

UKRAINE

LEGISLATIVE UPDATE

21 January – 17 February 2017

LEGISLATIVE DEVELOPMENTS

During the reporting period, apart from further elaboration of legal drafts and the coming into force of some by-laws on related to internally displaced persons (IDPs), the Ministry of Social Policy issued the fourth quarterly report on the implementation of the National Action Plan on Adaptation and Reintegration of IDPs. Among the newly registered draft laws, the one concerning compensation for damaged or destroyed housing is of particular importance.

Adopted/amended legislation

Law “On amending certain laws of Ukraine concerning state support to children who permanently reside in settlements along the line of contact in the Anti-Terrorist Operations (ATO) zone”

The law in reference¹ was adopted on 7 February 2016. It aims to support children permanently residing in settlements near the line of contact, on both sides. They are not registered as IDPs, live in harsh conditions and close to ongoing hostilities, and require social and other types of assistance. In particular, the law suggests granting such children with the following privileges: full or partial exemption from tuition fees, free textbooks and internet access, free housing while studying at college or university. The law tasks the Cabinet of Ministers with developing the necessary executive provisions for its implementation within three months after its entering into force².

The positive effect of the law may be assessed after respective by-laws are developed by the Cabinet of Ministers and will depend on the implementation of its provisions.

Action Plan on Implementation of Priority Measures to Reform the State Migration Service (SMS) in 2017

On 8 February, the Cabinet of Ministers adopted order no. 83-r approving the above-mentioned Action Plan³.

The measures include, among others:

- Involving Centers for the Provision of Administrative Services in the process of issuing biometric documents;
- Ensuring harmonization, standardization and facilitation of procedures for citizens in the SMS units during delivery of administrative services;
- Creating a Contact Center that is expected to function as a help-desk;
- Professional training of SMS staff;

¹ Registered as draft law no. 5089 on 7 September 2016. The full text in Ukrainian is available here:

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59948

² At the time of publication, the law had not entered into force.

³ The full text is available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/83-2017-%D1%80>

- Improving SMS performance through active exchange of experiences with other countries and international organizations;
- Identifying corruption risks through analysis and review of current legislation and operating procedures, and further developing proposals to counter those risks (including through possible amendments to current legislation).

UNHCR welcomes the Action Plan with the hope that its implementation will create the conditions to build high-quality services for the citizens of Ukraine, foreigners and stateless persons, and will become another step in bringing the SMS in line with European standards.

New format of the IDP registration application form

The Ministry of Social Policy adopted order no. 1,610 “On approval of an application form for registration of an IDP”⁴, which is expected to enter into force on 21 February 2017.

Accordingly, the new application form will include the information on:

- Disabilities (cause of the disability, the disability group and subgroup, the symptoms, the applicant’s needs for technical and other rehabilitation facilities and treatment);
- The applicant’s last place of residence in the non-government controlled areas or Crimea;
- Bank accounts containing more than ten times the minimum subsistence allowance for able-bodied persons;
- Property rights over any housing located outside the “Anti-Terrorist Operation” zone and not in settlements near the line of contact.

UNHCR considers that the requested level information is excessive for the purpose of IDP registration. Previously, information regarding housing and/or bank accounts was required at the time of application for targeted IDP-related assistance under Cabinet of Ministers Resolution no. 505 of October 2014. It is also unclear whether the provisions mentioned are mandatory for IDP registration. Monitoring implementation of the provisions will inform about the impact on the registration process and IDP’s access to rights.

Draft legislation

Draft law related to Readmission considered by the Main Legal Expert Department of Parliament

On 2 November 2016, draft law no. 5,344 “On Introduction of Amendments to Some Legislative Acts on Improvement of Certain Provisions During the Implementation of International Agreements of Ukraine on Readmission” was registered by Parliament⁵.

The draft law suggests amending Articles 18 and 183-7 of the Code of Administrative Offences of Ukraine and Articles 26, 29 and 30 of the Law “On legal status of foreigners and stateless persons”. The amendments are of technical nature and aim at refining and harmonizing the provisions related to forcible return, readmission and forcible expulsion from Ukraine of non-nationals.

As per the suggested amendments, for individuals with regards to whom there are reasonable grounds to believe that they will not comply with a decision on their forcible expulsion or would avoid its implementation, the State Border Guard Service (SBGS), the SMS, or the State Security Service (SBU) will immediately initiate a lawsuit on “forcible expulsion from Ukraine”. The local court judge “on duty”, even during non-working days, weekends or holidays will consider the request. The court will also be allowed to consider extension of detention of those who are currently administratively detained for 72 hours with the purpose of readmission as per the respective agreements. The SBGS or SMS staff would convey such individuals to the court and to the border to ensure implementation of the forcible expulsion decision. Such individuals

⁴ The full text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/z0089-17>

⁵ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60395

may also be banned from entering Ukraine for next five years from the moment of their readmission to their country of origin or country of domicile.

The amendments will shorten the time between the apprehension and the forcible expulsion of a foreigner and/or a stateless person, leaving UNHCR and its partners less time for protection interventions in such cases. Without access to free government legal aid and, in most cases, with no proper interpretation provided during the first instance court consideration, asylum seekers might not have access to the asylum procedure in Ukraine. UNHCR considers that current legislation and the amendments are not in line with the standards of Article 13 (effective appeal remedies) of the 2008 EU directive on the return of third country nationals.⁶

The Parliament Chief Legal Expert Directorate, in its conclusion dated 9 February 2017, considered the amendments inappropriate for the following reasons: forcible expulsion shall be applicable only to those originating from countries with which Ukraine has no readmission agreement; “forcible expulsion issues” are already regulated by item 6 of paragraph 1 of Article 18 of the 2016 amendments to the Code (which introduced periodic court review of detention); there is no definition of a “judge on duty” in the administrative process; and it is unclear on which grounds and which procedures “a ban to enter Ukraine for the next five years” will be implemented.

Other important legislative developments

Fourth Quarterly Report on the Implementation of the National Action Plan on Adaptation and Reintegration of IDPs

On 8 February, the Ministry of Social Policy (MoSP) issued the Fourth Quarterly Report of the National Action Plan on Adaptation and Reintegration of IDPs.⁷ The 200-page document contains information on all the activities of executive bodies at central and local levels, aimed at integration or adaptation of IDPs in respective communities or areas. The report also contains statistical information by region on the types of assistance available from local authorities to IDPs, on the types of housing (including incomplete housing awaiting investment) for possible accommodation for IDPs, and on efforts related to the integration of specific categories of IDP (persons with disabilities, children, elderly, etc.).

Draft law on verification of and control over social payments

On 1 February, the Cabinet of Ministers of Ukraine approved the draft law “On state control over the assignment of social support”, which is expected to be registered by Parliament⁸ shortly. The objective of the law is to prevent violations of social assistance provision and timely identification of such cases.

Draft legal acts registered at the Parliament

Draft law no. 5,713 amending the law of Ukraine “On Social Protection of War Veterans”⁹ suggests enhancing social protection for “ATO” participants and members of their families. The draft law suggests that all types of social benefits should be allocated to such individuals without consideration of their actual social and economic status and financial income. UNHCR expresses concern that the draft law may contradict emerging legislation on the verification of social payments.

The draft laws no. 5,648-1 amending the Law of Ukraine “On Temporary Measures for the Period of the Anti-Terrorist Operation”¹⁰ and no. 5,649-1 amending the Tax Code of Ukraine (concluding provisions)¹¹ registered by Member of the Parliament Natalia Veselova are aimed at enhancing certain economic rights of residents of settlements near the line of

⁶ DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

⁷ The text is available online (in Ukrainian): <http://www.msp.gov.ua/timeline/?t=152&from=&till=&m=19#tagpanel>

⁸ Information on the Governmental web portal is available in Ukrainian:

http://www.kmu.gov.ua/kmu/control/uk/publish/article?art_id=249703607&cat_id=244276429

⁹ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61002

¹⁰ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61034

¹¹ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61040

contact. If adopted, the amendments to the Tax Code will provide residents of settlements near the line of contact with certain tax privileges until the end of the “Anti-Terrorist Operation” and obligatory payments will be lifted for land that is situated in the non-government controlled areas. Both draft laws are alternatives to previously submitted drafts on the same issues.¹²

Draft law no. 6,001 “On compensation for damage done to houses of the population during the Anti-Terrorist Operation”¹³ was registered on 30 January 2017. The draft suggests that the State will compensate: (i) damage to housing fully destroyed in the course of the Anti-Terrorist Operation; (ii) costs related to the restoration of houses; (iii) all costs borne by the population to restore (repair) houses prior to entry into force of the law” (Article 2 of the draft). The draft implies the possibility to draw costs from the side of the Russian Federation by stating that in case damage was caused “by illegal actions of third persons, the State may request compensation from their side”. The reimbursements are expected to be conducted under a separate government program implemented exclusively for territories and settlements where Ukraine exercises full control. The draft law contains detailed provisions on the methodology for assessing the damages and for calculating the amount that will be compensated; all related information will be stored in a centralized registry.

The draft law may bear positive consequences for individuals whose houses, including rooms in dormitories and apartments, were destroyed. At the same time, due to its current formulation and the ongoing political debate over aggression/occupation, debate on the draft law may become highly politicized.

The draft law no. 6,019 alters the law of Ukraine on Unified Social Tax¹⁴ and may deteriorate the situation of IDPs and residents of non-government controlled territories, which are registered as individual entrepreneurs. Currently, if such individuals are registered as taxpayers in non-government controlled areas, they are not obliged to pay the unified social tax until the end of the “Anti-Terrorist Operation”. The said draft suggests removing this exemption. Since the draft law may have a retroactive effect, it might negatively affect IDPs and residents of the non-government controlled areas.

Draft laws no. 6,029 amending the Civil Code of Ukraine¹⁵ and no. 6,030 amending the Tax Code¹⁶ are aimed at recognizing as non-recoverable costs the taxes and debts of enterprises that have their industrial assets in the non-government controlled areas with no control or access to them. UNHCR considers that adaptation of the draft laws could have a positive effect by removing an unreasonable tax burden from owners of such enterprises.

Cancellation of University licenses in non-government controlled areas

On 7 February, the Ministry of Education annulled licenses of all higher educational establishments located in the non-government controlled areas of Donetsk and Luhansk regions and in the temporarily occupied territories of the Autonomous Republic of Crimea.¹⁷ This concerns only universities that had not relocated during 2014-2016. The full list of such universities is available on the webpage of the Ministry of Education.

Students who are currently studying at the concerned universities but wish to have their qualification acknowledged in Ukraine will fall under the application of the special Order on Attestation¹⁸. Such students may also decide to transfer and continue their education at universities located in the government-controlled areas.

¹² Both drafts no. 5648 and no. 5649 were presented in the previous Legal Update.

¹³ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61021

¹⁴ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61048

¹⁵ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61058

¹⁶ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61059

¹⁷ Detailed information is available at: <http://mon.gov.ua/usi-novivni/povidomlennya/2017/02/07/anulovano-licenziyi-vnz,-shho-zalishilisya-na-nepidkontrolnix-ukrayini-teritoriyax/>

¹⁸ The respective by-law is available online (in Ukrainian): <http://old.mon.gov.ua/ua/about-ministry/normative/5621->

Decisions of the Parliament Human Rights Committee regarding some IDP-related and stateless-related legislative initiatives

On 18 January 2017, the Committee returned draft law no. 1,442 "On State's Orders of Construction of Temporary Housing for IDPs (temporary shelters)"¹⁹ to its authors for improvements. Though the draft aims to increase emergency shelter reception capacity by creating the respective legal framework and envisaging 1 per cent of funding from the annual state budget for such housing construction, no clear mechanism for the implementation was suggested. Discussions revealed that the Ministry for Temporarily Occupied Territories and IDPs lacks information on how many IDPs are in need of such housing and the actual number of IDPs in Ukraine (MoSP estimates 1,6 million IDPs, while the UN estimates 800,000 to 1,000,000 in government-controlled areas).

On the same day, the Committee considered draft law no. 5,385 amending the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" (on stateless persons status determination procedures)²⁰. It concluded that: (1) the exclusion threshold under the draft law goes beyond the 1954 UN Convention on Statelessness standards and may lead to unlawful SMS rejections; (2) the draft law discriminates against refugees who might not be able to apply for such status. The Committee recommended the Parliament return the draft law to the Cabinet of Ministers for improvements after the first reading. UNHCR shares the above conclusion and advocates for providing applicants with free interpretation and legal aid, as well as reducing the residence in Ukraine for stateless individuals from eight to three years from the moment of recognition as a stateless person to become eligible to apply for naturalization.

Contacts:

Nina Sorokopud, Public Information Officer, sorokopu@unhcr.org, Tel: +38 044 288-9710 ext.116

Links:

UNHCR Ukraine: <http://unhcr.org.ua/en>

Facebook: www.facebook.com/UNHCRKyiv

Twitter: www.twitter.com/UNHCRUkraine

UNHCR Flickr: https://www.flickr.com/photos/unhcr_ukraine

¹⁹ The draft was registered in December 2014. The full text is available online (in Ukrainian):

http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=52906

²⁰ The full text is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60482