



CHANGES IN THE IDP REGISTRATION PROCEDURE

On 13 December, social networks broke the news¹ that a meeting of the Government Committee for Social Policy and Humanitarian Development approved a draft resolution of the Cabinet of Ministers of Ukraine *On the Amendment of Certain Resolutions of the Cabinet of Ministers of Ukraine* regarding changes in the procedure of registration of internally displaced persons (IDP).

Soon thereafter, the website of the Ministry of Social Policy of Ukraine reported² that at the meeting on 14 December, the Government finally adopted the aforementioned draft resolution and changed the IDP registration procedure.

On 20 December, this resolution appeared on the Government web portal³ under registration number 964.

The Government amended a number of resolutions concerning registration and social protection of IDPs, in particular, the Procedure of Applying for and Issuing a Reference on Registration of an Internally Displaced Person (Resolution of the Cabinet of Ministers of Ukraine No 509 of 1 October 2014), the Procedure of Providing Monthly Financial Assistance to Internally Displaced Persons to Cover Housing (Including Utility) Costs (Resolution of the Cabinet of Ministers of Ukraine No 505 of 1 October 2014), the Procedure of Granting (Resuming) Social Benefit Payments to Internally Displaced Persons (Resolution of the Cabinet of Ministers of Ukraine No 365 of 8 June 2016, Resolution of the Cabinet of Ministers of Ukraine No 637 of 5 November 2014), and the Rules for Registration of Residence Address (Resolution of the Cabinet of Ministers of Ukraine No 207 of 2 March 2016).

According to the Government web portal, implementation of the aforementioned resolution of the Cabinet of Ministers of Ukraine would help simplify the procedure of registration of IDPs, improve the procedure of granting (resuming) social benefit payments to IDPs, accommodate needs of disabled persons and persons requiring nursing care, regulate registration of the place of stay of IDPs, and as a result, improve their social protection.

The Right to Protection Charitable Foundation team decided to find out whether these claims were true.

#BETRAYAL or #VICTORY?

For the purpose of convenience, we presented all regulatory changes in the form of a comparative table (see: below). As follows from the text of these changes, they could be conditionally classified into three groups:

- 1) technical (the ones affecting the regulatory act's style only);
- 2) positive (the ones aimed at making the process of registration of and social benefit payments to IDPs easier);
- 3) negative (the ones potentially capable of complicating the IDP registration procedure).

¹ <https://www.facebook.com/natalka.poltavka85/posts/1789585707975486>

² <http://www.msp.gov.ua/news/12113.html>

³ <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249601066>

Let's begin with the **technical changes**. These are the changes to the Procedure of Providing Monthly Financial Assistance to IDPs (Resolution No 505 of 1 October 2014). One of the paragraphs of the above Procedure still contains the term "registration of persons being displaced", which finally was replaced with the legal term "registration of internally displaced persons".

The text of Resolution of the Cabinet of Ministers of Ukraine No 365 of 8 June 2016 was altered to remove the provision stating that commissions granting (resuming) social benefit payments are obliged to make a decision regarding resumption/termination of payments to all IDPs to whom these payments had been suspended within one month of the aforementioned resolution's affective date. This decision seems logical, because Resolution 365 entered into force over half a year ago (on 15 June 2016), but the commissions still haven't processed all cases concerning IDPs whose social benefits had been suspended⁴. Therefore, the aforementioned provision was "stillborn" from the very first day.

In addition, Ukraine's regulatory framework now stipulates that the Department of Labor and Social Protection (DLSP) has to submit to the social benefits commission a motion for resumption/termination of social benefit payments to an IDP within three business days after the date of an act on examination of the family's financial and living conditions and receiving the social benefit recipient's electronic case, NOT after the date of receiving the social benefit recipient's electronic case (as stipulated earlier). This change was necessitated by the fact that drawing up an act often takes much more time than receipt of the social benefit recipient's electronic case, and the commission would not hear the IDP's case without an examination act; therefore, the case would still be actually submitted to the commission only after the act on examination of the family's financial and living conditions was drawn up. In fact, this change has simply confirmed the actual state of affairs at the local level.

As for the **positive changes**, this time, there are many more positive developments than negative ones. Thus, the Ministry of Social Policy as the chief architect of the act was able to accomplish the following:

- from now on, if an IDP moves from one apartment to another within the same city district / city which is not divided into districts/village/hamlet/district of a region, this person is no longer required to procure a new IDP reference as required earlier; instead, all he has to do is to notify the DLSP which issued the IDP reference (personally or over the telephone) about the change of his address. In turn, the DLSP is required to file relevant changes in the Unified Information Database of Internally Displaced Persons (UIDB). Upon request, the DLSP can enter the new residence address into the IDP's reference;
- if an IDP is registered with a regional center for social services, attends a kindergarten, secondary school, vocational school or university (for full-time students only), an act on examination of financial and living conditions is not required for this person to be eligible for social benefit payments. The DLSP must place an inquiry concerning this IDP for confirmation of the IDP's place of stay/study. After the required confirmation is received, social benefit payments to the IDP may be resumed.

If information regarding the IDP's registration/place of study is not confirmed, the DLSP must check the IDP's place of residence/stay and draw up a relevant act.

In addition, if an IDP fails to attend the educational institution for a long period of time (more than 60 days), the educational institution is required to report it to the DLSP.

- if a social worker does not find an internally displaced person at the place of his listed residence/stay, the social worker must leave a written notice requiring the IDP to appear within three business days after the date of drawing up an act at the DLSP to undergo the physical identification procedure. In the past, this matter was unregulated, so when an IDP was at work when the social worker's visited his home, the social service could either draw up an act of the IDP's absence at the residence address or appoint a new visit for which the IDP may have to wait for a long period. Nevertheless, this provision represents a relatively positive change only,

⁴ according to information by Right to Protection Charitable Foundation's monitoring teams

because it remains unclear where the aforementioned notice should be left, how the IDP should be informed about the notice, etc.

- The Ukrainian Postal Service was excluded from the process of delivering pension payments to pensioner IDPs at their places of residence, because during the first half of year, the trilateral Pension Fund – Savings Bank – Ukrainian Postal Service cooperation failed on delivering pension payments to pensioner IDPs' homes. From now on, the Savings Bank will be obliged to deliver, free of charge and upon request, pension payments to homes of IDPs with group I disabilities and IDPs who cannot look after themselves and require continuous nursing care. At the same time, the Savings Bank will perform physical identification of these persons to establish their eligibility for social benefit payments.

A STEP BACKWARDS

Negative changes were made too.

A brief look into history: On 24 December 2015, the Verkhovna Rada of Ukraine has passed Law of Ukraine No 921-VIII *On the Amendment of Certain Laws of Ukraine to Improve Guaranteed Observance of Rights and Freedoms of Internally Displaced Persons*. The main goal of the above law was to improve guaranteed observance of rights and freedoms, and simplify the procedure of registration of IDPs. The aforementioned Law was enacted on 13 January 2016.

Among the key changes stemming from the passage of this Law was the change that abolished the hitherto required the State Migration Service registration stamp of the IDP's place of residence in the IDP's reference.

Therefore, the State Migration Service, as an agency coordinated by the Interior Ministry has lost all powers in the IDP registration process.

Relevant amendments were also introduced to the Law of Ukraine *On the Freedom of Movement and Free Choice of a Place of Residence in Ukraine*, and the IDP registration reference was excluded from the list of documents containing information regarding the person's place of residence and place of stay.

However, other amendments to the Law of Ukraine *On the Freedom of Movement and Free Choice of a Place of Residence in Ukraine* entered into force on 04 April 2016. According to these amendments, the IDP reference was included in the list of documents containing information regarding the person's place of stay. These amendments enlarged the scope of powers belonging to local self-government bodies, optimized dispensation of administrative services, and were related to lasting decentralization processes, not systemic changes building a system protecting IDP' rights and freedoms.⁵ Therefore, one can hardly say that inclusion of the IDP reference in the list of documents containing information regarding the person's place of stay was a consistent and conscious act.

On the contrary, the new Rules for Registration of Residence Place approved by Resolution of the Cabinet of Ministers of Ukraine No 207 of 2 March 2016 contain no mention of the IDP reference, and therefore, the State Migration Service has not been affixing any stamps unto these references since the beginning of 2016.

However, everything can change, for the changes analyzed here have amended paragraph 9 of the Rules for Registration of Residence Place and stipulate that information concerning registration of a person's place of stay must be included in the reference on registration of an IDP by affixing thereunto a relevant stamp in the required form.

The aforementioned changes represent a step backwards in the IDP registration sphere, because they again reinstate the absolutely meaningless procedure of affixing the migration service's stamp into IDP references. As the experience of 2014 and 2015 proves, these stamps have not been accounted for in almost any way whatsoever, and bore no informative content: neither for the state, nor for bodies of local self-government, nor for civil society, nor for international donors. In addition, these stamps were,

⁵ <http://zakon2.rada.gov.ua/laws/show/888-19/ed20160404>

for IDPs themselves, an additional bureaucratic obstacle to procure a reference that provides access to government administrative and social services. The majority of IDP reference applicants belong to the most vulnerable categories of IDPs who were first required to wait in long lines at DLSPs to procure a reference and then visit another part of the city/district and wait in another line to have a migration service stamp affixed unto the reference.

At this point, it's worth noting that when the draft act analyzed here was in the finalization phase, the Interior Ministry, the Ministry for Temporarily Occupied Territories and Internally Displaced Persons, the Government Commissioner for the European Court of Human Rights, and the National Assembly of the Disabled All-Ukrainian Civic Association opposed the introduction of the aforementioned changes to the Rules for Registration of Residence Place, emphasizing that rather, the Law of Ukraine *On the Freedom of Movement and Free Choice of a Place of Residence in Ukraine* and the Rules for Registration of Residence Place need to be harmonized with the Law of Ukraine *On Guaranteed Observance of Rights and Freedoms of Internally Displaced Persons*, which requires no migration service stamps on the IDP reference.

OPINION OF THE INVOLVED⁶

In his opinion regarding conformance of the draft act analyzed here with the Convention for the Protection of Human Rights and Fundamental Freedoms and practice of the European Court of Human Rights, the Government Commissioner for the European Court of Human Rights points out that the draft act IS NOT conformant with the Convention and the ECHR's practice, in particular, the legal certainty principle, and may result in violation of Article 1 of the First Protocol to the Convention.

In addition, in his reference concerning conformance of the draft resolution with Ukraine's commitments in the sphere of European integration and the EU acquis, the chief developer (i.e. the Ministry of Social Policy) states that in terms of legal regulation, the draft act does not concern the spheres in which legal relationships are regulated by the EU acquis and Ukraine's international commitments in the sphere of European integration. Although, it is obvious that as a factor contributing to intensification of migration processes, social protection of population of a country aspiring for membership in the EU is a matter of particular concern for our European partners, and therefore, it seems unwise, to say at least, to maintain that a regulatory act addressing the social sphere does not concern the spheres in which legal relationships are regulated by the EU acquis and Ukraine's international commitments in the sphere of European integration.

P.S.: considering the foregoing, we can draw a conclusion that the draft act contains both technical changes which, essentially, won't have direct bearing upon everyday life of IDPs, and a number of positive changes definitely aimed at improving the process of resuming/granting social benefit payments to IDPs. But at the same time, the act contains changes that will complicate the IDP registration procedure (in particular, the procedure of affixing a stamp concerning the registration of a place of stay/residence unto the IDP reference), which would surely require special attention on part of the human rights activists and stakeholders.

P.P.S.: on Dec. 22 the Resolution was published in the Government Courier (Government Courier, 2016, 12, 22.12.2016 N 242). So the document came into force.

⁶ documents concerning visaing of the draft resolution are attached in *pdf format