

THEMATIC REPORT

**Freedom of movement across the administrative
boundary line with Crimea**

19 June 2015

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1. Summary

The establishment of *de facto* control over the Autonomous Republic of Crimea and the city of Sevastopol (hereinafter collectively referred to as Crimea) by the Russian Federation in March 2014 had a negative effect on many civilians, in particular on Crimean residents and internally displaced persons (IDPs) from Crimea.

Crossing the administrative boundary line (ABL) between the Kherson region and Crimea became increasingly difficult as freedom of movement between mainland Ukraine and the peninsula had been gradually limited by various measures. These include the setup of crossing points at the ABL by the Russian Federation and the Ukrainian authorities' non-recognition of documents issued after the annexation of Crimea as well as the suspension of public bus and railway transport to and from Crimea. The measures particularly affected the most vulnerable and economically disadvantaged groups.

The annexation of Crimea had also severe implications for human rights activists, Crimean Tatars and others who were detained and interrogated at the ABL or expelled from the peninsula by the *de facto* authorities in Crimea.

2. Background

In accordance with the Constitution of Ukraine Crimea is an autonomous republic within the unitary state of Ukraine. It became the Autonomous Republic of Crimea within the newly independent Ukraine with the collapse of the Soviet Union in 1991. Following the EuroMaidan protests and the ousting of the ex-president of Ukraine, Victor Yanukovich, on 16 March 2014 a referendum took place in Crimea. Over 95 percent of the voters voted in favour of accession to the Russian Federation. The referendum was not in compliance with the Constitution of Ukraine and has not been recognised internationally. On 18 March 2014, the Russian Federation and the so-called "Republic of Crimea" signed an agreement in which the "Republic of Crimea" pledged adherence to the Russian Federation in line with the Constitution of the Russian Federation.¹ According to this agreement Crimea became a subject of the Russian Federation and the border between Crimea and Ukraine was designated by the Russian Federation as an international boundary. Following the referendum, the legislation of the Russian Federation began to be enforced on the territory of Crimea with a transition period set to be completed by 1 January 2015.

Since the March referendum more than 20,000 individuals have moved to mainland Ukraine from the Crimean peninsula, out of which approximately 10,000 are Crimean Tatars.² The regions and towns with the largest number of Crimean IDPs are Kyiv city (4,665), Lviv region (3,042), Odessa region (2,043), Kyiv region (excluding Kyiv city) (1,217) and Mykolaiv region (1,160). However, the actual figures are likely to be higher as many IDPs choose not to officially register with the state authorities and stay either with friends or rent accommodations without governmental assistance. A

¹ According to article 1 "Republic of Crimea is admitted to the Russian Federation as of date this Agreement is signed. Accession of Republic of Crimea to the Russian Federation is done in line with Constitution of Russian Federation, current Agreement, Federal Constitutional Law "On procedure of admittance of new subjects to Russian Federation and creation in its composition of new subjects", and Federal Constitutional Law "On adherence of Crimea Republic to Russian Federation", <http://kremlin.ru/acts/20605>.

² According to the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea based in Kherson, as of 27 March 2015, 20,382 IDPs from Crimea have been accommodated in Ukraine's mainland, including 6,835 women, 6,348 men, 5,624 children and 1,575 persons registered as "disabled and elderly".

number of IDPs regularly travel between the Crimean peninsula and mainland Ukraine. Also people who permanently reside on the peninsula travel to the mainland, mostly to the Kherson region in order to obtain various administrative services, including the issuing of travel documents.³

The SMM was established on 21 March 2014 by the OSCE Permanent Council Decision No. 1117 which tasked the SMM to, *inter alia*, “establish and report facts in response to specific incidents and reports of incidents, including those concerning alleged violations of fundamental OSCE principles and commitments” as well as to “monitor and support respect for human rights and fundamental freedoms, including the rights of persons belonging to national minorities”.⁴ This thematic report provides an overview of the situation in regard to freedom of movement across the ABL between the Kherson region and Crimea. It is based on the SMM’s observations, interviews with people displaced from Crimea as well as information obtained from various interlocutors outside of Crimea during the period April 2014 to March 2015.

3. The administrative boundary line with Crimea

Within the legal system of Ukraine an administrative boundary line serves the purpose of delineating territorial administrative units.⁵ In practice there is no line, border checks or any other restriction upon freedom of movement at such lines as individuals are able to move freely through all administrative units within Ukraine. The total length of the ABL between the Kherson region and Crimea is approximately 171 kilometres which includes a land segment of about 10 kilometres, comprised of Perekop Isthmus and the Arabat Spit. The water segment is about 160.5 kilometres long and includes the Black Sea, the Azov Sea and a fresh water part.

The Russian Federation established a presence at the ABL, including in areas within the Kherson region, at the end of February 2014. In December 2014, troops from these areas retreated to the current administrative boundary line between the Kherson region and Crimea vacating parcels of land at the Arabat Spit, Chonhar and Ad Peninsula. On 14 March 2014 Ukrainian authorities established their crossing points at the ABL. At each crossing point there is a neutral zone between the Ukrainian and Russian crossing points. There is no contact with the Russian military and border guards on the Crimean side, except for visual contact. The security situation at the ABL remains stable.

Currently there are three functioning land crossing points, namely Chonhar, Kalanchak and Chaplynka.⁶ The existing railway crossing points (for passenger trains) have been closed due to the suspension of railway transport in December 2014. The only cargo train which operates across the ABL is located at Vadim Railway Station (Chaplynka). At the moment there is no public air or sea transport connection between Crimea and Ukraine’s mainland.⁷ The crossing points are run by Border Guards, the Military, the Customs Service, the Veterinary Service and the Security Service of

³ According to the State Migration Service of Ukraine since April 2014 in total 40,065 different kinds of administrative services, including migration-related services, have been received by people from Crimea from the local offices of the State Migration Service of Ukraine. Most of them were provided in Kherson and Kyiv regions.

⁴ OSCE Permanent Council Decision No. 1117 Deployment of an OSCE Special Monitoring Mission to Ukraine, PC.DEC/1117, 21 March 2014.

⁵ Article 173 of the Land Code of Ukraine, <http://zakon1.rada.gov.ua/laws/show/2768-14/print1428306880436825>.

⁶ The Chonhar crossing point is 162 kilometres south-east of Kherson on the European route E105, Kalanchak is 91 kilometres south-east of Kherson on the European route E97 and Chaplynka is 87 kilometres south-east of Kherson on the route T2202. On the Crimean side there are respectively: Dzankoi, Armyansk and Perekop crossing points.

⁷ In April 2014, the Ukrainian authorities temporarily closed 27 international crossing points across the border due to the occupation of the peninsula, primarily maritime and air border crossing points to enter Crimea, according to the Cabinet of Ministers’ Order of 30 April No. 424-p ‘On Temporary closure of crossing points across the border and checkpoints, <http://zakon4.rada.gov.ua/laws/show/424-2014-%D1%80>.

Ukraine. There are no visible Ukrainian female crossing points' personnel working at the ABL, apart from a few female customs officers.

4. Legal context

The right to leave and to return to one's country as well as freedom of movement within a country is a fundamental human right recognized by various international human rights instruments.⁸ Freedom of movement is also one of the OSCE commitments.⁹ The Government has the right to control movement on its sovereign territory to protect national security and public order. However any restriction on the freedom of movement must be necessary, reasonable and proportionate.

The Constitution of Ukraine enshrines that Crimea is an inseparable constituent part of Ukraine. Freedom of movement and free choice of place of residence are guaranteed for everyone who is legally present on the territory of Ukraine.¹⁰ Article 33 of the Constitution of Ukraine establishes that restrictions on freedom of movement may only be established by law.

According to the law "On the rights and freedoms of citizens on the temporarily occupied territory of Ukraine"¹¹ ("Law on Territory") the citizens of Ukraine have the right to free and unimpeded access to and from Crimea through designated control points upon the presentation of a personal document which confirms an individual's Ukrainian identity and citizenship. The Government of Ukraine established a special procedure to enable Ukrainian citizens who do not have proper documents to prove their citizenship and obtain such documents.¹²

At the beginning of 2015, the area adjacent to Crimea within mainland Ukraine was given the status of a state border of Ukraine.¹³ The regulation states that Article 22 of the Law of Ukraine "On State Border of Ukraine"¹⁴, which sets out regulations concerning the borderline and controlled border areas, is applicable to the territories of certain municipalities in the East, North and South of Ukraine.¹⁵

On 4 June 2015, the Cabinet of Ministers of Ukraine approved a special procedure for crossing the ABL.¹⁶ The resolution designates separate control points for vehicles and trains and a comprehensive procedure for crossing the ABL with Crimea with regard to Ukrainian citizens, foreigners, stateless individuals and children.

⁸ Article 13 of the Universal Declaration of Human Rights, Article 12 of the International Covenant on Civil and Political Rights, Article 2 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the first Protocol thereto. On 27 March 2014, the UN General Assembly adopted a resolution affirming the sovereignty, political independence, unity and territorial integrity of Ukraine within its internationally recognized borders (UN GA resolution 68/262 on the "Territorial integrity of Ukraine" A/RES/68/262).

⁹ Paragraph D of the Helsinki Final Act (1975), the Third follow-up Meeting in Vienna on 15 January 1989, the 1990 CSCE/OSCE Copenhagen Document.

¹⁰ Constitution of Ukraine of 28 June 1996 No. 254k/96-BP, <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>.

¹¹ The law of 15 April 2014 No. 1207-VII "On the rights and freedoms of citizens on the temporarily occupied territory of Ukraine", <http://zakon3.rada.gov.ua/laws/show/1207-18>.

¹² Cabinet of Ministers of Ukraine resolution of 4 June 2014 No. 289 "On issuance of documents proving citizenship of Ukraine, individual's identity or their special status for citizens residing in temporary occupied territory", <http://zakon2.rada.gov.ua/laws/show/289-2014-%D0%BF>.

¹³ Cabinet of Ministers of Ukraine resolution of 30 January 2015 No. 38 on "Certain Issues of Strengthening of Ukraine's National Security Level", <http://zakon2.rada.gov.ua/laws/show/38-2015-%D0%BF>.

¹⁴ Law of Ukraine of 04 November 1991 No. 1777-XII "On State Border of Ukraine", <http://zakon2.rada.gov.ua/laws/show/1777-12>.

¹⁵ In the South these are Novotroitsk and Chaplynsk districts of Kherson region.

¹⁶ Cabinet of Ministers of Ukraine Resolution of 4 June 2015 No. 367 "Order of Entry and Exit from and to Temporarily Occupied Territory of Ukraine", <http://www.kmu.gov.ua/control/uk/cardnpd?docid=248222450>.

5. Challenges in crossing the administrative boundary line

5.1. Citizenship and passports issues

For Ukrainian citizens under 16 years of age the document proving a person's identity is a birth certificate. Individuals 16 years or older must apply for a national (internal) passport.¹⁷ It is an obligation to have a new photograph in the internal passport upon attaining the age of 25 and 45. If an individual is 18 he or she can apply for an international passport for travels abroad. Both national and international passports are issued by the State Migration Service (SMS) of Ukraine.

People in Crimea have lost access to numerous services provided by the Ukrainian state after the *de facto* authorities in Crimea had taken over the administrative structures on the peninsula.¹⁸ In order to obtain a new passport or simply replace a photograph in the existing one, they need to travel to mainland Ukraine which implies additional expenses related to transportation and, in some instances, accommodation. People may refer to any of the SMS offices in any part of Ukraine, including one regional office in Kherson city and 18 district offices in Kherson region. One office was set up in Novotroitske especially for residents of Crimea because of the proximity to the ABL and to the Chonhar crossing point.

Russian citizenship was automatically imposed on the citizens of Ukraine and stateless persons who had been permanently residing on the territory of Crimea except those who, during the period from 18 March until 18 April 2014, expressed their intention to retain Ukrainian citizenship or to remain stateless individuals.¹⁹ It was reported, however, that there were very few locations in Crimea in which citizens could submit their refusal to obtain Russian citizenship and at these locations extremely long lines were usually present. Not all applicants were able to submit their refusal. People who did not wish to acquire Russian citizenship are considered foreign citizens in accordance with Russian law. Forced automatic acquisition of the citizenship of the Russian Federation by the citizens of Ukraine residing in Crimea is not recognized by Ukraine and is not accepted as a ground for loss of Ukrainian citizenship.

Various sources, including IDPs and commuters, told the SMM that without Russian citizenship in Crimea it is impossible to receive social benefits, buy or sell property, obtain employment or enrol in educational institutions. People intending to work as public servants had to give up their Ukrainian citizenship; those who worked as judges, teachers, doctors, police and military forces officers were required to obtain Russian passports or, reportedly, would lose their jobs. Many people have applied for a Russian passport to ensure that they would be able to travel freely between Crimea and mainland Ukraine. The international passports issued by the *de facto* authorities in Crimea are not valid for travel within the European Union and some other countries. Therefore people need to obtain Ukrainian international passports or Russian Federation international passports for travels abroad.

¹⁷ On 31 March 2015 the Cabinet of Ministers approved a special card to replace the internal passport. The State Migration Service of Ukraine forecasted that Ukrainian passports would be issued in form of cards by the end of 2015, http://www.ukrinform.ua/eng/news/ukraines_internal_passports_to_be_replaced_with_cards_330233.

¹⁸ Such as issuance of foreign travel passports and travel documents for children, extension and first-time issuance of internal passports, reinstatement of lost, damaged or stolen passports, residence registrations, issuance of birth certificates for children born in Crimea, etc.

¹⁹ According to the agreement concluded between the Russian Federation and the so-called "Republic of Crimea".

5.2. Practical implications of documentary requirements

It is impossible to enter mainland Ukraine from Crimea with a Crimea-issued Russian passport as the Ukrainian authorities refuse to recognize any documents which have been issued to the residents of Crimea after they lost control over the peninsula.²⁰ Therefore many people have two passports and they use the Crimea-issued Russian passports on the Russian controlled side of the ABL and their Ukrainian passports on the Ukrainian side. Also the vehicle registration documents and licence plates issued in Crimea are not recognized as they are considered invalid.²¹

Ukrainian citizens can cross the ABL with a document confirming their Ukrainian citizenship. However, it has been reported to the SMM by people who crossed the ABL that Ukrainian border guards questioned individuals whether they are in possession of a Russian passport even where they have presented their Ukrainian passport. This questioning was then often followed by thorough searches of personal belongings. According to the witnesses on some occasions Ukrainian border guards destroyed Russian passports. People were also questioned about the purpose of their journey. There were cases when people were forced to return to Crimea. People did not receive written explanations of the decisions taken by the border guard officials.

On 8 September 2014, the State Border Guard Service of Ukraine introduced a requirement for Ukrainian citizens under the age of 16 to travel to and from Crimea with a Ukrainian internal passport. The reason for such a decision was the fact that the birth certificate does not certify Ukrainian citizenship while the Law on Territory requires presenting a document confirming Ukrainian citizenship while crossing the ABL, as explained by the State Migration Service of Ukraine. Reportedly the implementation of the instruction lasted only one day as the number of complaints from the travellers overwhelmed the Central Border Guard administration and they had to revert to the older regulations until further notice. Currently minors under 16 are still not required to have passports and are allowed to travel with birth certificates.²²

Foreigners and stateless persons need to obtain special permits to access Crimea.. Foreigners are allowed to enter mainland Ukraine only through the crossing points at the international borders legally recognized by the Ukrainian authorities by presenting a valid passport with an entry stamp which proves his or her legitimate entrance and stay in Ukraine. Those who try to cross the ABL and enter from Crimea are denied entry. Foreigners, including Russian citizens, have to use their international passports to enter and exit Ukraine.²³

According to the special instruction issued for the Ukrainian border guards in March 2014, male Russian citizens aged 17 to 55 are subject to special checks and need to demonstrate the purpose of their visit or they will not be allowed to enter Ukraine. In general young men crossing the ABL are subject to additional scrutiny measures for the reason of possible involvement in terrorist and separatist activities. The decision to allow a person to cross the ABL is conducted at the ABL crossing points through a “filtration” procedure. The travellers’ evaluation is based, *inter alia*, on their appearance and it is applied by the Ukrainian border guards and the SBU operatives.

²⁰ According to article 9 point 3 of the Law on Occupied Territory any act (decision, document) issued by the authorities and/or persons of the *de facto* authorities of Crimea is considered invalid and does not create legal consequences.

²¹ <http://news.allcrimea.net/news/2015/1/5/gai-ukrainy-ne-priznaet-dokumenty-na-avto-vydannye-v-krymu-28734/>.

²² According to Resolution No. 367, Ukrainian citizens under the age of 16 require a notarially-certified consent when crossing the ABL in the company of only one of their parents or of another authorized individual.

²³ Russian citizens, the same as Ukrainians, use their internal as well as international passports. Until recently Russian citizens could enter Ukraine with their internal passports. According to the newly adopted resolution No. 23 by the Cabinet of Ministers of Ukraine on 30 January 2015 “On suspension of certain provisions of Agreement between Government of Ukraine and Government of Russian Federation on visa-free trips of citizens of Ukraine and Russian Federation”) they can cross the border only with the international passports, <http://zakon2.rada.gov.ua/laws/show/23-2015-%D0%BF>.

Commuters reported to the SMM about long queues and slow processing of travel documents on both sides of the ABL. On the Ukrainian side, a lack of clearly indicated custom zones (green and red corridors) at the ABL crossing points creates confusion among travellers. Various interlocutors, including the border guards themselves, reported to the SMM about the problem of corruption at the ABL.²⁴ People who crossed the ABL told the SMM about cases when Ukrainian border guards asked Ukrainian citizens in possession of Crimea-issued Russian passports to pay certain amount of money in order to be allowed to pass.

In response to these issues, a platform for cooperation has been jointly established by Ukrainian border guards and some civil society organisations, *inter alia* the Ukrainian Helsinki Human Rights Union. As a result of this cooperation, problems such as misconduct of border guard officials, destruction of passports, refusals of entry to Ukraine's mainland and cases of corruption have reportedly decreased. A special form for the refusal of entry to or exit from Crimea has been developed enabling people to contest the act.²⁵

5.3. Suspension of public transport to Crimea

At the end of December 2014 public railway and bus transport to and from Crimea was suspended.²⁶ On 26 December 2014 the State Inspection of Ukraine on Road Transport Safety "Ukrtransinspektsiya" decided to stop operating the bus routes between the mainland part of Ukraine and the territory of Crimea for security reasons. Following this decision, on 27 December 2014 the State Railway Transport Administration "Ukrzaliznytsia" suspended its passenger and cargo traffic between Ukraine's mainland and Crimea with passenger trains for Crimea stopping in Novooleksiivka and Kherson City.

The suspension especially affected the most vulnerable and economically disadvantaged groups, such as elderly, women, and people with small children and students who study in Crimea or mainland Ukraine and wanted to visit their relatives during the Christmas break. There has been no assistance or accommodation for elderly or people with disabilities as well as no basic infrastructure for people crossing the ABL on foot, such as toilets or proper lighting. As a result of the suspension people had to walk considerable distances on foot, pay increased taxi fares to cross the ABL, or travel in a private vehicle. The walk across the ABL via the neutral zone is more than 2 kilometres and most people had luggage to carry in very cold weather. The only means of transport admitted inside the neutral zone were private cars and shuttle vehicles that illegally operated between Ukraine's mainland and Russian checkpoints. The decision to cease railway and bus transportation to Crimea prior to the beginning of the new year and Christmas festivities, on one's day notice, seriously impacted citizens' freedom of movement. The ban caused chaos at the crossing points and led to several kilometre-long traffic jams both from the Crimean and Kherson region side.

Currently, all three ABL crossing points may only be passed on foot or in private vehicles. No busses are allowed across the ABL regardless of whether they are private or state-owned, or whether

²⁴ For example on the night from 9 to 10 March 2015 at the Chonhar crossing point the Ukrainian border guards demanded a bribe of around 200 hryvnia from the Archbishop of Simferopol and Crimea of the Ukrainian Orthodox Church of the Kyivan Patriarchate (UOC-KP), http://www.religion.in.ua/news/ukrainian_news/28592-ukrayinski-prikordonniki-vimagali-xabar-vid-krimskogo-arxiyepiskopa-upc-kp.html.

²⁵ Annex 4 to Resolution No. 367

²⁶ The bus services into the parts of Donetsk and Luhansk regions were suspended on 6 January 2015.

they are from Crimea or from the mainland. The cargo vehicle traffic that moves across the ABL in both directions has not been affected by the ban.

5.4. Cases of the Crimean Tatars and people with pro-Ukrainian views restricted in crossing the ABL

In the aftermath of the developments in Crimea a number of human rights activists, journalists, Crimean Tatars and people openly expressing their pro-Ukrainian views moved to the mainland. Several of them reported to the SMM that they cannot return back as they feared for their security. There is a strong conviction among them that a list of persons banned from entering Crimea exists which contains the names of Ukrainian military officers or those who participated in activities advocating Ukrainian territorial integrity, as well as activists, journalists and Crimean Tatars. An NGO assisting Crimean IDPs in Western Ukraine reported to the SMM they have been receiving phone calls from Crimean Tatars living in Crimea who asked for assistance when leaving the peninsula, as they were afraid they would be arrested when attempting to cross the ABL.

It has been reported to the SMM by people who moved from Crimea that Ukrainian citizens were often questioned by the Russian border guards as to why they did not have Russian passports. The SMM learned about cases of activists and Crimean Tatars being questioned thoroughly on the purpose of their visit or their activity before being allowed to pass. The SMM received reports of incidents on the Russian controlled side of the ABL of people displaying a Ukrainian flag or symbols on their clothing or bags having been questioned. Those who had Ukrainian national insignia inside their vehicles (e.g. ribbons) were requested to remove them or be prohibited from entering Crimea. Several interlocutors stated that those displaying any Muslim symbols or paraphernalia were searched.

On 22 April 2014 and on 5 July 2014 respectively, the former Chairman of the Mejlis of the Crimean Tatar People and former leader of the Crimean Tatar National Movement, as well as the current Chairman of the Mejlis of the Crimean Tatar People, were banned by Russian authorities from entering Crimea for five years. On 10 August 2014 an entry ban to the territory of the Russian Federation was placed on the General Coordinator of the Crimean News Agency (QHA), who is also the advisor of the Head of the Crimean Tatar Mejlis on relations with Turkey.

On 13 September 2014, the Chairman of the Audit Commission, the VI Kurultay of the Crimean Tatar People, reported to the SMM about a detention incident while travelling by train from Simferopol to Lviv. On the Russian controlled side of the ABL he was forcibly made to leave the train, searched and then detained for two hours. Although he was not officially interrogated he was questioned as to why he opposed the Russian Federation authorities. Finally he was allowed to leave Crimea and continued his journey.

On 23 January 2015 three Crimean Tatar human rights' activists, founders and members of the Committee on Protection of the Rights of the Crimean Tatar People, were detained at the border while leaving Crimea at the Armyansk crossing point. According to one of the activists, while crossing the ABL from the Russian controlled side, he was deprived of his liberty by the Russian Federation officers from the passport control of Armyansk crossing point for several hours. After being questioned by the representatives of the Federal Migration Services from Simferopol he was taken to the administrative court of the town of Armyansk for a hearing. The same day the court passed a decision to impose a fine of RUB 2,000 and thereafter deport him from the territory of the Russian Federation due to the violation of the migration legislation of the Russian Federation.

Annex No. 1 Map of the ABL between the Kherson region and Crimea

