

Legislative Update

UNHCR update on displacement-related legislation | July 2018

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- Enshrining the jurisdiction for crimes occurred in Crimea
- Enhancement of IDPs freedom of movement
- Unified State Register of instances of domestic and gender-based violence

Adopted legislation

The President signed the Law of Ukraine "On the legal status of missing persons"¹ broadly implementing the rules of International Humanitarian Law (IHL) to the national legal framework. It entered into force on 2 August 2018 after its promulgation.

Amendments to IDP-related by-laws on the targeted assistance

On 11 July, the Government of Ukraine adopted its Resolution #548² modifying certain rules related to targeted assistance and the respective verification process:

- A verification of all categories of IDPs receiving social benefits shall take place every 6 months;
- Children:
 - born after the launch of the Anti-Terrorist Operation or ATO (in April 2014) are eligible for IDP targeted assistance;
 - who reached 14-years of age and possess ID-cards are eligible to apply for targeted assistance independently (while previously all children under 18 should have been registered with their parents);
- Targeted assistance for *students* is increased to 1000 UAH (previously, the assistance amounted to 442 UAH);

¹ Details on its content are in the Legal Update for May 2018. The full text available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/2505-19>

² The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-deyakih-postanov-kabinetu-ministriv-u73>

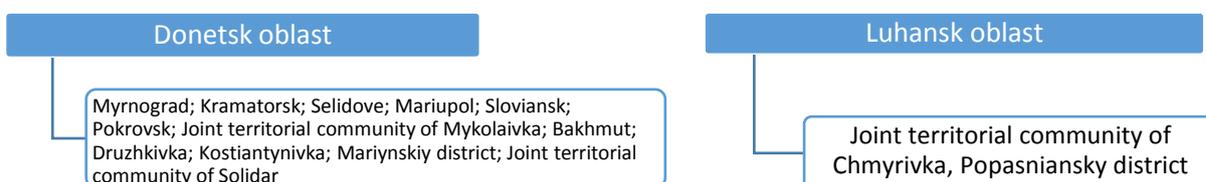
- IDPs who are unable to work (e.g. due to medical conditions or disability) can re-apply for the targeted assistance in case of its termination due to unemployment;
- The duration of the payment of targeted assistance to IDPs who lost job was increased from two to four months, where the assistance is paid in full during the first two months and in half during the last two months. After re-employment, IDPs may re-apply for targeted assistance;
- Persons with disabilities (first group) and those unable to self-care and requiring permanent support are exempt from physical identification in Oschadbank if they have been benefiting from the home delivery of social payments by *Ukrposhta*;
- Civil servants are exempt from home visit verification in the process of assignment/reinstatement of social benefits;
- Those registered in the Unified IDPs Database (adults and children of 14-years old and above with ID-cards) are eligible for certificates on their housing destroyed/ being inappropriate for living as a result of the ATO, regardless of their residency registration.

The adopted amendments would facilitate the access to allowance for IDPs with specific needs. Meanwhile, their further application in practice would require monitoring.

Subvention to the local budgets in the East

On 11 July, the Government of Ukraine adopted its Resolution #475-p³ dividing subvention from the State budget between the local budgets in the east of Ukraine with a purpose to support territories affected by the armed conflict. The Ministry for Temporarily Occupied Territories and Internally Displaced Persons (the MinTOT) is responsible for consenting the mentioned division with the Parliamentary Budgetary Committee.

The subvention covers the following settlements:



Granting of the subvention will contribute to the overall development of the territories affected by the armed conflict by solving of urgent IDP-related problems (e.g., as it was already the case in 2017, for housing issues and administrative services). Such financial contributions to the local budgets may lift any possible social tensions and facilitate the integration of IDPs into the host communities.

Facilitation of the legal assistance to persons illegally deprived of their liberty

On 26 July, the Government adopted its Resolution #593⁴ introducing amendments to its Resolution #328 of 18 April 2018.⁵ The initial Resolution regulates the state financial support for those deprived of their liberty in the non-governmental controlled areas (NGCA) and the temporarily occupied territory (TOT⁶) as well as for their families and those released on 27 December 2017 and 24 January 2018.⁷

³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-rozpodil-u-2018-roci-subvenciyi-z-derzhavnogo-byudzhetu-miscevim-byudzheta-na-zdijsnennya-zahodiv-shchodo-pidtrimki-teritorij-shcho-zaznali-negativnogo-vplivu-vnaslidok-zbrojnogo-konfliktu-na-shodi-ukrayini>

⁴ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-777>

⁵ The full text available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/328-2018-%D0%BF>

⁶ The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position

⁷ Please see more in the Legislative update for March 2018

These amendments would enhance the provision of legal aid to those deprived of their liberty in the TOT of Crimea, the Donetsk and Luhansk oblasts, as well as in the Russian Federation via financial assistance of up to 100 000 UAH per year.

Donbas informational reintegration strategy

On 26 July, the Government adopted its Resolution #539-p⁸ approving the Donbas informational reintegration Strategy. It was elaborated and lobbied by the Ministry of Informational Policy.

Noting that the full access to the Ukrainian information space for those residing in the NGCA is unavailable under the existing circumstances, the Government plans to ensure the limited access in the following manner:

- Facilitation of coordination between the executive bodies, local self-government bodies and the civil society;
- Extension of the broadcast zone for the maximum proximity to the non-controlled territories;
- Creation of a specialized content for those residing in the NGCA;
- Consideration of needs of persons with disabilities;
- Systematic cooperation with IDPs as the important communication channel with those residing in NGCA.

The planned measures would contribute to the proper coordination of information-related activities in the East between all relevant stakeholders.

Funds allocated for the improvement of crossing conditions at the administrative boundary with Crimea

On 04 July, the Government decided⁹ to allocate 106 million UAH (~\$ 3.9 mln) from the State Budget Reserve Fund to build temporary entry-exit checkpoints (EECP) to/from the TOT for automobile route in Kalanchak and Chongar. The focus is on the vehicle connection, although the aim of the decision is stated “to improve crossing conditions for citizens”. The Ministry of Infrastructure is responsible for the coordination of this initiative. All the works are expected to be completed and the funds used by 25 December 2018. The MinTOT shall be involved at the stage of preparing the design and all the elements of the site, while the State Enterprise “Ukrinteravtoservis” shall elaborate all the necessary documents necessary for conduction of the construction works.

This decision is expected to contribute to the establishment of decent conditions at the checkpoints and the possibly to facilitate access to services for the residents of Crimea.

Draft legislation

Status of individuals at the penitentiary institutions in the territories outside of the Government of Ukraine’s control

On 05 July, a group of MPs registered the draft law #8560¹⁰. This legislative initiative introduces **the new status of a person with regard to whom application of the criminal legislation has been violated due to the conflict-related circumstances**. The draft law is expected to rectify the situation of individuals in detention in the part of the territory controlled by the Government, but whose files/criminal records are unavailable (lost or remained in the NGCA or TOT), or who served sentences in the NGCA or TOT, or who were transferred to serve their penalties to the territory of the Russian Federation. The draft law is called to ensure remedy for their violated

⁸ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-shvalennya-strategiyi-informacijnoyi-reintegraciyi-doneckoyi-ta-luganskoyi-oblastej>

⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vidlennya-koshtiv-dlya-budivnictva-timchasovih-kontrolnih-punktiv-vyizdu-na-timchasovo-okupovanu-teritoriyu-ukrayiniviyizdu-z-neyi-dlya-avtomobilnogo-spoluchennya-ta-zon-servisnogo-obslugovuvannya-pered-nimi>

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64360

rights and aims at balancing the situation with Ukraine's declared derogations from international human rights treaties. The status may be granted by the court upon an application of an individual concerned, his/her relatives or legal representatives, as well as a special measure requested by the respective law-enforcement authorities. The draft law envisages centralized recording of all such individuals, irrespective of application of remedial actions. Remedial actions include the counting of detention duration in the NGCA, Crimea or in the territory of the Russian Federation towards any criminal charges expected under the criminal legislation of Ukraine.

The draft law would harmonize duration of detention spent in the NGCA/Crimea/ or the Russian Federation with requirements of Ukrainian legislation. It also may prevent repeated penalty for the same criminal violation.

[Enshrining the jurisdiction for crimes occurred in the temporarily occupied territory of Crimea](#)

On 09 July, a group of MPs registered the draft law #8577¹¹ introducing amendments to the Law on ensuring the rights and freedoms of the citizens and the legal regime on the temporarily occupied territory of Crimea.

The draft initiative may simplify criminal proceedings caused by the temporary occupation. It would allow the Prosecution Service of the Autonomous Republic of Crimea and the Main Division of the State Security Service (SBU) in the Autonomous Republic of Crimea responsible for such issues to deal with the criminal cases occurred in the peninsula immediately after receiving the respective information without waiting for a referral from the General Prosecution Service.

[Enhancement of IDPs freedom of movement](#)

On 19 July, the draft law #8630¹² was registered in Parliament, introducing amendments to Article 12 of the Law on IDPs. The draft law proposes to exclude the following provisions:

- If a person fails to notify the State bodies on his/her return to NGCA/Crimea, his/her IDP certificate would be cancelled based on the information on his/her absence at the place of residence in the government-controlled area (the GCA) for more than 60 days;
- If a person justifies his/her absence at the place of residence in the GCA for more than 60 days, (s)he should apply to an authorized State body with a request to prolong such absence for 90 days.

Therefore, return to NGCA/Crimea for permanent residence would be traced based on other criteria and not on formal absence at the place of registration as IDP. Other channels to verify return include information from different state authorities, such as the State Border Guard Service, departments of social protection and other. According to the explanatory note to the draft, exclusion of the abovementioned provisions shall ensure unimpeded exercise of the freedom of movement for IDPs.

[Unified State Register of instances of domestic and gender-based violence](#)

The Ministry of Social Policy published for a public discussion the draft Order on creating, maintaining and accessing the Unified State Register of instances of domestic and gender-based violence (GBV) (the Register).¹³

The main purposes of the Register are:

- Protecting the vital interests of victims (including children);
- Preventing the repetition of domestic violence and GBV cases;

¹¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64386

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64478

¹³ The full text available online (in Ukrainian): <https://www.msp.gov.ua/projects/332/>

- Exercising measures on preventing and combating violence;
- Providing complex and timely assistance to victims;
- Recording violence cases, summarizing and analyzing the information on violence;
- Coordinating activities of stakeholders involved in preventing and combating violence.

The Ministry of Social Policy will hold the Register, while the State Enterprise "Data processing centre of the Ministry of Social Policy" will perform the functions of its Administrator.

Representatives of the Ministry of Social Policy, the National Police as well as city state administrations, local councils and offices on children' affairs would register cases of domestic violence and GBV referred from centres of social services, psychosocial support, medical and social rehabilitation for victims, as well as from secondary free legal aid centres, health and education establishments and prosecution bodies.

In case of adoption, the Register would accumulate all available information on domestic violence and GBV cases from all stakeholders concerned. It would not be a substitution for criminal records and would rather serve the purpose of providing assistance and rehabilitation to victims. The draft Order entrusts the Ministry of Social Policy to ensure protection of all personal data contained in the Registry

Other Important Developments

[Kyiv Court of Appeal confirmed the discriminatory nature of several IDP-related Resolutions](#)

On 04 July, the Kyiv Court of Appeal confirmed¹⁴ the decision of the Kyiv Circuit Administrative Court¹⁵ dd. 29 June 2017 on recognizing several points¹⁶ of Governmental Resolutions 365 and 637 as not corresponding to the Law on IDPs and Law on ensuring the mandatory State pension.

Referring to the legislation in force, the Kyiv Court of Appeal agreed with the conclusion of the lower instance court on the discriminatory nature of the disputed points as they define additional criteria for IDPs willing to receive social benefits and pensions. The existence of such criteria put IDP-pensioners in less favourable conditions in comparison with other pensioners and social benefits' recipients.

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¹⁴ The full text available online (in Ukrainian): <http://reyestr.court.gov.ua/review/75172804>

¹⁵ The full text available online (in Ukrainian): <http://reyestr.court.gov.ua/Review/67481245>

¹⁶ Notably, points 7,8,9,13 of the Governmental Resolution 365 and point 1(10) of the Governmental Resolution 637