

Legislative Update

UNHCR update on displacement-related legislation | April 2018

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Adopted legislation

End of the “Anti-Terrorist Operation” and launch of the “Joint Forces Operation”

On 30 April, the President announced the substitution of the “Anti-Terrorist Operation” with the “Joint Forces Operation”¹ to implement measures ensuring “national security and defence, cutting off and containing armed aggression of the Russian Federation in Donetsk and Luhansk regions”.² The Special Order on implementation of the security and defense measures is based on Law no. 2268,³ underlining the military and security reasons for its adoption. It reaffirms the special functions of joint forces (military, security, and law-enforcement agencies) as set out in Article 12 of Law no. 2268, as well as identifies restrictions pertinent to the implementation of security and defence measures. The JFO is led by the Joint Forces Commander.

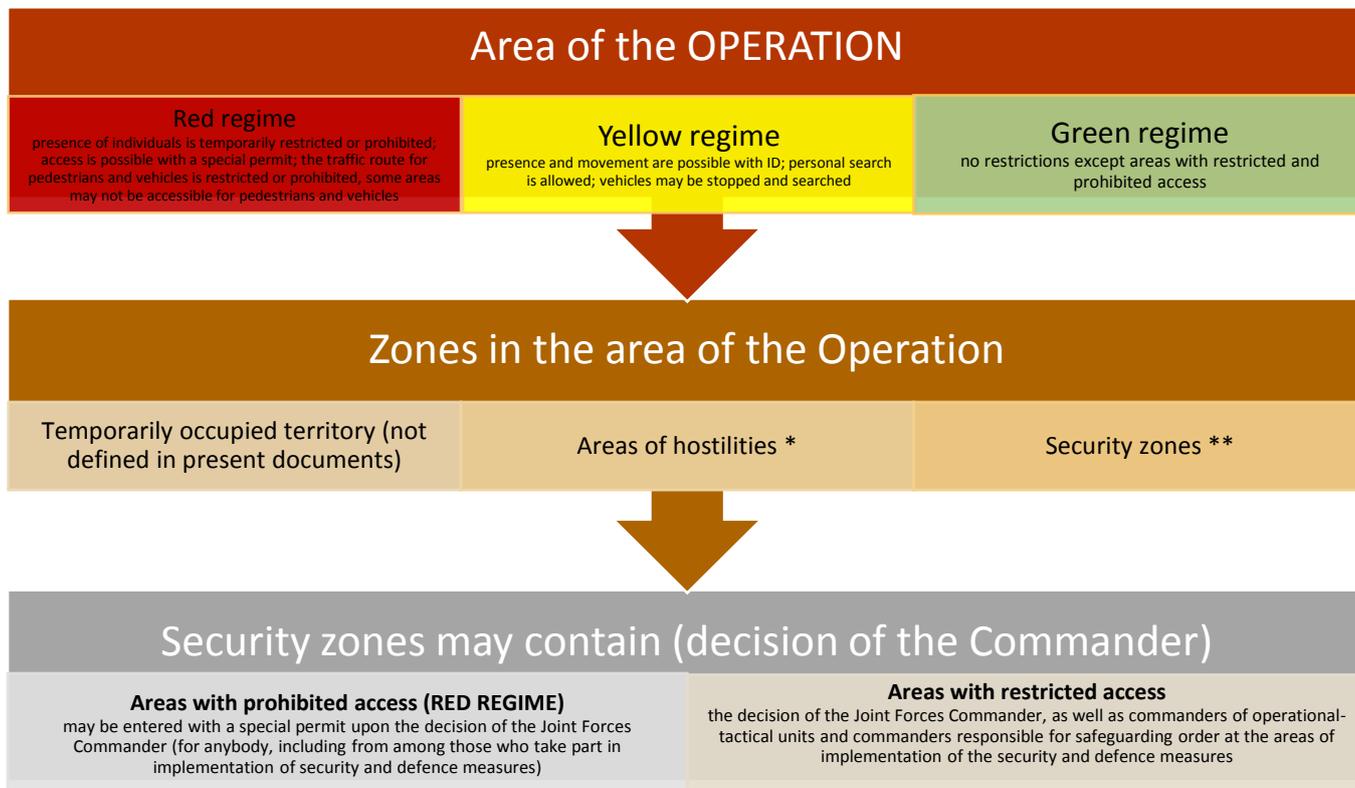
The Special Order clarifies restrictions on movement: Persons fulfilling military tasks will be posted along the boundaries, defined by the Joint Forces Commander, of the area of conducting operations (a term not defined in the Special Order), as well as areas of hostilities. They will conduct identity checks and personal searches on the boundaries; Entry to the operation area, the area of hostilities, as well as areas with restricted and prohibited access, is allowed only via entry-exit checkpoints to be defined by the Joint Forces Commander.

¹ The full text available online (in Ukrainian): <http://www.president.gov.ua/news/30-kvitnya-rozpochalas-operaciya-obyednanih-sil-iz-vidsichi-47206>

² The implementation of the security and defense measures is governed by the respective Special Order, full text available online (in Ukrainian): <http://www.golos.com.ua/article/302547>

³ Law no. 2268 is the Law of Ukraine “On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk regions”. Analysis of the Law is available online: https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/unhcr_analysis_of_law_on_safeguarding_sovereignty.pdf

The Special Order identifies the following areas, zones and regimes:



* **The areas of hostilities** includes areas along the line of contact where active combat is ongoing.⁴

** **The security zone adjacent to the area of hostilities** includes over 30 different settlements and locations.⁵

The Special Order identifies the reasons for allowing or refusing entry to the area of conducting operations for persons not involved in implementation of security and defence measures:

Allowed entry ⁶	Refused entry
<ul style="list-style-type: none"> ■ Residence in the JFO area (personal, close relatives or family members) confirmed by documents issued by respective state bodies of Ukraine;* ■ Presence of graves of close relatives or family members in the JFO area confirmed by respective documents; ■ Death of close relatives or family members in the JFO area confirmed by respective documents;* ■ Property rights for immovable property located in the JFO area;* 	<ul style="list-style-type: none"> ■ Suspicion of committing a criminal offence; ■ Fake or damaged ID, or using the ID of another person; ■ Information on the facilitation of a criminal offence; ■ Real threat to life and health of individuals, introduction of the “red regime” in areas of hostilities and security zones

⁴ The link to the unofficial list of the areas of hostilities may be found here (in Ukrainian): <https://www.pravda.com.ua/news/2018/04/30/7179140/> It contains names of over 100 settlements near the line of contact.

⁵ Vynogradnoe, Kurakhovo, Ocheretyne, Rozivka, Vovcheyarivka, Bila Gora, Novoaidar, Sadky, Makarivka, Prostyane; near the state border – Chernyavka; along the administrative border of Luhansk and Kharkiv regions – Olgivka; Along the administrative border of Donetsk and Kharkiv regions – Znamenivka; along the administrative border of Donetsk and Dnipro regions – Komyshevka; along the administrative border of Donetsk and Zaporizhzhia oblasts – Urzuf; along the seacoast – Prymorske.

⁶ Marked with * are the reasons also applicable to “red regime” zones.

- Necessity to participate in activities ensuring the national interests of Ukraine with the purpose of the peaceful conflict settlement or humanitarian affairs;
- Necessity to perform functions related to the activity of international organizations, where Ukraine is the member (exclusively via request or approval of Ministry for Foreign Affairs),* as well as perform diplomatic and consular functions;
- Release from detention places on the basis of ID after an examination by the National Police;*
- Special permit;*
- For infrastructure repairs and provision of medical or social assistance,* as well as for work, educational, scientific, educational, religious, medical-related activity or accompanying a child to kindergarten or school;
- Need to cross the line of contact in order to enter to and/or exit from “temporarily occupied territories of Donetsk and Luhansk regions” (only for red regime zones and hostilities areas).

The Special Order does not identify the boundaries of the red zone or the list of settlements of the “temporarily occupied territories of Donetsk and Luhansk regions.” Neither does it establish rules for crossing the line of contact. However, it does contain provisions that may protect humanitarian access.

Strengthening the protection of conflict-affected children

On 11 April, the Cabinet of Ministers adopted Resolution no. 301⁷ aimed at strengthening the protection of children suffering because of the hostilities and armed conflict, in particular adjusting the procedure for granting to a child a status of victim of hostilities or armed conflict. By introducing the amendments to previous thematic resolutions,⁸ the recent one specifies the notions of “physical”, “sexual,” and “psychological” violence against a child as the reasons for obtaining the status of a victim of hostilities and armed conflict. It also clearly defines categories of children who have the right to this status, the procedure and the respective bodies responsible for its granting. Overall, the procedure is expected to be simplified.

Subsidized housing for IDPs who participated in the “ATO”

On 18 April, the Government adopted Resolution no. 280,⁹ allowing the reimbursement of expenses incurred by local budgets in improving housing conditions for IDPs who participated in the “ATO”, who became disabled, and received a certificate of “hostilities participant.” These persons must have an existing entitlement to improve their housing conditions in accordance with existing legislation¹⁰ and be registered in a housing record. The Ministry of Social Policy, the main custodian and holder of funds, divides the respective costs based on requests from local social protection bodies and the needs in their regions. In their turn, local social protection bodies establish special commissions for assessing whether the person wishing to receive compensation instead of direct improvement of housing conditions is entitled for such compensation. If the decision is positive, the applicant receives compensation

⁷ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vn-1>

⁸ The full texts available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/866-2008-%D0%BF> and <http://zakon0.rada.gov.ua/laws/show/268-2017-%D0%BF>

⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pitannya-zabezpechennya-zhitlom->

¹⁰ The full text of respective Law on status of veterans of war and guarantees for their social protection available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/3551-12>

in full in accordance with the specifically defined procedure. The Government considers that adoption of this regulation will prevent social tension, restore social justice, and contribute to ensuring of the proper level of social protection of such persons. However, the group is rather narrow. For example, in Kyiv there are a little over 300 persons, in comparison to the 150,000 registered IDPs in Kyiv.

Draft legislation

Draft amendments to protect housing rights of IDP students

On 4 April, Parliament adopted in the first reading draft law no. 6142 amending the Law “*On ensuring the rights and freedoms of IDPs*” (the Law on IDPs) with provisions on the protection of housing rights of IDP students.¹¹ In particular, after de-registration from halls of residence, ex-students shall have the right of simultaneous registration in their previous place of residence left due to the armed conflict or “temporary occupation”. This amendment shall ensure that former students have a stamp proving their residence registration. This will allow students who are not willing to return to their previous place of residence to register as IDPs. These amendments shall ensure that ex-students preserve links with their previous place of residence in Crimea or non-government controlled areas, as well as to access state services and benefits in government-controlled areas through IDP registration.

Draft law on amendments to the Law on Citizenship

On 19 April, the President¹² submitted to Parliament draft law no. 8297 amending the Law on Citizenship.¹³ The issue of citizenship of the Russian Federation obtained as a result of the temporary occupation of the Autonomous Republic of the Crimea is specifically highlighted. The draft reiterates provisions of the Law on TOT Crimea¹⁴ whereby if a Ukrainian citizen obtained or was granted the citizenship of the Russian Federation in Crimea after February 2014, it does not amount to a voluntary obtaining of “other citizenship” within the meaning of the Law on Citizenship and therefore shall not result in losing Ukrainian citizenship.

Amendment to Law on
Citizenship

• Obtaining the RF citizenship in Crimea after February 2014 is not considered voluntary

Law on TOT of Crimea

• The forcible automatic obtaining of Russian citizenship by Ukrainian citizens residing in the occupied Crimea is not recognized by Ukraine and is not a reason for losing Ukrainian citizenship

The proposed amendment states: *If a Ukrainian citizen aged over 18 used the electoral (or any other) right or performed an obligation proposed to him/her under the “foreign citizenship” and this usage/performance may be confirmed by information from various state bodies, such actions amount to the voluntary obtaining of “foreign citizenship”.*

Interpretation of the two paragraphs in conjunction may result in a contradiction, where exercising a right could lead to a loss of Ukrainian citizenship. Expert opinions differ when assessing whether or not the above cited paragraph applies to the situation of Crimea.

¹¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61244

¹² On 13 March 2017, the President already registered draft law no. 6175 amending the Law on Citizenship. Proposed amendments contained a suggestion to consider the usage of the electoral (or any other) right or performance of an obligation under the “foreign citizenship” to amount to the voluntary obtaining of “foreign citizenship”. The main Parliamentary Human Rights Committee returned that draft law for reconsideration.

¹³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63900

¹⁴ Cf. Article 5 of the Law of Ukraine on ensuring the rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine. The full text available online (in Ukrainian): <http://zakon5.rada.gov.ua/laws/show/1207-18>

Parliamentary resolutions on protection of conflict-affected children, IDPs and individuals residing near the line of contact

While parliamentary resolutions are not legally binding, they may boost elaboration, adoption, or amendment of other legal acts, where government action is needed. Two draft resolutions were registered on 10 April 2018:

- Draft Regulation no. 8254 “*On some aspects of social protection of conflict-affected children*”¹⁵ urges the Government to simplify the procedure of granting the status of a conflict-affected child (adopted in 2017)¹⁶ and to develop draft legislation on additional social guarantees for disabled or wounded children from among the conflict-affected population.
- Draft regulation no. 8255 “*On the resolution of problems of IDPs and citizens residing along the line of contact*”¹⁷ urges the Government to concentrate its efforts on eliminating barriers to accessing different state services. Members of Parliament request the development of a state programme to support IDPs and residents of settlements along the line of contact, as well as to de-link pensions from IDP registration, increase targeted assistance for IDPs, and adopt procedures to compensate for damaged or destroyed property.

Order on coordination of activities related to preventing and combating gender-based and domestic violence

MoSP provided a draft order on cooperation of stakeholders involved in prevention and combating domestic violence for the public discussion.¹⁸ The draft defines the distribution of functions between central, regional and local authorities, as well as possible referral mechanisms. It is expected that MoSP will elaborate the legislative framework and programs for victims and perpetrators related to domestic violence. It will also create a special coordination council consisting of representatives of the Ministry of Education, the Ministry of Internal Affairs, the Ministry of Health, the National Police, other central executive bodies, NGOs, religious organizations, and foreign NGOs. At regional level, authorities will permanently control implementation measures addressing, preventing, and combatting domestic violence. They also create regional coordination councils and report on all the related activities and actions to MoSP. At local level, authorities collect data and register domestic-violence related applications. They also coordinate efforts of other bodies involved in the prevention and combat of domestic violence, collect relevant information, and assess the need to establish victim support services.

Action plan on well-being of older people (including IDPs)

MoSP provided a draft Action Plan on the well-being of older people until 2022 for public discussion.¹⁹ The draft contains a large number of soft components, such as capacity building activities, information campaigns, needs assessments, enhancing assistance to families with older people with health conditions etc. There are no actions that for short-term improvement of infrastructure. The draft contains two specific provisions pertinent to IDPs:

- Increased targeted monthly IDP assistance to cover housing needs, including utilities;
- Improved control mechanisms related to the payment of pensions and targeted assistance to IDPs.

Other Important Developments

The hearings in Parliamentary Human Rights Committee

On 18 April, the Parliamentary Committee on Human Rights, National Minorities and International Relations held hearings on the " implementation status of the National Strategy on human rights in relation to the protection of the

¹⁵ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63833

¹⁶ The full text of respective Government Resolution available online (in Ukrainian): <http://zakon5.rada.gov.ua/laws/show/268-2017-%D0%BF>

¹⁷ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63834

¹⁸ The full text available online (in Ukrainian): <http://www.msp.gov.ua/projects/316/>

¹⁹ The full text available online (in Ukrainian): <http://www.msp.gov.ua/projects/315/>

rights of IDPs and persons residing in the temporarily occupied territories of Ukraine, the release of hostages, and the restoration of their rights".²⁰ In order to analyze the reasons of the inadequate implementation of the National Strategy, the committee listened to opinions of major stakeholders, including the Ministry of Justice, the Ministry of Temporarily Occupied Territories and IDPs, MoSP, the Pension Fund, and others. The hearings resulted in recommendations to central state authorities regarding the development of state policy towards IDPs that is not discriminatory and ensures unimpeded access to rights. The discussion included social and economic rights, political participation and inclusion, access to education, housing rights of IDPs and the right to compensation for damaged or lost property, as well as birth and death registration relating to non-government controlled areas.²¹

[PACE resolutions covering the situation in Ukraine](#)

■ **State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights (PACE Resolution no. 2209)**

On 26 April, the Parliamentary Assembly of the Council of Europe (PACE) adopted Resolution no. 2209 entitled "*State of emergency: proportionality issues concerning derogations under Article 15 of the European Convention on Human Rights*" (the Convention).²² As far as Ukraine is concerned, the Assembly expressed concerns about the Law of Ukraine "*On combatting terrorism*" which permits preventive detention for up to 30 days; underlined the importance of improving material conditions at the crossing points between government-controlled and non-government-controlled areas; as well as the need to enhance courts transferred from non-government-controlled to government-controlled areas.

■ **Humanitarian needs and rights of internally displaced persons in Europe (PACE Resolution no. 2214)**

The Committee on Migration, Refugees, and Displaced Persons prepared a report on the humanitarian needs and rights of internally displaced persons in Europe based on which the Assembly adopted Resolution no. 2214.²³ The Resolution recalled that the war in eastern Ukraine and the annexation of the Crimea by the Russian Federation caused the displacement of some 1,7 million people. It identified areas where more actions are needed from the authorities of the Russian Federation and Ukraine:

- Support projects restoring family links by the Ukrainian Red Cross Society and the Russian Red Cross Society and to enable ICRC to enter, with due protection and safety, the areas affected by the conflict in order to pursue forensic work on cases of missing persons;
- Establishment of a commission for the compensation or return of IDPs' possessions and property in accordance with the jurisprudence of the European Court of Human Rights under Article 1 of the Protocol to the European Convention on Human Rights;
- Support and assistance for demining action in all areas affected by the conflict;
- Abstention from any action that will prolong or cause further internal displacement of persons and aggravate the humanitarian situation of IDPs, in violation of international humanitarian law.

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²⁰ The hearings available online (in Ukrainian): http://kompravlud.rada.gov.ua/news/main_news/73869.html

²¹ The full text available online (in Ukrainian): http://kompravlud.rada.gov.ua/news/main_news/73873.html

²² The full text available online (in English): <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24680&lang=en>

²³ The full text available online (in English): <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24736&lang=en>