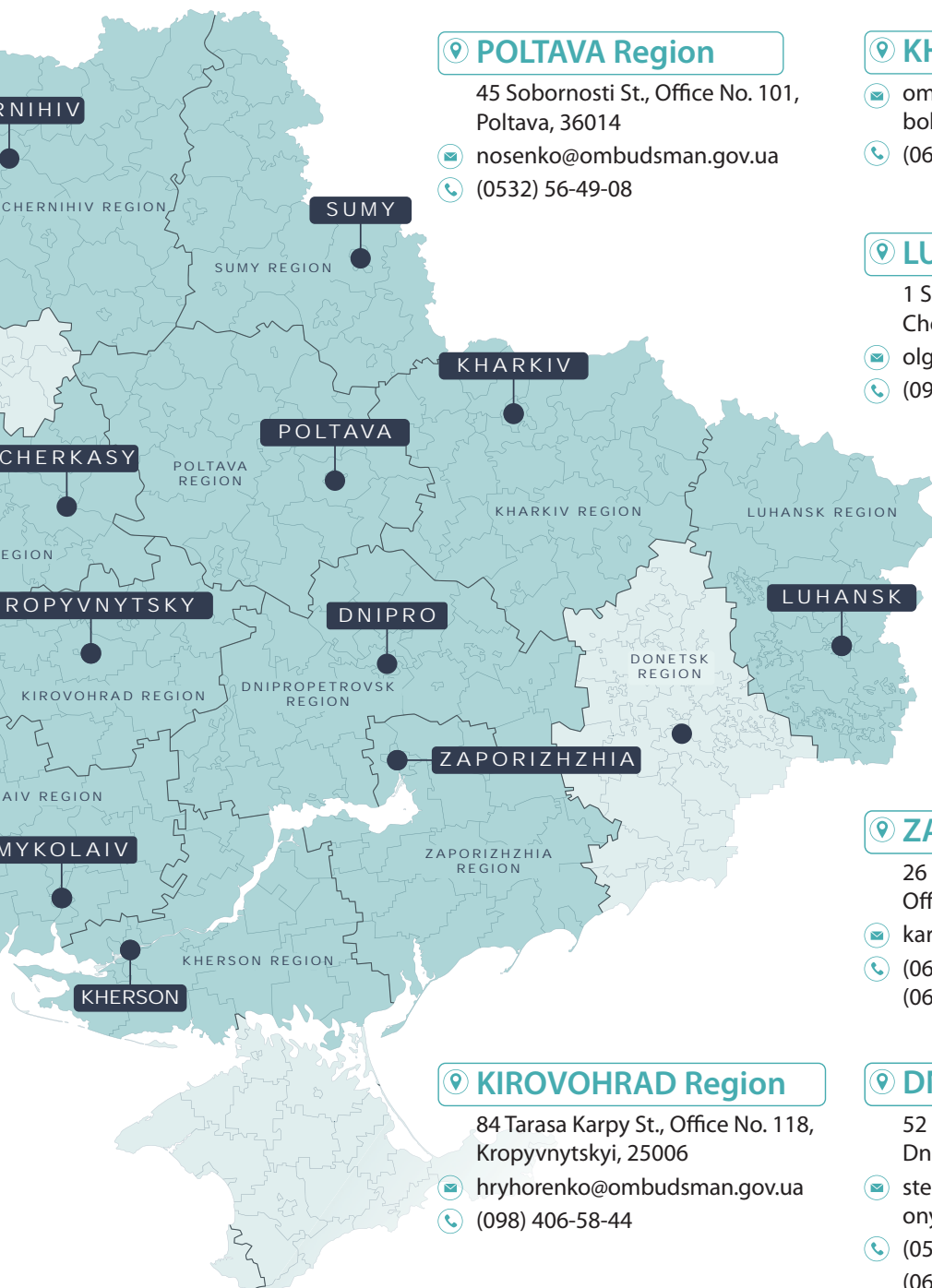
 [omarov@ombudsman.gov.ua](mailto:omarov@ombudsman.gov.ua)  
[bokhvalov@ombudsman.gov.ua](mailto:bokhvalov@ombudsman.gov.ua)

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[onyshchenko@ombudsman.gov.ua](mailto:onyshchenko@ombudsman.gov.ua)
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(068) 887-16-48


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(093) 783-67-84

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***For review and editing:***

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***and coordination:***

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