

## UKRAINE

### LEGISLATIVE UPDATE

11 March – 30 April 2017

## LEGISLATIVE DEVELOPMENTS

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This update provides information on legislative developments that occurred during the reporting period. Latest developments include laws on access to housing solutions for internally displaced persons (IDP), elimination of the need for a stamp confirming registration of the place of stay in IDP certificates, changes to the procedures on crossing the line of contact in eastern Ukraine, and other issues.

### Adopted legislation

#### Laws regulating IDP's access to certain rights and freedoms

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**Draft law 4022a amending Article 3 of the Law “On the Freedom of Movement”** entered into force on 13 April 2017.<sup>1</sup> The law eliminates a technical discrepancy between the Law “On the Freedom of Movement” and the Law “On Ensuring Rights and Freedoms of IDPs” by removing IDP-certificates from the list of documents which must contain information on the place of stay.<sup>2</sup> Thus, previously unclear provisions (on how obligatory such stamps are and their impact on the validity of an IDP certificate) are eliminated. The Ministry of Social Policy (MoSP) states that this provision may lower the possibilities for IDPs applying for utilities’ subsidies. This seems to be an exaggeration, since there are possibilities to demonstrate IDP’s affiliation with certain place of residence, such as tenancy agreements. However, any implications of the said law to IDP’s use of utilities’ subsidies will be scrutinized and any possible options detailed out before the next heating season.

Two laws ensuring different aspects of **housing rights for IDPs** entered into force:

- Draft law no. 2481<sup>3</sup> entered into force as law no. 1972-VIII. The act amended the law “On Ensuring Rights and Freedoms of IDPs”, aiming to reduce the cost of utilities for IDPs residing in certain types of collective centres (such as hotels and sanatoria). Utility prices for hotels and sanatoria can be up to three times higher than for private residences, further increasing the vulnerability of IDPs residing in collective centres. The law matches the cost of utilities for IDPs residing in collective centres with those of private residences. Although the law entered into force, its implementation depends on additional by-laws, which are expected to diversify billing for IDP residents and other residents of hotels and sanatoria.

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<sup>1</sup> The full text is available online (in Ukrainian):

[http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59793](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59793)

<sup>2</sup> Information on the place of stay is certified by a stamp on certain official documents. Place of stay is registered for up to six months and is considered a temporary place of factual residence. Initially, certification was seen as a measure to record the residence of IDPs. However, internal displacement in Ukraine tends to last longer than six months. The implications of the certification of residence on the validity of IDP certificates were not clear. Additionally, IDP tenants had difficulties with property owners regarding such registration. IDP certificates contain information on the address of factual residence, which is not documented unless an IDP is included in a special verification procedure for accessing social benefits and targeted assistance.

<sup>3</sup> The full text of the amended law is available online (in Ukrainian):

<http://zakon0.rada.gov.ua/laws/show/1972-viii>

- Draft law no. 4550<sup>4</sup> entered into force as law no. 1954-VIII. It amended the law “*On the prevention of influence of the world financial crisis on the development of the construction and housing economy*”. The law introduces a possible housing solution for IDPs, granting access to a state-run programme providing up to 50 per cent of housing costs. However, additional amendments to some bylaws are expected before the programme is implemented. At present, IDPs cannot apply for improvement of their housing situation (the so called “registry of individuals in need of social housing”). In an optimistic outlook, additional bylaws and shifts in the state budget will be introduced in the second half of 2017.<sup>5</sup>

## Legal status of conflict-affected children

The Cabinet of Ministers of Ukraine adopted Resolution no. 268, “*On the status of conflict-affected children*”.<sup>6</sup> The document stipulates that the following categories of children have a right to receive the status of a conflict-affected child if any of the following apply due to hostilities and/or conflict:

- Wounded or disabled children;
- Children victims of physical, sexual or psychological violence;
- Children abducted from the territory of Ukraine;
- Child soldiers;
- Apprehended (including imprisoned) children.

The document contains a number of ambiguous provisions, which may prevent granting of the status. These include: the need for an ongoing criminal investigation (which is impossible in some instances such as physical disability caused by explosive remnants of war), and additional judicial and medical expertise (which, according to experts, may lead to re-traumatization in some cases). Additionally, the status does not provide any privileges, such as psychological or social support, rendering the document purely declarative.

## Order on the transfer of goods to and from the non-government controlled areas

On 24 March, the Ministry of Temporarily Occupied Territories and IDPs (MTOT-IDPs) adopted Order no. 39 enlisting goods and properties that can be transferred to/from the territories not controlled by the government of Ukraine.<sup>7</sup> The main provisions include:

- The possibility to transfer goods for trade to humanitarian and logistics centers for business;
- The restricted list of goods for transfer by individuals in luggage (including in personal vehicles) may not be over 75 kg or of a value of up to UAH 10,000 (USD 380);
- The list of goods/items considered personal belongings that may be transferred by individuals. The list includes hygiene items, clothes, personal jewelry, bank cards (up to three), digital devices (no more than one of each type, such as a camera, tablet, mobile phone or laptop); food and non-food items etc.
- The list includes personal property such as furniture, kitchen appliances, books, toys and other, with a limit 75 kg or of a value of up to UAH 10,000.

The primary concern is that the document is unreasonably restrictive. Any limitations in this area (including a right to transfer certain items/goods through the line of contact) should be necessary (to ensure the legitimate aim of the authorities) and proportionate (be justifiable in the current circumstances and balance public and personal interests). Given the security issues in eastern Ukraine, the Government has a legitimate aim, namely safety and security, in imposing certain restrictions on the movement of persons and goods. For example, it is legitimate to restrict the movement of weapons or other dangerous materials. If there are other legitimate aims, such as to prevent the transfer of stolen property, then the authorities might impose measures that fall short of prohibiting the movement of an entire category of goods. For example, for larger items, such as new furniture or home appliances, certain proof of ownership could be

<sup>4</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=58935](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58935)

<sup>5</sup> Information received from the MTOT-IDPs.

<sup>6</sup> The full text is available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/268-2017-%D0%BF>

<sup>7</sup> The full text is available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/z0417-17>

required. In line with the principle of proportionality, it would be more appropriate to determine the list of prohibited items, rather than trying to list exhaustively the types of permitted goods.

UNHCR together with other UN agencies advocates for a change of approach in order to have a list of prohibited items, rather than a restricted list of permitted goods. In case the change of approach is not acceptable, the following minimum recommendations are suggested: (i) categories are to be framed as broadly as possible to avoid inadvertently omitting items; (ii) a higher upper limit for the amount of goods/items to be transferred (e.g. 200 kg instead of 75 kg); and (iii) removal of any restrictions on the frequency with which a person can cross the line of contact to transfer personal belongings.

## Draft legislation

### New draft law on temporarily occupied territories

After prolonged debates regarding draft law no. 3593-d “*On temporarily occupied territory of Ukraine*”, the draft law was recalled from Parliament. However, the new draft law “*On territory of Ukraine temporarily occupied by the Russian Federation*” was registered as draft law no. 6400.<sup>8</sup> The following provisions are important and some of them may be ambiguous or even result in human rights violations:

- Temporarily occupied territories include Crimea, as well as certain areas of Donetsk and Luhansk regions not controlled by the government of Ukraine. This will result in similar legal regimes for both situations which differ in facts and circumstances;
- Article 2 excludes individuals serving in the occupying administrations (both the armed forces and de facto civil authorities) from civilian status, seriously narrowing the classical definition as adopted in international humanitarian law;
- Article 3 remains ambiguous regarding the documents issued by the “occupying administrations”, stating that “activities inconsistent with IHL are unlawful and any legal act issued in the course of such activities are null and void”. It is not clear exactly which activities and whether the documents include civil documentation such as birth and death certificates;
- Article 6 stipulates that Ukraine bears “limited responsibility for the protection of rights to life, health and property at the temporarily occupied territory (TOT) as per provisions of international humanitarian and human rights law”. It states that Ukraine undertakes all possible measures to protect the human rights of civilians, and that Ukraine undertakes to assist individuals in applying to the European Court of Human Rights (in case of human rights violations in the TOT);
- Article 9 rejects the payment of pensions or social benefits to residents of the TOT;
- Article 14 introduces an “international border regime and customs regime” at the boundary of the TOT. This provision bears a risk of borderization and may result in disintegration of territories.
- Article 15 suggests the possibility of money transfer to and from the TOT, to be elaborated by the Cabinet of Ministers of Ukraine;
- Foreigners and workers of international organizations may pass checkpoints with priority;
- Anybody can leave the TOT, even without documents, through a special “verification/clearing” procedure would be introduced;
- Article 16 prohibits movement of any type of transport apart from vehicles transferring humanitarian assistance and personal belongings of individuals moving from the TOT. The transfer of personal belongings is only possible once a year (Article 18);
- Article 17 bans the transfer of dual use cargoes (e.g. construction materials, chlorine etc.) to the TOT;
- Water and energy supplies shall be regulated by the Cabinet of Ministers of Ukraine;
- Article 19 restricts humanitarian assistance to food and non-food items for major social and demographic population groups to be identified by the Cabinet of Ministers. In addition, it restricts transfers by Article 23 of IV Geneva Convention (food and hygiene items; medicine for children under 15 and pregnant women). Transfers of humanitarian

<sup>8</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61669](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61669)

assistance may be conducted by “international humanitarian organizations identified by the Cabinet of Ministers of Ukraine”. This provision may seriously restrict interventions related to the transfer of humanitarian assistance.

UNHCR shall closely monitor all the developments related to this and any possible alternative drafts.

## Draft law on access to political rights (for IDPs and other mobile categories of individuals)

Draft law no. 6240<sup>9</sup> amends several laws of Ukraine in order to ensure electoral rights of IDPs and other mobile groups of population (for example, labour migrants within the country). The draft contains a mechanism to ensure participation of the said categories of citizens in local elections and local referenda. According to the explanatory note, since many citizens of Ukraine reside in places different from their passport registration, more than three million adults (including 1.6 million IDPs) are unable to vote in local elections. The draft law suggests grounds based on which an individual may change their voting address without changing their registration address (if and where impossible). In particular, these grounds include registration as an IDP, tenancy agreement, registration as an entrepreneur, property rights in a certain area etc. The draft also contains safeguards to prevent electoral fraud.

UNHCR supports the draft, which will greatly contribute to the political inclusion of IDPs and to their integration in new places of residence.

## State control over social benefits and payments

Currently, the issue of establishment of control over the payment of social benefits in order to prevent and combat fraud in this regard is high on political and economic agenda. Respective legal provisions may improve the situation with verifications over IDP social payments and thus contribute to the improvement of the situation in this area. Three alternative drafts were registered suggesting to introduce such control:

- Draft law no. 6159<sup>10</sup> prepared by the Cabinet of Ministers suggests that control of targeted social payments and their correct provision shall be conducted by the Ministry of Social Policy (MOSP) social inspectorate. This solution may be controversial since assignment and control over payments would be conducted by the same central authority;
- Draft law no. 6159-1<sup>11</sup> was registered by a single Member of Parliament. It fully mirrors the provisions of the above draft, but replaces the control body with the Ministry of Finance. This would separate the assigning and controlling body.
- Draft law no. 6159-2<sup>12</sup> registered by three members of the Parliament alternates the controlling body and suggests that it is composed of members of the MOSP social inspectorate and civil society members. The drafters consider that such a mechanism would ensure a system of checks and balances.

Overall it is a positive initiative. State control over social payments will depend greatly on the implementation and human rights observance in the course of exercising of such control.

## Crimea: draft regulations for different aspects

Draft law no. 6206<sup>13</sup> concerning **violations when entering and exiting** the temporarily occupied territories suggests amending the Criminal Code of Ukraine (by adding stricter punishments to Article 332-1). The notion of “actions that threaten state’s interests” is introduced for the purposes of Article 332-1 only. This article criminalizes irregular entry in the temporarily occupied territory (only Crimea at present). The amendments suggest clarifying what constitutes “actions that threaten state’s interests” and includes entering of vessels into seaports of Crimea and the flying of aircraft over Crimea without Ukraine’s consent. The amendments suggest that in such cases criminal punishment shall include confiscation of vessels and aircraft. The lawmaker criminalizes anybody aboard such vessels. Additionally, the draft law suggests amending the Code of Criminal Proceedings and states that in case a suspect is known to be in the NGCA or TOT and has no postal address in the controlled territory, it is impossible to inform them in person regarding the pre-trial

<sup>9</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61425](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61425)

<sup>10</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61292](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61292)

<sup>11</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61372](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61372)

<sup>12</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61400](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61400)

<sup>13</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61361](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61361)

investigation. Thus, the draft implies that respective information will be published in national media and on the websites of responsible authorities. It is also suggested that “a proper informing” of the person regarding criminal charges raised against them be considered.

**Draft law no. 6383<sup>14</sup>** amends different laws of Ukraine in order to eliminate discrimination against individuals (citizens, foreigners and stateless who are in Ukraine on legal grounds) who reside in Crimea. The draft aims at ensuring provision of notary services at checkpoints at the administrative border with Crimea. The Cabinet of Ministers will develop a special order on organizing and maintaining a special e-registry of documents issued by the occupying administration presented on the territory of Ukraine. Notaries and registration authorities issuing civil documentation shall be charged with entering information regarding such documents into the e-registry.

The draft requests establishment of centers for provision of administrative services near or at checkpoints on the administrative border with Crimea.

The draft also suggests that citizens of Ukraine will be allowed to exit the temporarily occupied territory of Ukraine even if they have no documents. The same right is extended to foreigners and stateless individuals who plan to apply for asylum in Ukraine. A special identification procedure may be introduced.

This draft may positively influence the access to administrative services for residents of Crimea. If adopted, the law will enter into force from 1 January 2018.

Two draft laws concern rights of Crimean Tatars were registered in the Parliament in April:

- **Draft law no.6288<sup>15</sup>** amends Article 7 of the Law of Ukraine “*On Restoring Rights of Individuals, Deported on National Grounds*”. It concerns Crimean Tatars who returned to Crimea after the deportation and whose right to property was not restored before the occupation. In such cases, they have a right to apply for the compensation and return of their property within three years after the territory of Crimea would be returned under the control of Ukraine.
- **Draft law no.6315** “*On the Status of the Crimean Tatar People in Ukraine*”<sup>16</sup> recognizes Crimean Tatars an indigenous people of Ukraine. The draft law lists principles of state policy towards Crimean Tatars, in particular: recognition of the right to self-determination within Ukraine’s boundaries in the form of national and territorial autonomy of Crimean Tatars; respect to rights including to historical and cultural institutions, such as Mejlis and Qurultai etc. The law underlines the importance of the development of Crimean Tatar people, including the right to education and mass media on Crimean Tatar language.

## Draft laws on the social protection of conflict-affected populations

Two draft laws were registered in Parliament strengthening the social protection of the conflict-affected population irrespective of citizenship. Draft law no. 6270<sup>17</sup> focuses on the social protection of children who were adversely affected by hostilities in eastern Ukraine. It does not differentiate between children residing in the non-government controlled areas of the country, areas near the line of contact or other parts of the country (apart from Crimea). Social protection is not linked to IDP registration. The text suggests that the government will ensure annual budgetary support for the implementation of the law. The draft law enlists special guarantees with regard to the following rights:

- The right to family reunification, where state central and local authorities are tasked with search and re-establishment of family links;
- The right to medical assistance. Where all medical assistance is provided in the government-controlled area, it will be provided free of charge. Additionally, children will have a right to medication, prosthesis and other health-related services free of charge;
- The right to education is expected to be reinforced through social stipends and the possibility to ensure the transfer option to safer locations for children attending educational institutions near the line of contact;

<sup>14</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61635](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61635)

<sup>15</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61408](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61408)

<sup>16</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61537)

<sup>17</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61477](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61477)

- The right to legal aid is expected to be fulfilled through access to free legal aid for parents and guardians of conflict-affected children irrespective of their registration as IDPs.

The draft law also provides for social (financial), psychological and psychiatric assistance, where needed. Although most of these provisions are already included in bylaws, the draft may strengthen the provisions.

An alternative, draft law no. 6270-1,<sup>18</sup> fully mirrors the scope of social protection, but adds adult citizens of Ukraine to its beneficiaries. The catalogue of rights to be guaranteed by this law is the same as in draft no. 6270, including financial support to conflict-affected people. Due to the enlarged scope of protected individuals, draft law no. 6270-1 has lower chances for adoption due to higher budgetary costs.

## Other important legislative developments

### Rights of children in Ukraine: a conceptual document is adopted

On 5 April, the Cabinet of Ministers adopted Order no. 230-r “On the concept of the national action plan on the implementation of the UN Convention on the Rights of the Child for the period until 2021”.<sup>19</sup> The document is comprehensive and encompasses problems of different categories of children in Ukraine. It will serve as a basis for the development of the detailed action plan, which is expected to include international recommendations related to the implementation of the UN Convention on the Right of the Child. The Concept does not mention IDP-children separately, but contains provisions on work with conflict-affected children, including prevention of enrollment of children into armed forces or irregular armed groups and provision of social and psychosocial support to conflict-affected children. In the part related to ensuring equal access to rights, the concept states that special attention shall be paid to the nourishing of inclusive environment for refugee children and children from national minorities. Children with disabilities will be guaranteed an accessible and inclusive environment.

### Council on the Rights of Persons with Disabilities

The Council on the Rights of Persons with Disabilities functions in Ukraine. In order to ensure the search for comprehensive solutions of different categories of disabled individuals, the representatives of the following state authorities were included into its composition: the MTOT-IDPs, the Ministry of Justice, the Presidential Plenipotentiary on the Rights of Disabled Participants of the “Anti-Terrorist Operation”, and the Governmental Plenipotentiary on the rights of Persons with Disabilities. The respective order entered into force on 22 March.<sup>20</sup>

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<sup>18</sup> The text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61507](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61507)

<sup>19</sup> The text is available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/230-2017-%D1%80>

<sup>20</sup> The text is available online (in Ukrainian): <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249840990>