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THE AVAILABILITY OF ARCHIVES AND COURT CASES

THAT REMAINED
IN THE NON-GOVERNMENT-CONTROLLED AREAS
OF DONETSK AND LUHANSK OBLASTS

EXECUTIVE SUMMARY



This Report has been prepared to describe the issue of accessibility of archives and court cases remaining in the NGCA, the challenges it poses and possible ways to address it. The Report describes the context of the problem, available practices to cope with it and suggestions for remedial actions. The full version of the Report (available in Ukrainian) is recommended for a better understanding of the issue at hand. The information presented in the Report is up-to-date as of January 15, 2021.

The Report was prepared by Olena Sapozhnikova, legal analyst of the NGO Ukrainian Helsinki Human Rights Union (UHHRU), legal representative, and Oleksii Plotnikov, PhD in Law, Senior Lawyer of the NGO "Tenth April" within the framework of the United Nations Recovery and Peacebuilding Programme (UN RPP) with the financial support of the Government of the Kingdom of the Netherlands.

The authors of the study would also like to acknowledge the role of judges of local and appellate courts in Donetsk and Luhansk oblasts and the Supreme Court, the State Judicial Administration of Ukraine and its territorial departments, the system of bodies of the State Migration Service of Ukraine, the Pension Fund of Ukraine, the State Labour Service of Ukraine, the Department for State Registration of Civil Acts and Apostille of the Department of Notaries and State Registration of the Ministry of Justice of Ukraine. This Report has only been completed with their backing and input.

Ivan Honcharuk, Rule of Law and Access to Justice Specialist, UN RPP, managed and supervised the study, provided editorial suggestions and substantive content.

The views, observations, findings or recommendations put forward in this document are those of the authors and should not necessarily be taken to reflect the views of the UN and the Government of the Kingdom of the Netherlands.

The United Nations Recovery and Peacebuilding Programme is implemented by four UN agencies: the United Nations Development Programme (UNDP), the UN Entity for Gender Equality and the Empowerment of Women (UN Women), the UN Population Fund (UNFPA) and the Food and Agriculture Organization (FAO).

Twelve international partners support the Programme: the European Union (EU), the European Investment Bank (EIB), the US Embassy in Ukraine, and the Governments of Denmark, Canada, the Netherlands, Germany, Norway, Poland, Sweden, Switzerland and Japan.

INTRODUCTION



Between September 2020 and January 2021, the United Nations Recovery and Peacebuilding Programme undertook a study on the accessibility of archives and court cases remaining in NGCA of Donetsk and Luhansk Oblasts. The study aimed to assess the availability of archives and court cases and how the absence of these documents affects the operations of the relevant state authorities as well as access to justice for persons living in the armed conflict area.

The study had the following steps:

- The analysis of relevant international law norms and national laws, available reports on the situation in Ukraine and the case law;
- Requests for the information from courts and the State Judicial Administration of Ukraine, the State Migration Service of Ukraine, the Pension Fund of Ukraine, the State Labour Service of Ukraine, the Department for State Registration of Civil Acts and Apostille of the Department for Notary and State Registration of the Ministry of Justice of Ukraine; a total of 233 requests for information were submitted, and 68 responses were received;
- Interviewing representatives of the said public authorities; a total of 41 interviews;
- Round-table meetings with representatives of the said authorities to present the provisional findings of the study and to seek feedback;
- Making a report detailing the findings of the study on the current state of accessibility of government and court archives and issuing recommendations based on the expertise of project specialists and the comments of the partners involved in the study.

For the purposes of the study, the archives of state authorities and courts meant the documents and files kept on the working premises and archival repositories of the relevant authorities that were created in the course of activities of those authorities.

GENERAL DESCRIPTION OF THE PROBLEM OF ACCESSIBILITY OF DOCUMENTS AND COURT CASES REMAINING IN THE NGCA



The armed conflict that started in 2014 and resulted in the Government of Ukraine losing control over parts of Donetsk and Luhansk Oblasts had the effect of terminating the activities of Ukrainian state bodies in the NGCA. The premises and assets of state bodies came under the de facto NGCA control and those staff who chose to continue working as civil servants were forced to relocate to the GCA. These archives are no longer accessible, resulting in added barriers for persons to regain their rights.

States are bound by international law to hold archives accessible to protect human rights and freedoms exercised through the data in these archives. The Constitution, laws and by-laws of Ukraine generally comply with these international regulations. The provision on the right of citizens to access official documents appears in the Laws of Ukraine «On Personal Data Protection» and «On Access to Public Information» and in a number of by-laws. The respective special rules were included in the Laws of Ukraine «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine» and «On Peculiarities of State Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories of Donetsk and Luhansk Regions.»

There is, however, a contradiction across the majority of laws and the practice of not recognising any «documents» issued by the de facto NGCA authorities and the human rights obligations arising from the Namibian exceptions and partially enshrined in Ukrainian legislation. The practice of state authorities has been to fail to recognise any «documents» issued by the de facto NGCA authorities. An example is their de facto reluctance to apply the Namibian exceptions whereby the state recognises the «documents» issued by the de facto NGCA authorities to the extent deemed appropriate for protecting and implementing human rights and legitimate interests.

The only exception is the medical «documents» certifying the facts of birth and death in the GCA, a practice enshrined in the legislation¹. That approach does not, however, fully qualify the Namibian exemptions, as there is no administrative procedure in place for such documents to be adopted by the executive branch of government. It should be noted that the Namibian exceptions provide only an example of legal facts, in support of which it is recommended to recognise the documents. The list of documents that may be subject to recognition by public authorities is by no means exhaustive².

The Ukrainian laws and by-laws on record keeping and archiving in state bodies and courts provided for an emergency evacuation of certain archives. The legal regulations in force as of 2014 (Rules of the Archives of Ukraine, Typical Instruction on Record Keeping in the Central Executive Authorities, the Council of Ministers of the Autonomous Republic of Crimea, local executive authorities and the instructions of individual authorities based on it) and still in force today, however, have not proven suited to the situation in which numerous documents from all public authorities need to be removed simultaneously in the face of the loss of state control over a certain territory. Certain rules regarding the handling of emergencies could not be put into practice in the real circumstances that arose in 2014.

DESCRIPTION OF THE ARCHIVES' ACCESSIBILITY ISSUE



There are international law obligations for Ukraine to preserve government archives and provide access to official documents. These obligations stem from international human rights law, international humanitarian law and individual international treaties. The Constitution and the laws of Ukraine mediate the relevant general international obligations.

1 Part 3, Article 2 of the Law of Ukraine «On Peculiarities of State Policy on Ensuring Ukraine's State Sovereignty over Temporarily Occupied Territories of Donetsk and Luhansk Regions».

2 <https://precedent.in.ua/2016/05/06/pravovyye-posledstviyya-dlya-gosudarstv/>; п. 125.

The Ukrainian laws on archiving and record keeping proved unsuitable for dealing with the need for mass evacuation of archives over a large territory. Some provisions available could not be implemented amid the armed conflict. This includes the Methodological Guidelines on the Procedure for the Transfer (Reception) of Documents of Central and Local Authorities to State Archives in the Event of a Threat of a Special Period in Ukraine. Although the special period was declared in March 2014, no specific guidance was provided to the state authorities.

The new Procedure for the Evacuation, Retention and Destruction of Documents during a Special Period³ was approved in 2019 as a step ahead. It specifies the duty of public authorities to prepare the evacuation of current and archive files themselves with no further instructions should a special period be declared. Meanwhile, the decision-making procedure to evacuate an institution, as well as whether the head or other employees of the institution can decide to evacuate the archives in the event of a sudden immediate threat of loss of control over an institution, is not well elaborated.

The international and national institutions have repeatedly stressed that it is essential to preserve documents, court cases and archives. The available domestic reports show that mainly public servants were relocated in the summer and autumn of 2014. Arrangements to relocate the archives were unfeasible due to the danger to staff, shortage of transport and special premises. In fact, all the archives of public authorities were left where they were kept permanently, and what happened to them is still unknown.

A great number of court cases were left in the GCA of Donetsk and Luhansk Oblasts. Various attempts have been made since 2014 to date to amend the law to address this issue. Specifically, five draft laws have been withdrawn, one is pending before the President of Ukraine (draft Law of Ukraine No. 0941 «On Amendments to the Law of Ukraine «On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine» regarding defining the territorial competence of the courts located in the Autonomous Republic of Crimea and Sevastopol to resolve court cases and their competence to resolve criminal offences committed in the temporarily occupied territories), and another is currently under public debate. The recommendations formed within this study can be offered to the developer of the draft law, the Ministry of Reintegration of the Temporarily Occupied Territories, as the draft law deals to some extent with the issues under study.

3 <https://zakon.rada.gov.ua/laws/show/z1132-19#Text>

According to Part 1, Article 1 of the Law of Ukraine «On the Administration of Justice and Criminal Proceedings in Connection with the Anti-Terrorist Operation», the High Specialized Court of Ukraine for Civil and Criminal Cases issued an order on September 2, 2014 to establish the competences for the courts⁴. This order, among others, altered the competence of the regional and appellate courts in Donetsk and Luhansk Oblasts which belong geographically to the NGCA or which, due to the ongoing armed conflict, failed to function as intended. Later on, the order was amended, as the armed conflict unfolded.

Some information in the cases where the materials are kept in the NGCA may be taken by the court from the Unified State Register of Court Decisions, as it contains all court decisions since 2006⁵.

In doing so, the court should use the in-house version, i.e. only available to judges and court staff with all personal (identifying) data of the parties to the proceedings recorded therein rather than a public domain version. This is a much easier way to restore materials of the case and consider it on the merits.

Civil cases, and among them the establishment of legal facts, constitute the largest number of cases involving claims from the conflict-affected people in eastern Ukraine. As of today, such cases are considered according to the general provisions of the Civil Procedure Code of Ukraine with Namibian exceptions partially introduced into the national laws.

The national case law on disputes involving access to the NGCA government archives can be divided into two categories. The first is where courts have established the facts that would ordinarily be supported by a document from the archives of state authority. Such cases account for the bulk of court cases dealing with the armed conflict (see Annex 2). The second category includes those cases involving claims to the Pension Fund of Ukraine relating to the pension accrual of employees of enterprises who remained in the NGCA.

The litigation practice has adopted a separate group of cases in recent years to address the issue of redress of loss (see Annex 1 of the Report). The courts have repeatedly dismissed the claims of victims of the armed conflict who lost their property. The courts invoked the lack of documents remaining in the NGCA of Donetsk and Luhansk Oblasts, as judges in such cases have held the copies and photocopies of documents in disbelief. In some judgments it passed, however, the Cassation Civil Court in the SC did clarify how a claim for redress of loss could be granted while upholding the judgments of the lower instance courts on the merits of the case.

4 https://supreme.court.gov.ua/userfiles/rozp_27_0_38_14_2014_09_02_1.pdf

5 <https://zakon.rada.gov.ua/laws/show/3262-15#Text>

Judges face major obstacles in adjudicating cases of victims of the armed conflict when they are unable to obtain both the case file and any supporting documents on a given fact as the relevant documents are held in the NGCA. In such instances, judges will inquire whether the plaintiff wishes to have the case files restored to court, suspending the claim on the merits in the event of a request to do so. Indeed, it is in the framework of the initiated proceedings that the court will send the appropriate requests to state authorities asking for information and documents (copies) that are available.

Noteworthy, whenever judges have full access to the Unified State Register of Court Decisions without encrypted personal data of the parties to the proceedings, it is an effective tool, i.e. judges receive the full text of a court decision they need to restore.

Civil, criminal, administrative and commercial proceedings may allow for various expert examinations to take place at the request of the parties to the case. It is very common for expert institutions to ask for case materials to be made available for examination, i.e. some court cases may not be in courts, but in the NGCA expert institutions. Criminal cases are most likely to have expert examinations where case files and physical evidence are provided, yet the number of such cases is not known. There is no way to look into this issue as there is no separate judicial statistical data available.

Through a review of the practice of the Criminal Chamber of the High Specialized Court of Ukraine for Civil and Criminal Cases (hereinafter, the HSCU) on the website of the Unified State Register of Court Decisions, we were able to determine an approximate number of appellate criminal proceedings that the HSCU opened in cases that ended up in the NGCA of Donetsk and Luhansk Oblasts with an order to request criminal cases for review in the cassation proceedings. For some of them, cassation proceedings were suspended due to (1) lack of case materials or (2) inability to bring a convicted person to court or arrange a video call if the convicted person's cassation appeal for his/her participation in the cassation proceedings was submitted to the cassation court. There are 38 such cases; they have not yet been considered by the Supreme Court, nor is it clear what will happen to them unless there is a legislative solution to the issue, or unless the armed conflict is brought to an end. It is very likely that there are more such cases, however, as they searched for those cases only where the convicted persons applied for cassation proceedings with their participation or where rulings had been issued to reclaim the case files for cassation proceedings.

The transfer of convicts to the GCA who were serving their sentences in the NGCA is ongoing. Those are typically transferred together with paper files of criminal cases.

That procedure is part of the Trilateral Contact Group's efforts to bring about a peaceful settling of the situation in certain districts of Donetsk and Luhansk Oblasts. Now it is among the most viable mechanisms of handing over paper files of criminal cases.

The territorial offices of **the Pension Fund of Ukraine** in the NGCA of Donetsk and Luhansk Oblasts were operating until the summer of 2014 and stopped operating due to the threat from non-state armed forces. It was common for documents to remain in the buildings and premises of the Pension Fund (PF) of Ukraine as the armed conflict unfolded. In total, approximately 1.4 million paper archive files have been lost (approximately 900,000 in Donetsk Oblast and 500,000 in Luhansk Oblast). Their use, even if they are re-accessed, is all but impossible.

The challenges caused by the loss of archives in the NGCA have been partly remedied through an electronic database that the Pension Fund of Ukraine launched in 2012 and which keeps data on pension assignments. A full electronic conversion of pension files, however, including the creation of a database of digital copies of all pension case documents, only started in 2015. So, the documents lost in 2014 are mostly unavailable in this database. E-documents are being added to the electronic database by digitizing the existing documents as well as documents submitted by the persons applying to the PF of Ukraine.

Data from original employment record books, as well as data taken from public registers, witness statements and court decisions, may be used when a person is granted a pension for the first time. The pension is usually granted upon presentation of a person's employment record book. The legal regulation on the assignment of pensions to internally displaced persons has been developed since 2014; this includes the procedure for application, identification, formation of an electronic pension file based on the documents submitted by internally displaced persons.

A continuing concern is granting pensions when employment record books are lost, contain corrections or false data. The Pension Fund bodies cannot handle «documents» originating from the de facto NGCA authorities and enterprises, institutions and organizations domiciled there. To address this issue, efforts to develop an alternative procedure for confirming the length of service based on witness testimony, which is being undertaken by the PF of Ukraine jointly with the Ministry of Social Policy of Ukraine, should be pursued.

Notably, the PF of Ukraine in itself does not see the issue as too grave. Thus, according to the employees of the PF of Ukraine, about 1-2% of people who contact the PF of Ukraine are experiencing difficulties due to the loss of archives.

The State Migration Service (SMS) of Ukraine effectively ceased its activities in the NGCA between July and October 2014. The SMS buildings and premises were taken over by representatives of non-state armed forces. The archives were left in those buildings and premises as it was impossible to evacuate them. Only in a few cases did they manage to arrange for the evacuation of certain types of documents. Once lost, those archives cannot be accessed.

There is no way to recover the lost documents and, if re-accessed, it would be questionable for the public authorities to use them as they cannot be verified for forgery or alterations. For this reason, invalidation procedures were undertaken for some lost documents for which data was available (1994 model passport forms for citizens of Ukraine).

The State Migration Service of Ukraine did not have an electronic database until 2015. Work is underway to fully unroll it. The lost documents are recovered from any lawful source (documents provided by individuals, databases of state authorities, court decisions, etc.).

The State Migration Service has roughly estimated that the bodies of the SMS of Ukraine have received more than 200,000 applications on matters related to the archives lost in the NGCA. These applications are still received in 2020. It should be noted that all residents of the NGCA bear the burden of the loss of archives eventually.

Some issues arising from the archives of the SMS of Ukraine being lost in the NGCA have been rectified in law and practice. Specifically, the procedure for issuing a passport of a citizen of Ukraine has been streamlined. If a person, whose passport was issued by a body of the SMS of Ukraine that ceased its activity, applies for it, the SMS of Ukraine will identify such person using the information available and the information received from other state authorities, enterprises, institutions and organizations. Witnesses are invited for questioning, if necessary.

The identification of foreigners and stateless persons holding temporary or permanent residence permits, whose files remain in the NGCA is still an urgent issue. The issue is addressed with the assistance of international organizations and by contacting the diplomatic missions of the respective states.

Another pressing issue is the registration of birth in the NGCA and entering data in the passports of the registered address of minors residing in the NGCA. The bodies of the SMS of Ukraine themselves recommend applicants to go to court to establish the fact of birth, after which the SMS bodies will take necessary actions based on the court decisions made.

The State Labour Service (SLS) of Ukraine was formed on September 10, 2014 and «inherited» the archive loss issue from its predecessor services, the State Service for Mining Supervision and Industrial Safety and the State Labour Inspectorate. The SLS of Ukraine had no own archives in the NGCA. There is no information about the archives of the predecessor services, which were stored in their buildings and premises in the NGCA. Nor there is any information about actions to evacuate the relevant archives to the GCA. No documents held in the NGCA have been handed over to the State Labour Service. Neither have these documents been accounted for nor has any recovery work been undertaken. The SLS of Ukraine has only documents of the branches of its predecessor services located in the NGCA. Some documents are known to have been removed from the NGCA by predecessor officials on their own initiative and by their own efforts.

The State Labour Service does not maintain any records of the documents that are left in the NGCA. If questions arise on them, the SLS of Ukraine uses only existing documents and databases, such as the register of high-risk facilities, the register of accidents, etc.

The SLS of Ukraine only encounters issues related to the loss of archives in the NGCA in isolated cases. Being prevented from inspecting the activities of enterprises, institutions and organizations operating in the NGCA, the SLS of Ukraine cannot undertake any oversight activities involving the use of documents for the enterprises, institutions and organizations running their activities there. The handling of such subjects by the SLS Ukraine is potentially relevant as any employee who is or has been working in the NGCA may be affected by the loss of the predecessor services' archives. Given this, it is a pressing task to develop a legal and regulatory framework for the SLS of Ukraine on how to deal with issues arising from the inaccessibility of archives.

Data in the archives of **the State Register of Civil Acts (SRCA)** has been kept for 75 years. Data has been entered into the State Register of Civil Acts since 2008, with data from 1945 to 2008 recorded in almost all oblasts. The exceptions are, inter alia, Donetsk and Luhansk Oblasts, which due to the outbreak of the armed conflict in 2014, have not completed the planned stages of data entry into the electronic register: the entry of the 1945 to 1949 data could not be completed; hence it is this body of paper documents which needs to be accessed as soon as possible.

Recovering civil status records is not a new phenomenon in Ukraine. It rather happens all the time, apart from the armed conflict. It can also be caused by the loss of documents due to natural disasters, emergencies, etc. For those people affected by the conflict, the general rules for recovery apply.

As of October 2014, the State Civil Registry Offices no longer register civil status documents of the NGCA in Donetsk and Luhansk Oblasts.

The electronic register in the NGCA has no access since October 31, 2014. It took nearly seven years for State Civil Registry Offices to learn how to work without paper records from the NGCA.

As there is no way to ascertain or confirm that a marriage has been registered or dissolved in the NGCA, it is now common for the NGCA residents to marry in the GCA. It takes a single day for them to get married, after which they go back. To dissolve their marriage, they also need to arrive in the GCA.

The return of archives of the State Civil Registry Offices from the NGCA will be necessary sooner or later, because sometimes the electronic registers may contain an error that can only be verified if an original document is available. Other issues are basically solved.

COOPERATION BETWEEN PUBLIC AUTHORITIES



The cooperation between these authorities is a crucial step in bridging the adverse effects deriving from the lack of access to many court cases and documents of public authorities. Thus, the Pension Fund of Ukraine and the State Migration Service of Ukraine cooperate through official requests for information on a variety of issues. The most common way of cooperating is to request the relevant information from other public authorities possessing it (e.g. the State Tax Service).

Another common practice is to send enquiries to the economic entities that may possess the relevant information. In some scenarios, enquiries may be sent to notaries registered in the GCA.

The PF of Ukraine and SMS of Ukraine communicate with the relevant agencies of foreign countries on issues of lost documents in the NGCA. The PF of Ukraine may, for example, provide information on pension files whose hard copies were lost in the NGCA when requested by the relevant authorities of the foreign country who possess the lost pension file. The SMS of Ukraine cooperates with foreign embassies on matters of identifying foreigners and stateless persons originating from foreign countries.

The SMS of Ukraine also cooperates with international intergovernmental and non-governmental organizations on matters relating to the loss of archives. Representatives of the SMS of Ukraine, in particular, cooperate with the United Nations High Commissioner for Refugees (UNHCR) in both the form of requests for information on the status of certain persons as refugees or asylum seekers and in the form of meetings to address the issues arising from the loss of archives.

The State Labour Service of Ukraine interacts with other state authorities, local authorities, citizens' associations, trade unions and relevant foreign bodies, as well as enterprises, institutions and organizations. There is no information on any specific forms or examples of such cooperation.

All individuals involved in the study were each questioned about interaction with the de facto authorities of the NGCA. All interviewees reported that such interaction neither took place nor could take place, as any «document» issued or certified by such de facto authorities was invalid under Ukrainian laws.

A major issue in the court hearing of cases on victims of the armed conflict is getting information by judges when both case files and any supporting documents on a certain fact are missing since the relevant documents are located in the NGCA. This obstacle is solved within the framework of recovery of lost proceedings, whereby the court sends the appropriate requests for information and available documents (copies) to state authorities. Had the judge been able to access the databases of the state authorities which generate the answers to the requests, this procedure would have been quicker and better, as the response may contain incomplete data.

MAIN FINDINGS OF THE STUDY



In 2014, the court staff initiated the removal of a small portion of court archives and case files to the GCA of Donetsk and Luhansk Oblasts and did it themselves. No one knows whether the situation would have been different if all issues related to the evacuation of documents amid the armed conflict and other associated issues had been regulated by law in 2014. The country, however, was not then ready for such events.

The representatives of the Trilateral Contact Group on the peaceful settlement of the conflict in Donbas later removed convicts along with criminal case files from the NGCA of Donetsk and Luhansk Oblasts from time to time. And twice, more than one hundred (total) criminal cases were evacuated alone without convicts. The procedure for the transfer of convicted persons together with the criminal case files against them is ongoing.

The recovery of case files is only possible through court proceedings. The procedure ran quite frequently in 2014-2015 and gradually decreased in 2020. Therefore, it can be assumed that the issue of the return of files remaining in the NGCA is not so urgent. Meanwhile, the recovery procedure for criminal cases has been suspended for the time being. Particularly, there are currently 38 cases with paper files held in the NGCA pending before the Cassation Criminal Court as part of the Supreme Court.

The court may take some data on the cases where the case files are located in the NGCA from the Unified State Register of Court Decisions⁶ with service access (this version has open personal data of the parties) that contains all decisions from 2006 onwards. This is a much easier way to restore materials of the case and consider it on the merits.

Sometimes, if there is a need to submit any documents to the court in civil proceedings, the parties themselves or through acquaintances and relatives get copies of the documents held in the NGCA. Courts accept these documents through the clerk's office, attach them to the case files, but do not recognise them as evidence and rather accept only the information from these documents under the Namibian exception. Treated together with other case files, this is a way to resolve the case on the merits.

6 <https://zakon.rada.gov.ua/laws/show/3262-15#Text>

However, some participants felt that the return of lost archives was not feasible in some cases, as such documents could not be used for document management purposes due to the likelihood of forgery. Most participants, however, felt that having electronic databases would prevent most of the issues spotted.

The State Civil Registry Offices have few or no issues with the lack of archives remaining in the NGCA. Few requests are made regarding misspellings of names, and then employees of the State Civil Registry Offices verify them in the electronic database. It is not possible, however, to verify data from original paper documents, if necessary, so these issues are postponed for an indefinite time or are adjudicated through the courts. Representatives of the State Civil Registry Offices stressed the need for a full return of the archives, especially for 1941-1945, as these archives have not been digitized before.

The Pension Fund of Ukraine has used its electronic database of pension files, which has been maintained since 2012, to solve most of the issues related to the loss of archives. Occasionally, the necessary information has been restored using documents from citizens and open databases. The fact that the PF of Ukraine has been generating full-fledged versions of pension files since 2015, which include digitized copies of all the documents in the case files, is clearly a positive thing. Some issues like the confirmation of a person's length of service in the case of loss of an employment record book or inaccurate entries in it are still pending. Efforts are continuing to address these issues.

The State Migration Service of Ukraine did not have an electronic database until 2015. Work is underway to fully unroll it. The lost documents are recovered from any lawful source (documents provided by individuals, databases of state authorities, court decisions, etc.). The identification of the persons residing in the NGCA who apply to the SMS of Ukraine seeking to have their passports replaced, the identification of foreigners and stateless persons residing in the NGCA and the registration of information on the place of residence of minors residing in NGCA are the areas of concern.

The State Labour Service of Ukraine lacks consistent handling of the obstacles caused by the predecessor services (the State Service for Mining Supervision and Industrial Safety and the State Labour Inspectorate) having their archives lost. No electronic databases are available. Only occasional issues related to the loss of archives have been seen in practice.

RECOMMENDATIONS BY THE STUDY AUTHORS



1. The state authorities that are subject of this study are encouraged to contact inter-state organizations to initiate negotiations with the de facto authorities of the NGCA on access by international personnel (as being neutral and unbiased) to the archives held in the NGCA, to scan and hand them over to the Ukrainian authorities in the pursuit of protecting the rights of those affected by the armed conflict.
2. The state authorities that are subject of this study are encouraged to initiate the issue of launching negotiations on an exchange of documents of state authorities, court cases and national archives to be held by the humanitarian Trilateral Contact Group on the peaceful settlement of the situation in certain areas of Donetsk and Luhansk Oblasts, and to approach the Ministry of Foreign Affairs of Ukraine requesting that the issue be included in discussions and diplomatic talks, that is, to bring the issue to the state-wide scale.
3. The state authorities that are the subject of this study are encouraged to apply to the Verkhovna Rada of Ukraine and the Ministry of Foreign Affairs of Ukraine to have the issue of access to archives in the NGCA added to the agenda of the Minsk process.
4. The Supreme Court should build a powerful mechanism for unifying jurisprudence on the subject of the study, addressing all the options now at hand for addressing the issues outlined.
5. To solve the issue albeit partially, the system of state authorities should decide what documents they can recognise and to what extent. Moreover, it should be envisaged in law that recognising the content of individual «documents» originating from the de facto NGCA authorities has no consequence in recognising the legitimacy of those entities.
6. A lower standard of proof in fact-finding cases where such facts occurred in the NGCA is required.
7. Legislative mechanisms for the citizens to have access to archives, both in the NGCA and the GCA, should be put in place.

8. Courts should be enabled by law to have access to electronic registers and databases of the executive authorities to obtain information in cases of armed conflict more fully and quickly.
9. Simplified extrajudicial (administrative) procedures for reviewing documents confirming legal facts of birth and death in the NGCA should be adopted.
10. It should be made mandatory that an extract from the Unified Register of Court Decisions is a proper copy of a court decision. This would remove the redundant bureaucratic formality of providing court copies of certified court decisions.
11. The matter of accessibility of court case files that remained in expert institutions in the NGCA should be addressed.
12. The Procedure for Ensuring the Evacuation, Storage and Destruction of Documents in Special Period Conditions, approved by Order of the Ministry of Justice of Ukraine No. 3194 dated October 17, 2019, should be supplemented with the provisions on the decision-making procedure for the evacuation of archives. These amendments may be made either to the Procedure itself or by adding references to other legal instruments regulating the adoption of such decisions. Equally, the regulations should be brought into line with the Procedure:
 - The Model Instructions on record keeping in the central bodies of executive power, the Council of Ministers of the Autonomous Republic of Crimea, local executive authorities, approved by Decree of the Cabinet of Ministers of Ukraine No. 1242 dated November 30, 2011;
 - Rules of operation of archival units of state authorities, local authorities, enterprises, institutions and organizations, approved by Order of the State Committee of Archives of Ukraine No. 16 dated March 16, 2001;
 - Rules for the Record Management and Archival Storage of Documents at State Authorities, Local Self-Government Bodies, Enterprises, Institutions and Organizations, approved by Order of the Ministry of Justice of Ukraine No. 1000/5 dated June 18, 2015.

Further, the logistical and technical resources for the evacuation arrangements for archives should be provided; these are, among other things, premises in which permanent or temporary storage of evacuated archives can be arranged, vehicles that can transport the archives evacuated, and the persons in charge of evacuating archives should be appointed.

- 13.** The existing practice of converting government archives and court cases (including current ones) into electronic form and forming complete electronic files should be expanded. This would include scanned copies of all documents contained in the paper files of government authorities and court cases. Scanned copies of documents stored in the electronic database of public authorities should, when appropriate, be ample grounds for restoring a lost paper copy of a document. The first to adopt these steps should be those institutions that are in the risk zone, along the «contact line».
- 14.** It is recommended that the State Migration Service of Ukraine prioritises the generation of full-fledged electronic files of persons applying to the SMS of Ukraine, especially foreigners and stateless persons. It is recommended that the passport procedures for persons born in the NGCA be made as easy as practical.
- 15.** It is recommended that the State Labour Service of Ukraine look into the issue caused by the loss of the archives of the State Service for Mining Supervision and Industrial Safety and the State Labour Inspectorate in the NGCA and, more specifically, review any potential areas of concern that might be caused by the loss of current and archived documents. It is recommended that arrangements be made to convert existing current and archived documents into electronic form and to build an appropriate electronic database.

