

UKRAINE

LEGISLATIVE UPDATE

5-18 November 2016

LEGISLATIVE DEVELOPMENTS

The current legislative update covers predominantly newly submitted legislative draft laws submitted during the plenary week of 14-18 November. Parliament did not pass any laws or other acts directly affecting internally displaced persons (IDP), asylum seekers or refugees in Ukraine. Important developments during this period also include the following:

- The establishment of a working group at the Ministry of Temporarily Occupied Territories and Internally Displaced Persons (MTOTIDP), aimed at improving existing IDP-related legislation;
- Consideration of legislation related to preventing and combating domestic and gender-based violence.

Newly adopted legal acts

Improvement of the status of unaccompanied minor asylum seekers

By the virtue of its Resolution no. 832 "On peculiarities of social protection of children, who are not citizens of Ukraine, separated from their families"¹, the Cabinet of Ministers of Ukraine amended the procedures for activities of guardianship bodies related to protection of children's rights. In particular, "a child separated from the family" (unaccompanied minor [UAM]) who is not a citizen of Ukraine, would be granted with a status of "a child deprived of parental care". This in turn, will ensure state aid and support.

The amendments concern many UAMs who were victims of persecution for reasons of race, religion, ethnicity, nationality (citizenship) in their countries of origin and do not have any legal status in Ukraine. They face problems entering the territory of Ukraine, accessing the asylum system and lack adaptation and social integration assistance in Ukraine. The number of such children varies from year to year. Currently UNHCR follows up to 50 cases throughout the country, whereas in some years there were as many as 150 cases.

The amendments are expected to protect the rights and interests of "children separated from their families"², who are not citizens of Ukraine, including asylum-seeking children, refugee children, and children who are in need of complementary protection. UNHCR has long been lobbying for these developments. The agency welcomes these amendments that will strengthen the protection of unaccompanied minor asylum seekers and refugee children.

Draft legislation

The information in this section concerns draft laws newly registered in Parliament, as well as developments regarding other draft laws important for UNHCR's persons of concern.

¹ The text is available online (in Ukrainian): <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249510322>

² As per provisions of the Law of Ukraine, "On refugees and persons in need of complementary or temporary protection", "a child separated from his family" is a person under the age of eighteen who arrives or arrived on the territory of Ukraine without parents or one parent, grandfather or grandmother, adult brother or sister, guardian or trustee appointed in accordance with the legislation of the country of origin or other adults who prior to arrival in Ukraine, voluntarily or due to the custom of the country of origin, assumed responsibility for the upbringing of the child.

Status determination procedure of stateless persons

Draft law no. 5385³ of 10 November 2016 “On the Introduction of Amendments to the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” (on the status determination procedure of stateless persons)” has been developed by the State Migration Service of Ukraine (the SMS).

The key provisions of the draft include:

- The establishment of a Statelessness Determination Procedure (SDP). The SDP can take up to six months.
- The right for any stateless individual, regardless of the legality of their stay in Ukraine, to apply to the State Migration Service (SMS) for the SDP.
- An exhaustive list of all necessary documents and other requirements to complete at the time of launching the SDP.
- The SMS is to administer the stateless database, including those who were rejected in the provision of such status.
- The legalization of the stay of stateless individuals in Ukraine during SDP, allowing them to apply for a temporary residence permit. Individuals who apply through the SDP and reside legally on the territory of Ukraine for more than three years can obtain a permanent residence permit. Unlike foreigners, stateless individuals do not have to possess valid identification documents to apply for a permanent or temporary residence permit.
- The requirement that foreigners and stateless individuals provide biometric data at the time of application for a visa to Ukraine.
- The prevention of application for a permanent residence permit from foreigners and stateless persons: (1) who apply for international protection in Ukraine; (2) who are recognized as refugees, beneficiaries of complementary or temporary protection or who are granted Presidential asylum.

UNHCR welcomes that some of its proposals to the initial draft text were taken into account. However, the draft law does not contain a proposal of the working group of the March 2016 National Migration Forum, which suggests bringing the definition of a "stateless person"⁴ in line with the definition contained in Article 1 of the 1954 Convention Relating to the Status of Stateless Persons.

Prevention of domestic and gender-based violence

Ukraine aims to develop its legislation relating to preventing and combating domestic and gender-based violence. To that end, Parliament has considered the following three important draft laws.

The draft law no. 0119 of 14 November 2016 “On Ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence” (the Istanbul Convention)⁵ has been scheduled for a repeated first reading. Ukraine signed the Istanbul Convention on 7 November 2011, however, its ratification has never been placed on the agenda. At the same time, the need for ratification is specifically mentioned in the Action Plan on Implementation of the European Social Charter in Ukraine in 2015-2019 and the National Strategy for Human Rights Protection and the Action Plan thereto.

The draft law no. 4952 of 12 July 2016 “On amending certain laws of Ukraine due to the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence”⁶ has been voted in the first reading. It introduces amendments to the Criminal Code of Ukraine and the Criminal Procedural Code of Ukraine and concerns additional measures to be taken to ensure protection of victims of domestic or gender-based violence from unnecessary interactions with a perpetrator. The draft law criminalizes domestic violence as a general phenomenon in Article 126-1. It also introduces new provisions or reshapes existing provisions in accordance with the types of crimes described in articles 34-39 of the Istanbul Convention, including stalking, sexual violence and rape.

³ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60482

⁴ The definition can be found in Article 1 of the Law of Ukraine “On the Legal Status of Foreigners and Stateless Persons” and in Article 1 of the Law of Ukraine “On the Citizenship of Ukraine”.

⁵ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60492

⁶ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59648

The draft law no. 5294 of 20 October 2016 “On preventing and combating domestic violence”⁷ has been voted in the first reading with the side note that “any mentioning of gender and sexual orientation shall be removed throughout the text”. The exact meaning of the comment is unclear and no further comments were provided. Following the Istanbul Convention, the draft law contains “refugee status and other categories with recognized migratory status” as a possible ground on which discrimination is specifically prohibited. The draft law considers family in a broad sense and covers all types of relations, including registered marriages, separated marriages, civil unions or former civil unions, foster families, families with adopted children, relations between grandparents and grandchildren, siblings and children living in one family but without family links etc. The draft law aims to prevent and combat physical, sexual, psychological and economic violence. The draft law identifies rights, duties and responsibilities of central and local authorities, as well as the role of self-government institutions.

Although these draft laws do not regulate the legal status of UNHCR’s persons of concerns directly, it sets out the general framework that will allow using a wider range of instruments in advocacy and protection work.

Other important developments

Ministry of Temporarily Occupied Territories and Internally Displaced Persons working group

The Ministry of Temporarily Occupied Territories and Internally Displaced Persons has established a working group comprising of representatives of central state authorities, deputies, international organizations and civil society members. In order to carry out targeted work, the group is divided into five thematic sub-groups covering:

1. Improvement of the legal situation of IDPs, the functioning of state authorities and local self-government in IDP-related areas (including the definition of IDPs, registration of the place of residence in the non-government controlled areas in eastern Ukraine, functioning of the consolidated IDP database, electoral rights of IDPs and freedom of movement).
2. Confirmation of civil documents and contracts, registration of legal facts (including renewal of ID documents, recognition of heritage, retrieval of information from archives situated at the non-government controlled areas in eastern Ukraine and the provision of free legal aid, etc.).
3. Social and economic rights of IDPs (including employment, entrepreneurship, pensions and social assistance, verification of IDPs as well as some other issues including a joint registry of civilians who were physically injured in the course of or the immediate aftermath of hostilities).
4. Access to education (primary, secondary and higher) for IDPs, as well as distance learning for residents of Crimea and non-government controlled areas in eastern Ukraine, and the status of universities transferred from Crimea and non-government controlled to government-controlled areas;
5. Housing, restitution and compensation, including issues of access to proper housing in the course of and after displacement and compensation for damaged property.

Through the working group, MTOTIDP hopes to present elaborated and agreed draft legal texts to amend the current legislation or to introduce new provisions.

UNHCR is represented in the working group and will contribute to the work of at least of two of the sub-groups. Through its implementing partners, UNHCR is presented in all sub-groups.

Implementing protocols to the EU-Ukraine Readmission Agreement

On 16 November 2016, the Cabinet of Ministers approved the draft of the Implementing Protocol between the Cabinet of Ministers of Ukraine and the Government of the Republic of Poland on the implementation of the Agreement between the European Community and Ukraine on readmission. The draft was approved through Cabinet of Ministers Order no. 849-r. The Government also authorized the Head of the State Migration Service, Mr. Maksim Sokolyuk, to sign the protocol on behalf of Ukraine⁸. The implementing protocol details the rights and obligations of the two countries with respect to

⁷ The text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_2?id=&pf3516=5294&skl=9

⁸ The text is available online (in Ukrainian): <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249508391>

readmitted individuals. UNHCR welcomes the development, which will make the normative framework and the practical approach mutually consistent.

Extraordinary sitting of the Parliamentary Human Rights Committee

On 17 November 2016, an extraordinary sitting of the Parliamentary Human Rights Committee took place with the participation of the State Security Service (SBU), the State Border Guard Service (SBGS), the SMS and civil society. The committee focused on issues faced by asylum seekers from Russian in Ukraine.

- The participants of the meeting were specifically preoccupied by the fact that many asylum seekers and persons in need of international protection are not allowed to enter the territory of Ukraine and no legal assistance is provided to them upon arrival.
- According to the human rights protection organizations, in 2015 the SBU returned over 6,000 individuals to the Russian Federation. No explanation or reason was provided for the returns.
- The SMS informed that between January and October 2016, there were 481 asylum applications, including 54 Russian citizens. 16 individuals were granted refugee status, including 5 from Russia; 39 individuals were granted complimentary protection, including 10 from Russia.
- The sitting reiterated the importance of protecting individuals in the need of such protection.

UNHCR will closely monitor developments regarding asylum seekers in Ukraine arriving from Russia.

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