

Analysis of the human rights issues on the borders of the European Union member states, Ukraine and on the contact line with temporarily occupied territories of Ukraine (Crimea, Donbas)

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INTRODUCTION

Borders are a special space mainly structured around the security function. The authorities, different bodies and control officials have more powers in this space than within the rest of the country. Consequently, citizens have more responsibilities and, eventually, fewer freedoms.

Such a situation creates grounds for possible abuses and violations - and this may be due to excessive security measures, or corrupt and discriminatory actions of control officers, or improper organization of border crossing procedures which leads to violations of the rights of travelers.

Although anyone who has crossed the borders of Ukraine and other countries may face violations of their rights, and such cases are known, occur regularly, and sometimes resonate significantly, in general the issue of human rights at the border remains insufficiently articulated as a separate phenomenon.

Current analytical note mainly, but not exclusively, focuses on the constraints and challenges faced by:

- citizens of Ukraine at the EU borders;
- foreigners on the borders of Ukraine;
- citizens of Ukraine during the crossing of the contact line and administrative border with the temporarily occupied territories of Ukraine.

The purpose of the analysis is to identify border-specific human rights violations and to develop ways to address them. The sources of information for this analysis are laws and other regulations, monitoring and analytical reports of governmental, international and non-governmental organizations, and messages in the media and social networks. Although the latter source is insufficiently verified it may provide an opportunity to process “non-institutionalized” data which for some reason are not reflected in the first two.

Chapter I. Human rights abiding at the border in the legal system of the EU and Ukraine

Considering international agreements and national legislation of Ukraine and of the European Union human rights abiding at the border is not allocated to any separate group which somewhat complicates the task of identifying them and monitoring their compliance. Mentions of certain rights of travelers are scattered in the regulations governing the general principles of the border, the procedure for crossing the border, the work of control and security agencies etc.

Issues related to crossing the border in the context of asylum seeking are more codified in the regulatory field and more present in human rights discourse while the issue of the rights of travelers traveling for tourism, work, study, etc. is much more fragmentary.

It is important to remember that in both cases there is **no question of the right to freedom of movement** within the meaning of Article 13 of the UN Declaration of Human Rights that tells only of freedom of movement within borders and the right to leave the country. There is no unconditional right to enter another country.

1. EU+ law¹

Загальні засади

Apart from national legislation, the main document governing the crossing of the EU external border by third-country nationals including Ukraine is EU Regulation 2016/399 (the Schengen Borders Code).

According to Article 4 of this Regulation, applying the Schengen Code, Member States of the Schengen area must act in full compliance with relevant EU law, in particular the EU Charter of Fundamental Rights, and relevant international law, including the Convention relating to the Status of Refugees, adopted in Geneva on 28 July 1951 and obligations related to access to international protection, in particular the principle of non-refoulement and respect for fundamental human rights.

Article 7 of the Code emphasizes that border guards must respect human dignity while performing their duties, in particular, within the cases involving vulnerable persons. Any action taken in the performance of their duties shall be proportionate to the objectives pursued. Also, when conducting border checks, border guards should not discriminate against persons on the grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.²

Several provisions of the Code stipulate the obligation of the Schengen Member States to ensure proper training of border guards, including specialized training in identifying and resolving situations with vulnerable persons, such as unaccompanied minors and victims of trafficking, and special training on fundamental human rights. Member States should also encourage border guards to learn the languages necessary to carry out their duties.³

The Practical Guide for Border Guards, recommended by the European Commission, clarifies that the fundamental rights enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union must be guaranteed to anyone seeking to cross the

¹ European Union countries and four non-EU Schengen countries

² Schengen Borders Code, Article 7

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0399&from=EN>

³ Schengen Borders Code, Article 16

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0399&from=EN>

border. Border control must fully comply with the prohibition of inhuman and degrading treatment and the prohibition of discrimination enshrined in Articles 3 and 14 of the European Convention on Human Rights, respectively, and in Articles 4 and 21 of the Charter of Fundamental Rights of the European Union.

Article 1.3. of the Guide emphasizes that all travelers have the right to be informed of the nature of the controls and have the right to be treated professionally, kindly and politely in accordance with applicable international, EU and national law.

Thus, directly in the context of borders, EU law sets out the requirements of proportionality of control measures, proper training of border guards, prohibition of discrimination, dignified treatment, courtesy and provision of information on the nature of control. In addition, the Schengen Code and the Practical Guide refer to the basic rights set out in the Charter of Fundamental Rights of the European Union. The following is a non-exhaustive list of important rights guaranteed by the Charter in the context of the border:

The right to dignity and decent treatment determines that human dignity is inviolable, must be protected and respected, and that everyone has the right to be respected for his or her physical and mental integrity.

The right to asylum is guaranteed in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 on refugee status and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union. In fact, this is the only right that can at least partially prevail over the right of the state to deny entry to its territory to anyone.

The right to equality and protection against discrimination on any grounds such as sex, race, color, ethnic or social origin, genetic characteristics, language, religion or belief, political or any other opinion, belonging to a national minority, property, birth, disability, age or sexual orientation.

The right to proper administration within the meaning of Article 41 of the Charter of Fundamental Rights of the European Union means that everyone has the right to manage his or her affairs impartially, fairly and within a reasonable time. The EU institutions must facilitate this.

One can mean here the following:

- the right of every person to be heard before any individual action is taken which may affect him or her.
- the right of every person to access his or her files in compliance with the legitimate interests of confidentiality and professional and business secrecy.
- the obligation of the administration to justify its decisions.

Denial of entry

According to Article 14 of the Schengen Code a person who does not meet all the conditions for entry may be refused regarding entering into the territory of the Schengen Member States.

You can only be denied entry by a reasoned decision stating the exact reasons for the refusal. The decision shall be taken by a body authorized by national law and shall take effect immediately. Persons denied entry have the right to appeal in accordance with national law. Although the decision to refuse entry is usually being made immediately, and an appeal is possible ex post facto,

the legislation of some countries provides for the possibility of "suspending" the refusal. For example, in Belgium the appeal has a suspensive effect on refusal, and in Switzerland a person who is denied entry can stay in the transit zone of the airport (Switzerland does not have border control at the land border) for up to 15 days. Such a period allows to appeal, accordingly.⁴

EU internal borders

A special feature of the Schengen area is the existence of internal borders at which member states can restore control if necessary. The Schengen Code stipulates the need to properly inform travelers about the resumption of border checks, in particular the start and end dates of such activities.⁵

3. Law of Ukraine

As in the EU, the issue of human rights at the border in Ukraine is regulated by specialized regulations on borders, mainly with reference to the basic provisions of the Constitution and the need to respect fundamental rights.

According to the Law of Ukraine on Border Control, border control is organized and carried out on the basis of legality, openness, respect for human dignity and equality of persons regardless of race, color, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds⁶.

The human rights component is present in strategic documents in the field of border management.

Thus, the Integrated Border Management Strategy (IBM) until 2025 contains, in addition to the list of 9 Strategic Objectives, 3 "horizontal" components, ie universally present in different content parts of the Strategy. One of the three is "human rights"⁷. The strategy contains the task "Raising the level of awareness of the representatives of integrated border management in the field of human rights, taking into account the principle of gender equality"⁸ and provisions on the need to carry out the forced expulsion and readmission of foreigners "in compliance with fundamental human rights and freedoms".

In particular, the task "Ensuring rights and freedoms during protection and detention procedures in Ukraine" involves working on access to quality translation in the process of providing protection in Ukraine and creating appropriate conditions for the detention of persons detained for violating border legislation. Improving the mechanism for transferring protection seekers from the SBGS to the State Migration Service is also envisaged by the Strategy of the State Migration Policy until 2025.

At the same time, the dimension of human rights at the border is virtually absent in the latest National Human Rights Strategy adopted in early 2021, with the exception of the provisions on the rights of foreigners and refugees, which provide for "improved expulsion and return procedures". In particular, it concerns the "observance of the principle of the prohibition of the deportation of foreigners and stateless persons to a state where they may be subjected to torture, cruel, inhuman or degrading treatment or punishment"⁹, which, among other things, may also concern the issue of access to the mechanism for obtaining protection at the border.

⁴ ЄСПЛ зобов'язав Україну створити ефективний засіб правового захисту для шукачів захисту на кордоні. Який він у країнах Європейського Союзу? <https://r2p.org.ua/mehanizmy-zahystu-shukachiv-prytulku-yes/>

⁵ Schengen Borders Code, Article 7

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R0399&from=EN>

⁶ Закон України "Про прикордонний контроль"

<https://zakon.rada.gov.ua/laws/show/1710-17#Text>

⁷ Стратегія інтегрованого управління кордонами на період до 2025 року

<https://zakon.rada.gov.ua/laws/show/687-2019-%D1%80#Text>

⁸ Стратегія інтегрованого управління кордонами на період до 2025 року

<https://zakon.rada.gov.ua/laws/show/687-2019-%D1%80#Text>

⁹ Указ Президента "Про Національну стратегію у сфері прав людини"

<https://zakon.rada.gov.ua/laws/show/119/2021#Text>

Own citizens

According to Ukrainian law, a citizen of Ukraine has the right to leave Ukraine, except in cases of restrictions established by law¹⁰ and a right to return to Ukraine. Under no circumstances may a citizen of Ukraine be restricted from entering Ukraine¹¹.

Denial of entry

Instead, Ukrainian law provides for the possibility of denying entry to the territory of Ukraine to foreigners and stateless persons. The decision is made by the border guard, it must be justified and indicate the reason for refusal. The decision may be appealed in the form of an appeal to the relevant authority or court, but it takes effect immediately¹².

Legislation in the field of border management takes into account and contains the dimension of human rights at the border, while the main documents governing their own protection of human rights, in fact, ignore the border as a special space with special approaches and problems.

As in the European Union, border protection issues related to protection and asylum in Ukraine have a higher degree of codification, and some of them are included in strategic programs for the coming years. Problems and legislative gaps in this area are partially formulated, and it is primarily a matter of finding ways to solve them.

At the same time, another aspect - the rights at the border of "regular" travelers - is much less developed and is present mainly in the form of sporadic calls for fundamental rights and the need to respect them.

¹⁰ Awareness of state secrets, criminal proceedings, court verdict for a criminal offense, the presence of enforcement proceedings, arrears of alimony - the Law "On the procedure for leaving Ukraine and entering Ukraine for citizens of Ukraine", Article 6

<https://zakon.rada.gov.ua/laws/show/3857-12#Text>

¹¹ Закон "Про порядок виїзду з України і в'їзду в Україну громадян України", стаття 1

<https://zakon.rada.gov.ua/laws/show/3857-12#Text>

Конституція України, стаття 33

<https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>

¹² Закон України "Про прикордонний контроль", стаття 14

<https://zakon.rada.gov.ua/laws/show/1710-17#n169>

Section II. Practical aspects of border crossing in the EU and Ukraine

This section describes human rights violations at the EU-Ukraine borders based on monitoring and analytical expert reports, as well as media and social media reports.

1. The border of the European Union for third-country nationals

Asylum and irregular migration

The main migration discourse in the European Union in recent years has been the issue of asylum and mass irregular migration ("migration crisis"). Accordingly, the very issue of the right to asylum and the related observance of basic rights in refugee camps is key to consideration in the context of human rights at the border, it is in this area that the most violations are recorded and they are the most glaring. At the same time, because of this, the rights of asylum seekers and unregulated migrants at the EU's borders are constantly monitored closely by national and international human rights organizations.

A recent report by the European Union Agency for Fundamental Rights (FRA) covering the first half of 2021 provides an insight into the range of violations faced by migrants trying to enter the EU¹³.

These include large numbers of people trying to enter the country of destination in various ways, and the harsh response of national governments, which includes operations to physically evict migrants from the country they came from, detention and placement in inappropriate conditions, and legislative changes aimed at combating mass unregulated immigration. For example, in Hungary, the state of emergency due to mass migration has been going on for 6 years.

The implementation of the policy of counteracting the migration crisis is accompanied by numerous human rights violations. In some cases, these are violations that lead to death or serious damage to health, in others - violations of the right to decent treatment, protection against discrimination, the right to asylum, and so on.

For example, in Italy, reports from the Association for the Study of Immigration Law (ASGI) and the National Guarantor on the Rights of Persons Detained or Deprived of Liberty address the following issues: poor reception conditions, inadequate information on the asylum procedure and access to rights, as well as the lack of protocols for working with vulnerable groups. SOS Racismo in Spain (Ceuta's exclave in North Africa) has documented systematic cases of racial profiling - in-depth checks based on race or ethnicity.

Amnesty International's new report contains evidence of torture and ill-treatment of migrants by Greek authorities¹⁴. According to the local ombudsman, quoted by the FRA¹⁵, in Greece, there is a practice of unjustified police interception after crossing the border, confiscation of mobile phones and identity documents, transfer to unknown persons in uniform and detention of migrants in an unknown building without any official procedures.

Citizens of Ukraine at the EU borders

Information on the observance and violation of the rights of "regulated" travelers at the EU's borders is less often in the field of view of non-governmental, state and international organizations. From the array of available statistical and monitoring data, two types of violations of travelers' rights can be distinguished - unjustified denials of entry and discrimination / rude treatment by control officers during the crossing.

¹³ Migration: Key fundamental rights concerns, 01/01/2021-30/06/2021
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-migration-bulletin-2_en.pdf

¹⁴ Greece: violence, lies and pushbacks
https://www.amnesty.eu/wp-content/uploads/2021/06/Greece_Violence.Lies_.Pushbacks_AI-Report-22062021.pdf

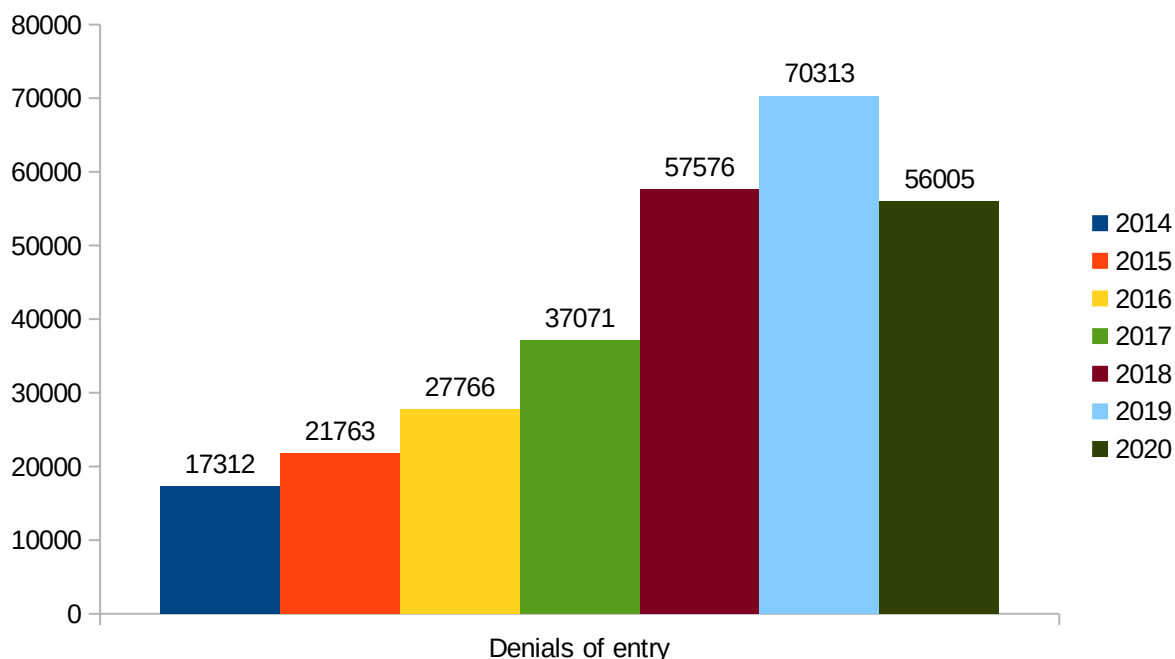
¹⁵ Migration: Key fundamental rights concerns, 01/01/2021-30/06/2021
https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-migration-bulletin-2_en.pdf

Denial of entry

For several years in a row, the citizens of Ukraine have been ranked first in the absolute number of refusals to enter the territory of the EU +. The number of denials to Ukrainian citizens has been growing steadily since 2014, with the exception of a certain decrease in the pandemic 2020.

At the same time, in 2020, denials to Ukrainians accounted for more than 50% of all denials at the EU's land borders, and 12% of all denials at EU airports.

Diagram 1. Denials of entry to the EU to citizens of Ukraine in 2014-2020. Source: Frontex



The four most common reasons for refusal are 1) the lack of documents confirming the purpose of the trip and the conditions of stay, 2) the threat to safety or public health (since 2020, a pandemic innovation), 3) the exhaustion of the permitted time limit in the EU, 4) lack of funds. Until 2020, the latter cause was the second most common¹⁶.

Reports of unjustified denials of entry to the EU to Ukrainian citizens occur infrequently but regularly. Thus, in 2019, the media spread the story of a Ukrainian citizen who was denied entry to Italy despite the availability of supporting documents, the necessary funds and a positive travel history. In addition, she was detained in conditions that violated human dignity and used abusive language.¹⁷

Special mention should be made of cases of non-recognition by EU border guards of funds on a bank card as confirmation of the availability of means of subsistence during the trip. In 2018, for this reason, two Ukrainian citizens were not allowed into Cyprus¹⁸. Local travelers on the border with Poland also talk about problems with bank cards¹⁹.

¹⁶ Реалії безвізу: за що та як часто українцям відмовляють у праві в'їзду до ЄС
<https://www.eurointegration.com.ua/articles/2019/02/27/7093344/>

¹⁷ Обурлива історія дискримінації громадянки України в Італії
<https://www.facebook.com/notes/2728061397465764>

¹⁸ <https://www.facebook.com/yuliyadychuk/posts/2190088257707860>

¹⁹ По різні боки кордону – репортаж з пункту пропуску «Ягодин-Дорогуськ»
<https://www.radiosvoboda.org/a/polsko-ukrajinsky-kordon/30137892.html>

In this case, if the Schengen Borders Code provides for the possibility of confirming the availability of funds by card²⁰, the national legislation of many countries defines in this capacity only cash or an official document from the bank. For example, in Poland it can be a tourist check, or a document on the amount of the credit limit or the availability of funds issued by the bank no later than one month before the trip.²¹

These norms are outdated, do not correspond to the current situation, when in Ukraine there are more than 75 million issued payment cards²², and about half of respondents from Ukraine express a willingness to completely abandon cash over the next few years²³, and lead to an increase in unreasonable denials and related violations of travelers' rights, such as improper detention and violations of the right to clear and understandable information about travel conditions.

Discrimination

Another important issue of "regular"²⁴ crossing the EU border, Ukrainian citizens discriminate against travelers by border guards during control. This violation is recorded both in individual reports such as the ones above, as well as in EU monitoring missions and independent cross-border traffic studies.

For example, in the 2018 Border Anatomy survey conducted on Ukraine's borders with EU countries, respondents complained about issues such as "superiority" and "lack of respect" on the Slovak and Hungarian borders.²⁵

In 2014-2019, within the framework of the Schengen evaluation mechanism, the monitoring mission of the European Commission made 36 visits to checkpoints at the external borders of the EU, as a result of which more than 150 recommendations were developed. Most of them concerned the following issues:

- failure to explain to travelers the purpose of in-depth control in the case of an invitation to the "second line"²⁶ and explanations of the reason for refusal of entry, or failure to provide explanations in accessible language;
- lack of knowledge of languages by border guards or lack of access to translation;
- providing decent conditions for travelers waiting in line;
- ensuring appropriate conditions for the detention of those who have been denied entry²⁷;

²⁰ Шенгенський кодекс про кордони. Умови в'їзду та список супровідних документів для громадян третіх країн <https://europewb.org.ua/shengenskyj-kodeks-pro-kordony-umovy-v-yizdu-ta-spysok-suprovodnyh-dokumentiv-dlya-gromadyan-tretyh-krayin/>

²¹ Rozporządzenie Ministra Spraw Wewnętrznych z dnia 23 lutego 2015 r. w sprawie środków finansowych wymaganych od cudzoziemca wjeżdżającego na terytorium Rzeczypospolitej Polskiej oraz dokumentów, które mogą potwierdzić możliwość uzyskania takich środków, a także cel i czas trwania planowanego pobytu <http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20150000326/O/D20150326.pdf>

²² Платіжні картки в Україні, I квартал 2021 року <https://bank.gov.ua/ua/news/all/platijni-kartki-v-ukrayini-i-kvartal-2021-roku>

²³ Дослідження Mastercard: половина українців готові повністю відмовитися від використання готівки https://www.mastercard.com/news/europe/uk-ua/%D1%80%D0%BE%D0%B7%D0%B4%D1%96%D0%BB-%D0%BD%D0%BE%D0%B2%D0%B8%D0%BD/novini/uk-ua/2021/masterindex_half-of-ukrainians-are-ready-to-abandon-cash/

²⁴ Corresponding to the needs of everyday life, as opposed to the emergency situation of asylum seeking

²⁵ Анатомія українського кордону: незалежний моніторинговий звіт https://europewb.org.ua/wp-content/uploads/2018/10/PRINT_Anatomiya-kordonu.pdf

²⁶ The second line is an in-depth interview and verification of the traveler about the person or conditions of the trip whose border service had questions

²⁷ Migration: Fundamental Rights Issues at Land Borders, 2020 https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-land-borders-report_en.pdf

Monitoring by the European Agency for Fundamental Rights in 2013-2014 captures such problems at the EU's external borders²⁸, as unworthy or abusive treatment by border guards, use of "inappropriate speech", lack of access to information about the possibility of complaining about such behavior.

A similar fact was recorded by a 2019 study on the Ukrainian-Polish border conducted by the Stefan Batory Foundation - the attitude of Polish services towards Ukrainian citizens was worse than towards Polish ones. In particular, the phenomenon of addressing travelers-citizens of Ukraine as "ty" is widespread, which in the context of border control and rules of use of the Polish language is rude and discriminatory.²⁹

2. Border of Ukraine

Rights of foreigners

As in the European Union, violations of the rights of foreigners upon entry into Ukraine can be broadly divided into two categories. The first group is related to access to the shelter. In this case, we are talking about high risks - up to life-threatening - and the presence of a body of monitoring and analysis of legislation on this issue.

The second group of violations concerns the daily crossing of the border, is less studied and largely "invisible" to public optics.

Access to the shelter

In 8 months of 2021, 65 people gained access to the procedure for applying for international protection in Ukraine at the borders of Ukraine. A total of 722 applications were received, ie at the borders - less than 10%³⁰.

Ukraine, as a party to the Geneva Convention, is obliged to provide access to the asylum / protection procedure to those who need it. This means that in the event that a foreigner applies at the border for the need for protection, the Ukrainian control authorities cannot in fact deny this person entry, and in particular, return him to the country of origin. However, in practice at the border there is a regular "problem with the existence" of a request for protection, when the foreigner himself claims that he applied for protection, and the State Border Service - that there was no application, and therefore a foreigner can be denied entry. In the light of such cases, the European Court of Human Rights has ordered Ukraine to establish a mechanism that would allow a foreigner in need of international protection to challenge a refusal of entry before it enters into force.³¹

Ukraine currently has a draft Law №3387 "On Protection of Foreigners and Stateless Persons", which provides for the introduction of a number of progressive innovations in the field of asylum policy, but it does not solve the problem of access to the procedure at the border.³²

Other cases of violations of foreigners' rights

Poorly grounded denials of entry to foreigners and inadequate conditions of detention for those denied are still common on Ukraine's border. According to the State Border Guard Service of Ukraine, in 2020 5,200 "potential illegal migrants" were denied entry to Ukraine, and a total of more than 26,000 people were banned from crossing the border.³³

²⁸ Fundamental rights at land borders: findings from selected European Union border crossing points, 2015 https://fra.europa.eu/sites/default/files/fra-2014-third-country-nationals-land-border-checks-summary_en.pdf

²⁹ Granica nowoczesnego sąsiedztwa. Jak ją zbudować? https://www.batory.org.pl/wp-content/uploads/2020/02/Nowoczesna-granica_interaktywna1.pdf

³⁰ Data from the State Migration Service of Ukraine

³¹ ЄСПЛ зобов'язав Україну створити ефективний засіб правового захисту для шукачів захисту на кордоні. Який він у країнах Європейського Союзу? <https://r2p.org.ua/mechanizmy-zahystu-shukachiv-prytulku-yes/>

³² Аналітична записка щодо законопроекту №3387 «Про надання захисту іноземцям та особам без громадянства» <http://jurfem.com.ua/analichna-zapyska-zakonoproekt-3387/>

Human rights defenders regularly record cases of in-depth control of citizens of "countries at migration risk", which ends with an unjustified denial of entry. For example, in 2017, a Nigerian citizen, a mother of a doctor working in Ukraine, was denied entry to Ukraine on the grounds of alleged lack of security during her stay.³⁴. Excessive inspections and unjustified refusals of foreigners are often complained about by the tourism industry.

Those who have been denied entry, particularly at airports, are often held in extremely poor transit zones. This problem is regularly recorded by the monitoring missions of the Ukrainian ombudsman. For example, in February 2021 at Boryspil airport, the ombudsman found a Gambian citizen who had been at the airport for several days and had no room for a full night's rest (bed, bed linen), access to a shower, access to an open source of drinking water and fresh air³⁵.

Rights of citizens of Ukraine

In the process of crossing Ukraine's border with other states, there is a special dimension of human rights violations - infrastructure. Citizens of Ukraine regularly face inadequate living conditions, long queues and corruption risks when crossing the land border³⁶.

The situation at the beginning of the pandemic was especially glaring, when due to the closure of some checkpoints, cessation of flights and poor communication by the authorities at the border, long queues formed to return to Ukraine, and citizens without cars were forced to use paid services of several hundred meters. , as pedestrian crossing of the border was prohibited³⁷.

This situation is a violation of the right to proper administration and, in particular, to receive complete and timely information on changes in border control procedures.

Recommendations

Office of the Ombudsman, non-governmental and international organizations

1. Monitor compliance with the rights of Ukrainian citizens / third-country nationals when entering the European Union and the Schengen area (outside the context of asylum).

Ministry of Foreign Affairs of Ukraine

1. Inform EU Member States of the need to include in the list of proofs of bank cards and applications in view of the growing prevalence of non-cash payments.
2. Initiate consultations with the Polish side on the need to eliminate the ill-treatment of Polish Border Guards on the border with Ukraine.

State Border Guard Service

1. Together with the State Migration Service to develop an effective mechanism for protection against the return of asylum seekers in case of refusal of entry.

³³ Державна прикордонна служба України. Результати оперативно-службової діяльності за 2020 рік
https://dpsu.gov.ua/upload/%D0%A0ezyltati_%D0%9E%D0%A1%D0%94.pdf

³⁴ Далеко не завжди спроби гарантувати державну безпеку в Україні ґрунтуються на законі – Буткевич
<https://www.radiosvoboda.org/a/28698575.html>

³⁵ Результати моніторингу дотримання прав іноземців, осіб без громадянства, біженців та осіб, які потребують додаткового або тимчасового захисту в аеропорту «Бориспіль»
<https://ombudsman.gov.ua/ua/all-news/pr/prav-%D1%96nozecz%D1%96v,-os%D1%96b-bez-gromadyanstva,-v-aeroportu-borisp%D1%96l/>

³⁶ Анатомія українського кордону. Незалежний моніторинговий звіт
<https://europewb.org.ua/anatomiya-ukrayinskogo-kordonu-nezalezhnyj-monitoringovyj-zvit/>

³⁷ Трансформації трудової міграції з України до ЄС під час пандемії COVID-19
<https://europewb.org.ua/transformatsiyi-trudovoyi-migratsiyi-z-ukrayiny-do-yes-pid-chas-pandemiyi-covid-19/>

2. Together with the relevant airports, ensure appropriate conditions for the detention of foreigners in transit zones.
3. Introduce an electronic queue at the land border with the EU and create accessible service areas for travelers.

Chapter III. Human rights situation on the demarcation line with NGCAs of Ukraine

The crossing of the contact line with the temporarily occupied territories of the Autonomous Republic of Crimea (TOT) and certain districts of Donetsk and Luhansk oblasts (ORDLO) is subject to enhanced state regulation. Entry and exit of persons to and from these territories may be carried out only through checkpoints of entry and exit due to the presence of special permits. With the beginning of the pandemic and the escalation of the conflict in Donbass, crossing the contact line became more difficult and led to new problems of human rights violations.

1. The human rights situation before the pandemic

Prior to the pandemic, the main problems faced by travelers while traveling through the above-mentioned checkpoints were overtime queues, lack of sanitation, restrictions on the export of personal belongings and goods to NGCAs that have been lifted only in November 2019³⁸. Queues at the checkpoints were caused by a significant daily overload. There is an evidence that in 2019 eight checkpoints were crossed 16.52 million times with the temporarily occupied Crimea and Donbass where 50.1% were crossed at the exit from TOT and ORDLO, and 49.9% - at the entrance to these territories.

Mainly, the contact line was crossed by residents of the temporarily occupied territories, their relatives and internally displaced persons. They went to receive social and pension benefits, to visit relatives, to study, receive medical treatment, etc., and then returned. The largest queues were in Donbass: five checkpoints in 2019 accounted for 13.93 million crossings, while three checkpoints with the temporarily occupied Crimea were being crossed 2.58 million times.³⁹

The problem of queues was especially severe for the elderly who systematically traveled from ORDLO to the territory controlled by Ukraine to receive pension benefits and pass through a bank inspection. In order to cross a check point waiting lasted at least 5 hours, and it was posing a threat to the lives and health of travelers. According to the OSCE (Organization for Security and Co-operation in Europe), between December and May 2019, eighteen people, mostly elderly, died while crossing the contact line, most of them due to complications of heart disease. In the summer of 2019, with the increase of temperature outside, the number of requests for medical care and the number of tragic cases have increased. During June 19th, at the Stanytsia Luhanska checkpoint, two people died while crossing the demarcation line in order to reach territory controlled by Ukraine (GCA). Hot weather was also affecting people in the way that hundreds were approaching the International Committee of the Red Cross every day to measure their blood pressure.⁴⁰ In general, the road from the settlements of ORDLO through the checkpoints to the nearest settlement in the territory controlled by Ukraine could take 6-12 hours, and in some cases – the entire day.

REFERENCE

Prior to the pandemic, five checkpoints operated within the contact line with the ORDLO: one Stanytsia Luhanska pedestrian checkpoint in Luhansk Oblast and four pedestrian and transport checkpoints in Donetsk Oblast: Majorske, Maryinka, Novotroitske and Gnutove ». Ukrainian citizens and foreigners had to obtain an unlimited permit on the website of the Security Service of Ukraine to enter the ORDLO. Permission could be obtained in case of residence of close relatives on the territory of ORDLO, death of

³⁸ Доповідь за результатами моніторингу контрольних пунктів в'їзду-виїзду у Донецькій та Луганській областях. Восток-SOS <https://vostok-sos.org/zvit-kpvv-0002-1004/>

³⁹ Контрольні пункти в'їзду-виїзду (КПВВ) : помісячний перетин лінії розмежування. Державна прикордонна служба України <https://app.powerbi.com/view?r=eyJrIjoiOTU4ODVjYTktNjk3ZC00N2E5LTlkNTQ0YzYzZTYzNzliYjk4IiwidCI6IjdhNTE3MjMzLTE1ZGYtNDQ1MC04ZjMyLWE5ODJmZTBhYTEyNSIsImMiOiJh9>

⁴⁰ На КПВВ "Станиця Луганська" на спеці в черзі померли люди <https://khp.org/1529485747>

*relatives, ownership of real estate on TOT, for consular and diplomatic functions, for humanitarian activities, employment, studies etc.*⁴¹.

*In addition, there were informal checkpoints for local residents outside the main checkpoints along the contact line with the ORDLO in such settlements as Lobacheve, Lopaskine, Novooleksandrivka and Verkhnotoretske. With the beginning of the pandemic, the work of these points was stopped.*⁴²

The new existing checkpoints "Schastyia" and "Zolote" in the Luhansk region are blocked by the de facto occupation authorities

*Taking into account border with the temporarily occupied Crimea there were three checkpoints - "Kalanchak", "Chaplinka" and "Chongar" until 2020. Ukrainian citizens only needed one of the documents proving their citizenship to enter Crimea. Instead, foreigners and stateless persons had to obtain a special permit from the territorial body of the State Migration Service, which was issued in the case of close relatives living in Crimea, ownership of real estate on TOT, for employment purposes, etc.*⁴³.

Restrictions on the freedom of movement after the onset of the pandemic

The COVID-19 pandemic has made significant adjustments to the rules for crossing the contact line which has negatively affected the state of respect for human rights, in particular the right to freedom of movement. Since March 2020, quarantine restrictions have been changed many times and are still ambiguous and disproportionate, creating significant barriers for people seeking to cross the conflict line.

In March 2020, Ukraine partially restricted traffic through the checkpoints: only those registered in the controlled territory were allowed on the ORDLO side, and those registered in the ORDLO were allowed to return. Within a few days, the de facto authorities in ORDLO and in the Crimea completely blocked the work of 8 checkpoints and 'zero areas', sharply and unreasonably restricting the freedom of movement of Ukrainian citizens. This isolation lasted 2.5 months. It was possible to cross the contact line in exceptional cases, with the permission of both parties.⁴⁴

In June 2020 Ukraine allowed traffic through the checkpoints. A mandatory condition for travel to the GCA was a two-week self-isolation using the mobile application "Diya (Act at home)" or observation in a medical institution. In June 2020 Ukraine allowed traffic through the checkpoints. A mandatory condition for travel to the GCA was a two-week self-isolation using the mobile application "Diya (Act at home)" or observation in a medical institution.⁴⁵

However, not all the checkpoints were opened on the "other side". The de facto occupation authorities in some districts of Donetsk region completely blocked the movement through the checkpoints "Mayorske", "Marinka" and "Gnutove". Since April 2020 no one has crossed these points. Passage through the Novotroitskoye checkpoint was interrupted, and currently the checkpoint can only be crossed twice a week according to the lists previously formed by the de facto occupation authorities. To get on the "list", you need to have a good, documented reason to leave. Such restrictions have significantly reduced number of

⁴¹ Постанова КМУ від 17 липня 2019 р. № 815 «Про затвердження Порядку в'їзду осіб, переміщення товарів на тимчасово окуповані території у Донецькій та Луганській областях і виїзду осіб, переміщення товарів з таких територій» <https://zakon.rada.gov.ua/laws/show/815-2019-%D0%BF/conv#Text>

⁴² Дотримання прав людини на Сході України під час пандемії корона вірусу. Затяжна невизначеність https://freedomhouse.org/sites/default/files/2021-07/HumanRightsEasternUkraineDuringCoronavirusPandemic8-UA_v01.pdf

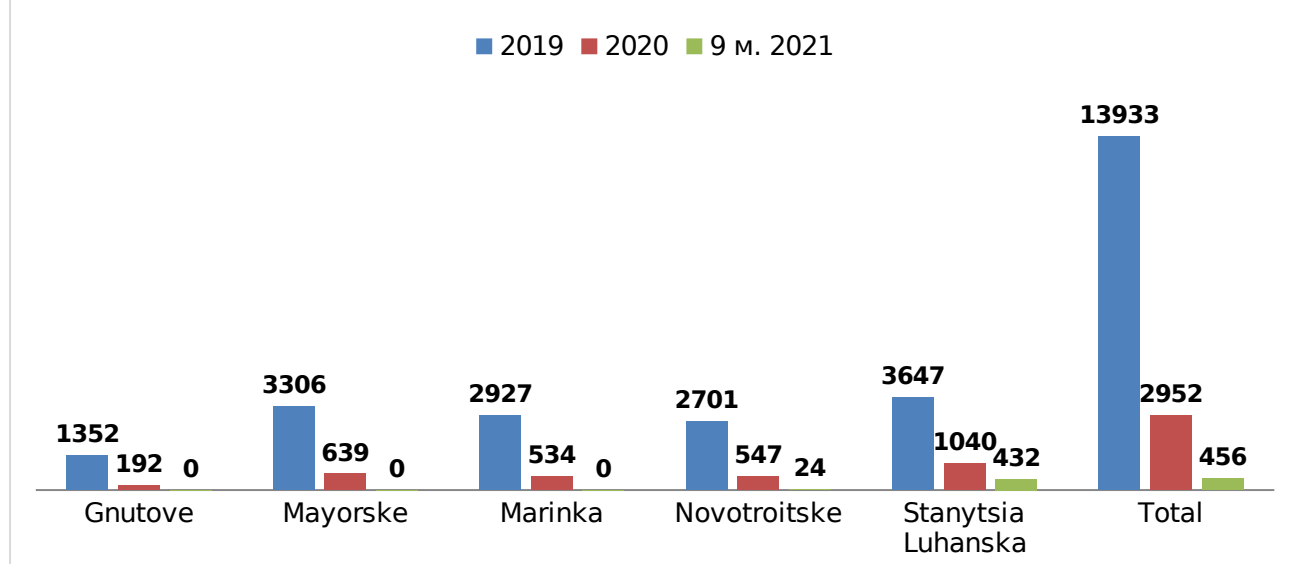
⁴³ Постанова КМУ від 4 червня 2015 р. № 367 «Про затвердження Порядку в'їзду на тимчасово окуповану територію України та виїзду з неї» <https://zakon.rada.gov.ua/laws/show/367-2015-%D0%BF#Text>

⁴⁴ «Л/ДНР» закрились на карантин, но пока не поняли, из-за какой эпидемии <https://hromadske.ua/ru/posts/dnr-zakrylis-na-karantin-no-poka-ne-ponyali-iz-za-kakoj-epidemii>

⁴⁵ Правило обов'язкового тестування або самоізоляції тимчасово не діяло з 17 червня по 5 серпня 2021 року, поки на території України було встановлено зелений рівень епідемічної небезпеки і подібна епідемічна ситуація прослідковувалась в сусідніх країнах.

crossings through checkpoints: if in 2019 checkpoints in Donetsk region were crossed more than 10 million times, in 9 months of 2021 - only 24 thousand (Diagram 2).

Diagram 2. Number of crossings of the demarcation line with and in ORDLO in 2019-2021 (thousand crossings)



The work of the pedestrian checkpoint "Stanytsia Luhanska" was unblocked in June 2020. However, since September, residents with "Luhansk registration" have been allowed by the de facto occupation authorities to travel to the territory controlled by Ukraine no more than once a month⁴⁶. And in March 2021 significant restrictions were introduced on entry into the occupied territory for people not with "Luhansk" place of registration⁴⁷. The occupation de facto authority allowed to travel to the ORDLO only on the basis of a previously obtained permit granted on exceptional grounds: treatment, education, care for sick relatives, burial and receiving financial assistance by certain categories of citizens within the so-called 'humanitarian program for reunification Donbass'. Consideration of the application and obtaining such permission takes from 14 working days, and that might be fatal in case of need of care for sick relatives.

And already on October 9th, 2021 the de facto occupation authorities severely limited the crossing of the Stanytsia Luhanska checkpoint. The norm on the possibility to leave once a month for residents with a "Luhansk" residence permit was abolished, and their departure, like the rules established in some districts of Donetsk region, is carried out only on the lists formed by the "permanent working group"⁴⁸. One must have the same decent reason to be allowed to enter: treatment, education, caring for sick close relatives, or burying a close relative. Consideration of the application also lasts at least 14 working days.

Passage to Russia became a window for Ukrainians from NGCA. This route involves passing through uncontrolled checkpoints at the state border which is prohibited by Ukrainian law. An administrative penalty was provided in the form of a fine of one hundred to three hundred non-taxable minimum incomes (from 1.7 thousand UAH to 5.1 thousand UAH) for a violation of the order of entry into and exit from the temporarily

⁴⁶ Боевики "ЛНР" ввели новое правило пересечения КПВВ. Гордон

<https://gordonua.com/news/war/boeviki-lnr-vveli-novoe-pravilo-peresecheniya-kpvv-1520167.html>

⁴⁷ Пересечение КПВВ: кого и как пропускает «ЛНР» на въезд и выезд. Новости Донбасса

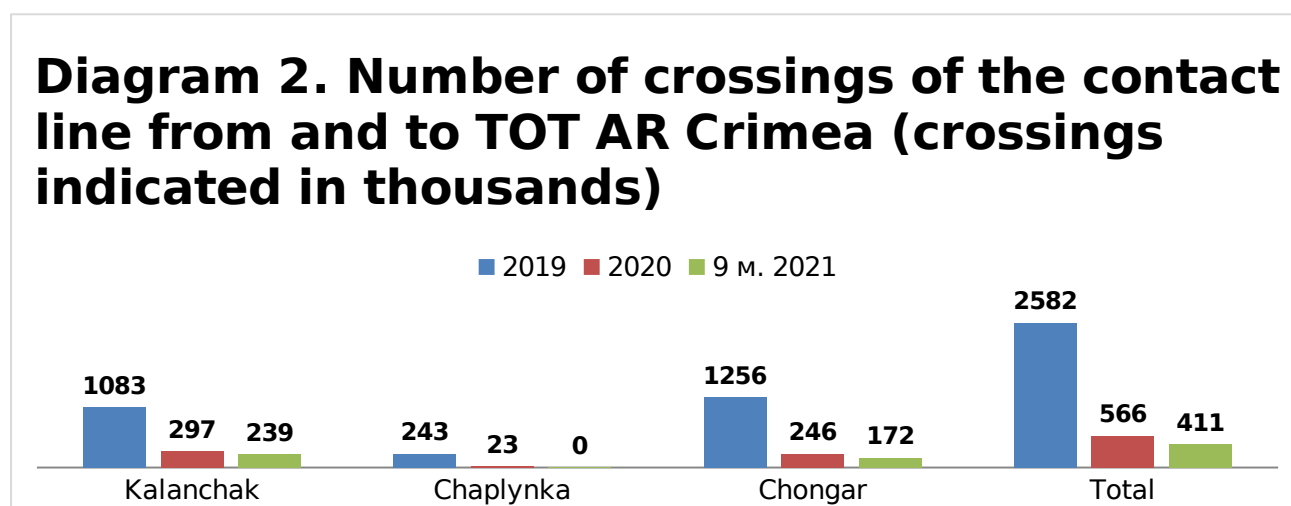
<https://novosti.dn.ua/news/310189-peresechenye-kpvv-kogo-y-kak-propuskaet-lnr-na-vezd-y-vyезд>

⁴⁸ У «ЛНР» пояснили, як подати заявку на виїзд через КПВВ «Станція Луганська». Центр журналістських розслідувань <https://investigator.org.ua/ua/news-2/237459/>

occupied territory of Ukraine. Following numerous statements by international and Ukrainian NGOs, the fines were lifted. The relevant law was signed by the President of Ukraine in July 2021.⁴⁹

According to Serhiy Garmash, a representative of Donetsk in the Trilateral Contact Group from Donbass, checkpoints do not work for political reasons, not because of COVID-19, because in Russia the situation with the disease is worse than in Ukraine, and checkpoints with Russia in ORDLO remain open. "This is the isolation of territories occupied by RF from Ukraine," Garmash said⁵⁰.

The work of the checkpoints at the entrance to the TOT of the Autonomous Republic of Crimea was also limited. The number of checkpoint crossings decreased from 2.5 million times in 2019 to 411 thousand crossings in 9 months of 2021. For a long time, the Russian occupation authorities allowed only people with close relatives to enter the peninsula if they had PCR testing for coronavirus. In order to cross the administrative border, it was necessary to document family relations or buy vouchers to Crimean sanatoriums for treatment⁵¹. People with a "Crimean" residence permit were also allowed to leave the peninsula only once a month. From May 26, 2021, these bans were eased: the occupation authorities allowed travel not only to close relatives but also to brothers, sisters, grandmothers, grandparents and grandchildren, adopted children and adoptive parents. Restrictions on one-time departure from the Crimea were also lifted.⁵²



Thus, under the pretext of a pandemic, the separatists radically restricted the rights of residents of ORDLO and the Autonomous Republic of Crimea to freedom of movement, and at the same time the rights to access to social security, medical care, and education. Restrictions on entry further severed ties with Ukrainian GCAs, barring entry to the temporarily occupied territory for those IDPs who managed to register a new place of residence in Ukraine but left their property, relatives and friends in Crimea/Donbas.

2. Problems of entering the territory controlled by Ukrainian government after the beginning of the pandemic

⁴⁹ Виїзд з ОРДЛО та Криму: Зеленський підписав закон про тимчасове скасування штрафів. Укрінформ <https://www.ukrinform.ua/rubric-politics/3284914-viizd-z-ordlo-ta-krimu-zelenskij-pidpisav-zakon-pro-timcasove-skasuvanna-strafiv.html>

⁵⁰ Гармаш: За небажанням ОРДЛО відкрити КПВВ на Донбасі стоїть політика, а не гуманітарні чи епідемічні аспекти. Інтерфакс-Україна <https://ua.interfax.com.ua/news/general/750472.html>

⁵¹ Окупанти залишають жорсткі обмеження на в'їзд у Крим – правозахисники. Укрінформ <https://www.ukrinform.ua/rubric-crimea/3249697-okupanti-zalisaut-zorstki-obmezenna-na-vizd-u-krim-pravozahisniki.html>

⁵² Росія пом'якшила обмеження на в'їзд до окупованого Криму. Укрінформ <https://www.ukrinform.ua/rubric-crimea/3252590-rosia-pomaksila-obmezenna-na-vizd-do-okupovanogo-krimu.html>

he Ukrainian checkpoints still have a number of problems related to ensuring human rights when crossing the contact line. According to the monitoring of the NGOs Truth Hounds and Vostok SOS, a number of shortcomings in the Ukrainian-controlled checkpoints were documented.

In particular, the improper condition of the modular premises and the lack of a stable Internet connection at the Stanytsia Luhanska checkpoint were noted. A significant problem for travelers was the lack of medical staff at the mentioned checkpoint, which led to significant queues for free testing for COVID-19. Those citizens, who enter the controlled area, are obliged to spend two weeks in self-isolation or observation in a medical facility, and in order to complete the quarantine earlier, one should get a negative test for COVID-19. Furthermore, there are no places for medical observation in Luhansk region. The capacity of the state free testing point for COVID-19 at the Stanytsia Luhanska checkpoint is about 100-150 people per day, queue waiting for testing can take up to 8 hours. Meantime, flow of people on average of the current checkpoint is about 2,000 of people who pass and most of whom were forced to turn to private laboratories⁵³.

The monitoring of public organizations also noted that the older generation faces the difficulty of installing the mobile application "Diya" which is mandatory to enter the GCA. Due to the fact that it is not possible to install this application on some phone models certain residents of ORDLO were deprived of the opportunity to cross the contact line⁵⁴.

Additionally, human rights activists of the Ukrainian Helsinki Human Rights Union (UHHRU) point out that in 2021 the number of citizens' appeals for drawing up protocols on administrative violations when crossing the Stanytsia Luhanska checkpoint has increased for moving goods and money to the temporarily occupied territories. Due to quarantine restrictions, retirees from ORDLO rarely leave and receive a pension for several months at a time, and then transport it to ORDLO in the form of foreign currency. Often, this large amount of money is confiscated by the fiscal service, according to the UHHRU, when crossing the checkpoint. Therefore, the residents of ORDLO must prove the legality of the origin of these funds and return them in the courts afterwards.⁵⁵.

3. Recommendations

Based on the results of monitoring of human rights organizations and the current state of the rules of crossing the state border and checkpoints, it is recommended:

To the checkpoints administrations in Luhansk and Donetsk oblasts:

1. Ensure the proper condition of the modular premises and a stable connection to the Internet at the checkpoint "Stanytsia Luhanska"
2. To speed up the process of free testing on COVID-19
3. Introduce an electronic queue for rapid testing on COVID-19

To the State Border Guard Service of Ukraine:

1. Provide an opportunity to undergo medical observation to people who do not have the opportunity to install the application "Diya", in accordance with the Resolution of the Cabinet of Ministers №1236 from 09.12.20 20.⁵⁶.

⁵³ Гармаш: За небажанням ОРДЛО відкрити КПВВ на Донбасі стоїть політика, а не гуманітарні чи епідемічні аспекти. Інтерфакс-Україна <https://ua.interfax.com.ua/news/general/750472.html>

⁵⁴ Дотримання прав людини на Сході України під час пандемії корона вірусу. Затяжна невизначеність https://freedomhouse.org/sites/default/files/2021-07/HumanRightsEasternUkraineDuringCoronavirusPandemic8-UA_v01.pdf

⁵⁵ При перетині лінії розмежування фіскали не мають права вилучати у громадян кошти – вони не є товаром, доведено у суді. УГСПЛ <https://helsinki.org.ua/articles/pry-peretyni-linii-rozmezhuвання-fiskaly-ne-maiut-prava-vyluchaty-u-hromadian-koshty-vony-ne-ie-tovarom-dovedeno-u-sudi/>

To the Ministry of Reintegration of the Temporarily Occupied Territories of Ukraine:

1. To amend the Order № 52 of 14.07.2020 "On approval of the list and amounts restricted or prohibited for movement across the contact line and to / from humanitarian - logistics centers of goods", in particular specifying which documents must be provided to determine the legality of the origin of money funds over 50 thousand hryvnias and not limit in this case the possibility of their movement⁵⁷.

To State Fiscal Service of Ukraine

1. Do not restrict the movement across the contact line of funds received by individuals as social and pension benefits.

⁵⁶ Постанова КМУ від 09 грудня 2020 р. № 1236 «Про встановлення карантину та запровадження обмежувальних протиепідемічних заходів з метою запобігання поширенню на території України гострої респіраторної хвороби COVID-19, спричиненої коронавірусом SARS-CoV-2»
<https://www.kmu.gov.ua/npas/pro-vstanovlennya-karantynu-ta-zaprovadzhennya-obmezhuvalnih-protiepidemichnih-zahodiv-1236-091220>

⁵⁷ Наказ від 14.07.2020 № 52 «Про затвердження Переліку і обсягів (вартості/ваги/кількості) обмежених або заборонених до переміщення через лінію розмежування та до/з гуманітарно-логістичних центрів товарів, а також товарів, які можуть бути віднесені до особистих речей»
<https://zakon.rada.gov.ua/laws/show/z0666-20#Text>