

UKRAINE

LEGISLATIVE UPDATE

19 November – 9 December 2016

LEGISLATIVE DEVELOPMENTS

The three weeks covered in this update have seen important legislative developments, including in the area of verification of residence of IDPs, registration of facts of birth and death that took place in non-controlled territories, regulations on crossing the contact line in the east of the country, humanitarian assistance delivery, as well as the status of foreigners and stateless individuals.

Adopted legislation

Legal acts related to IDP verifications

In September this year, the Government of Ukraine registered a draft law in Parliament "On introducing amendments to some legal acts of Ukraine".¹ The draft law covers diverse areas such as the minimum wage and pensions and stipends for some categories of student. The draft law also introduces provisions empowering the Ministry of Finance (MoF) to conduct the verification of recipients of different types of social assistance and pensions. For the purpose of verification the MoF is entrusted with a right to share individual personal data, including that of internally displaced people (IDPs), with third parties without the clear and specific consent of the individual. According to the Chief Expert Division of the Parliament, such provisions "undermine the whole idea of personal data protection legislation in Ukraine". Additionally, the draft law obliges the Cabinet of Ministers of Ukraine to develop a separate law on verification. The law was adopted by the Parliament on 6 December and is awaiting signature by the President of Ukraine.

On 7 December 2016, Parliament adopted in the first reading the draft Law "On Amendments to the Budget Code of Ukraine".² Under its provisions, when exercising control over and verification of financial allocations to pay pensions and different types of social allowances, the MoF shall have access to personal data information, including information subject to bank secrecy, as well as to automated information and information systems, registries and databases held or administered by state agencies or local governments.³ The draft law proposes to remove the currently prescribed explicit consent of an individual for the processing of their personal data. As the purpose of the verification, its scope and consequences for individuals are not clearly defined in the draft law, it is recommended that a separate law on verification includes all the necessary safeguards that would adequately protect individuals from interference into their private life.

¹ Draft law no. 5130 of 15 September 2016. The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60033

² Draft law no. 5131 of 15 September 2016. The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60034

³ Suggested amendment to point 40 of concluding provisions of the Budgetary code

Amendments to the Temporary Order regulating control over movement of individuals, transports and cargos (goods) through the contact line⁴

On 28 November, the Anti-terrorist Center at the State Security Service (SBU) introduced, among others, two amendments expected to have a positive impact on the situation at checkpoints:

- Priority entry at checkpoints will be given to the following categories of individual (and their means of transport): individuals with special needs (disabled persons belonging to the first and second groups, with supporting documents), older persons (over 70), pregnant women (visibly recognizable as such), parents with children under three and other individuals with humanitarian needs (medical, bereavement etc.). The decision shall be taken jointly by officers on duty from among the control services (State Border Guard Service, Fiscal Service and State Security Service) and representatives of civil society organizations (if present: Foundation.101, Donbas SOS, Vostok SOS), as specified in point 3.4 of the Temporary Order;
- The maximum cargo (goods) allowed for transfer to the non-government controlled areas for personal use was increased from 50 to 75 kg with a maximum value of UAH 10,000 (USD 380) and up to 75 kg of food items with a maximum value of UAH 5,000 (USD 190) per person, as specified in point 13.1 of the Temporary Order.

Legal acts on housing for some categories of individual including IDPs

Two by-laws were adopted to ensure access to budgetary funds for improvement of the housing situation of the following groups of individual:

- Families of fallen members of the armed forces, who participated in the “Anti-terrorist Operation” (“ATO”), through subsidies for construction (or purchase) of apartments/houses;
- Disabled persons belonging to the first and second groups from among members of the armed forces, who participated in the “ATO”;⁵
- Disabled IDPs belonging to the first and second groups, who took part in the “ATO”, as well as IDP family members of fallen members of the armed forces, who participated in the “ATO”.⁶

Registration of legal entities and entrepreneurs from Crimea, the non-government controlled areas and areas near the line of contact

On 25 November 2016, The Ministry of Justice adopted Order no. 3,359/5,⁷ the purpose of which is to regulate the registration procedure of legal entities, individual entrepreneurs and community groups that do not have the status of legal entities and originate from Crimea, the non-government controlled areas (NGCA) and settlements near the line of contact in eastern Ukraine. Registration in the government-controlled areas (GCA) shall be conducted regardless of their location or residence in these areas.

Registration is to be conducted in paper format for legal entities and entrepreneurs from:

- Crimea and city of Sevastopol, by the Chief Territorial Department of Justice in Kherson region;
- The NGCAs and settlements near the line of contact, respectively by the Chief Territorial Department of Justice in Donetsk and Luhansk regions.

⁴ The updated text is available online (in Ukrainian): <https://ssu.gov.ua/ua/pages/32>

⁵ Access to local and state budgets for those categories is ensured through the Cabinet of Ministers Resolution no. 719 of 19 October 2016, which approved the Procedures and conditions for granting subsidies from the State budget to local budgets for the mentioned purposes, as well as the Procedures for payment of monetary compensation for suitable living quarters for the said categories of persons. The full text in Ukrainian is available at: <http://zakon3.rada.gov.ua/laws/show/719-2016-%D0%BF>

⁶ Resolution of the Cabinet of Ministers of Ukraine #861 *Some issues of registration of citizens who are in need of better housing conditions* The full text in Ukrainian is available at: <http://zakon2.rada.gov.ua/laws/show/470-84-%D0%BF> and <http://xn--80aagahqwyibe8an.com/kabineta-ministriv-postanovi/postanova-vid-listopada-2016-861-pro-vnesennya311222.html>

⁷ As a result of the adoption of Order #3359/5 *On regulation of relations connected with the state registration of legal entities and individuals - entrepreneurs and community groups that do not have status of legal entity, within a few administrative-territorial units*, the Ministry of Justice declared Order #1849/5 of 5 November 2014 "On registration actions for legal entities and individuals - entrepreneurs, location / residence of which is occupied territory and the territory of the ATO" null and void.

UNHCR expects these provisions to positively influence opportunities for self-employment, as well as empower entrepreneurs to pay taxes and social security allocations to the state budget, ensuring future access to pensions and other social assistance.

Registration of births and deaths

The Ministry of Justice has introduced changes to the birth and death registration procedure through Order no. 3,447/5⁸.

The Order introduces general amendments to the birth and death registration procedure, now clearly distinguishing between passports of citizens of Ukraine and foreigners, as well as other identification documents of stateless persons. Foreigners, including stateless persons, will be required to present a permanent or a temporary residence permit, or any other document confirming the legality of their stay in Ukraine.

Some changes concern the birth registration of residents of Crimea and the NGCAs. The registration authority (the Department of State Registration of Acts of Civil Status) will use the date of birth indicated in the relevant court decision to issue the birth certificate. The court decision will also serve as a basis for inserting information about the child's father. Since at present there is no separate simplified procedure for the recognition of marriages and divorces conducted in Crimea or in the NGCAs, this provision could assist in the indirect recognition of marriages during the consideration of a case for the recognition of a birth. In particular, it is important that residents of Crimea and the NGCAs are advised to ask the court to clearly identify in the court decision not only the birth, but also to spell out the names of both parents and the date of birth of the child.

In the case death registration in Crimea and the NGCAs, the court will transfer information to the relevant registration authority automatically; the latter will be tasked with issuing the death certificate upon request.

Financial and other assistance to IDP families (pilot project of the Cabinet of Ministers)

On 2 December 2016, the Cabinet of Ministers adopted amendments to Resolution no. 1,154 "On implementation of the pilot project with the involvement of members of poor families and IDPs".⁹ The pilot project (to be conducted from 1 July 2016 to 1 June 2018)¹⁰ is currently being conducted in Lviv, Poltava and Kharkiv regions supporting IDPs and vulnerable families by finding jobs, providing interest-free financial assistance to businesses to be reimbursed over a period of one year and also facilitating involvement in community work. The project aims to effectively involve local authorities (employment centers, state administrations, local council executive committees, etc.) in the process of integrating IDPs through employment and starting businesses. The document contains criteria to identify IDPs who will benefit from the project, as well as a mechanism for granting financial assistance.

Draft legislation

IDP related draft laws

Registered at Parliament on 25 November, draft law no. 5,454 amends Article 1 of the Law "On Ensuring Rights and Freedoms of Internally Displaced Persons".¹¹ It expands the IDP definition to include individuals forced to move within one specific settlement due to the destruction of their home. When adopted, the amendment will positively influence the fate of individuals forced to move within a settlement. The provision will allow them to be registered as IDPs and benefit from payments allocated to cover rent expenses and communal charges, as provided for in Cabinet of Ministers Resolution no. 505.

⁸ The Order is to be published officially on 16 December 2016 and then will enter into force. The text is available online:

http://search.ligazakon.ua/l_doc2.nsf/link1/RE29694.html

⁹ Amendments are introduced by Resolution #816 of 16 November 2016. The text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/816-2016-%D0%BF>

¹⁰ The pilot project is financed by the International Bank for Reconstruction and Development (IBRD) through their program on "Modernization of social support for the population of Ukraine".

¹¹ The full text in Ukrainian is available at: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60589

Draft laws on the legal status of missing persons

Two alternative draft laws were registered to regulate the legal status of missing persons:

- Draft law no. 5,435¹² of 22 November 2016 defines the legal status of individuals missing during armed conflict. It regulates situations connected with the status of individuals missing during an armed conflict and provides measures for their search. The draft ensures protection of missing individuals and their relatives. The draft contributes to the implementation of international treaties in the area of international humanitarian law (IHL) and human rights law (HRL). The text of the draft is based on the Model Law on missing persons, developed by the International Committee of Red Cross and Red Crescent (ICRC). To trace individuals missing during an armed conflict the Government of Ukraine will establish a Commission on Missing Individuals, an auxiliary interagency body, which will be the holder of the Unified Registry of Data on Missing Individuals.
- Draft law no. 5,435-1¹³ of 5 December 2016 is also based on the Model Law on missing persons of the ICRC, though with several major differences. In particular, it considers enforced disappearances to be one of the root causes for individuals having gone missing. The draft law contains the definition of enforced disappearances mirrored from the International Convention for the Protection of All Persons from Enforced Disappearance;¹⁴ it criminalizes conduct resulting in enforced disappearances, including giving orders to actions resulting in such disappearances. Additionally, The Ministry of Temporarily Occupied Territories and Internally Displaced Persons (MTOTIDP) shall be the holder of the Unified Registry of Data on Missing Individuals. The draft law introduces a Commission on Missing Individuals that is expected to coordinate all work related to the search for missing individuals and the functioning of the registry.

UNHCR considers that the second draft (no. 5,435-1) has a stronger position from the point of view of international legal obligations of Ukraine, including under the International Convention for the Protection of All Persons from Enforced Disappearances. The provisions of draft law no. 5,435-1 will enable Ukrainian law enforcement agencies to apply international cooperation mechanisms in the search for individuals who have gone missing in the NGCAs or Crimea in circumstances that are not directly related to hostilities.

Draft laws concerning legal status of foreigners and stateless individuals

Draft law no. 5,433 of 21 November 2016 “On amending some legal acts of Ukraine regarding the issue of acquiring (terminating) citizenship of Ukraine, citizenship (nationality) of another state or states”¹⁵ introduces a number of provisions that may enable citizens of Ukraine to have more than one citizenship. For holders of dual or multiple citizenships, it will influence the right to elect and be elected, as well as the right to serve in executive authorities at central and local levels, law enforcement bodies and national defence authorities. The draft law introduces an administrative fine up to UAH 3,400 (USD 125) for citizens of Ukraine who fail to inform authorities of their acquisition of the citizenship of another country. The law requires that recognized refugees applying for Ukrainian citizenship make a declaration renouncing their previous citizenship. This will suffice for naturalized refugees to participate in any elections in Ukraine. The draft law suggests that citizens of countries recognized by Parliament to be aggressor states or against Ukraine in a state of war cannot acquire Ukrainian citizenship. The ambiguity of this provision lies in the fact that citizens of such countries still can apply for and be granted refugee status or complementary protection. Thus, in the longer term, their integration in Ukraine may come under question.

Draft law no. 5,509 of 8 December 2016 suggests amending Article 16 of the Law of Ukraine on Legal Status of Foreigners and Stateless Individuals.¹⁶ In particular, the draft widens the list of individuals to be registered with the Ministry of Foreign Affairs and includes private domestic workers employed by personnel of diplomatic missions, consular offices, international organizations and their missions in Ukraine. The list also includes individuals who hold (labour) contracts with diplomatic missions, consular offices, international organizations and their missions in Ukraine but are not considered staff. These provisions will simplify registration of the mentioned categories of individual in Ukraine.

¹² Submitted by a group of deputies. The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60560

¹³ Submitted by one deputy. The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60630

¹⁴ Ukraine ratified the Convention in June 2015: <http://zakon5.rada.gov.ua/laws/show/525-19/paran2#n2>

¹⁵ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60558

¹⁶ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60665

Draft laws on some aspects of humanitarian assistance delivery

In order to empower the MTOTIDP in the area of delivery, distribution and control over humanitarian assistance in Ukraine during armed conflict, Members of Parliament registered draft law no. 5,475 of 1 December 2016,¹⁷ amending the Law of Ukraine “On Humanitarian Assistance”. As per the provisions of the draft law, during armed conflict in Ukraine, in temporarily occupied territories, in the NGCAs and in settlements near the line of contact and in IDP related cases, the MTOTIDP will be solely responsible for monitoring the distribution of humanitarian aid, work with state authorities, local self-government and international organizations.

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¹⁷ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60619