

Legislative Update

UNHCR update on displacement-related legislation | October 2018

Adopted Legislation

- Facilitating access to social housing opportunities for IDPs
- Prolongation of the validity of the Law on the special order on local self-government in certain areas of the Donetsk and Luhansk oblasts
- Amendments to Government resolutions ensuring protection of and financial assistance to persons deprived of their liberty in NGCA/TOT and their family members
- Amendments to the procedure on issuing identity documents (IDs)
- Elaboration of a procedure on affordable housing
- Amendments to the Criminal Code of Ukraine on liability for illegal crossing of the state border

Draft Legislation

- Amendments ensuring access to economic and inheritance rights for citizens living in rural areas
- Law on local elections
- Law on combatants of Ukraine
- Law on freedom of movement and free choice of place of residence

Other important developments

- Supreme Court decision on benefits upon birth in NGCA/TOT
- Constitutional Court decision concerning the Ministry of Finance's authority to collect personal data

Adopted legislation

Facilitating access to social housing opportunities for IDPs

The amendments to the Law on Social Housing Stock¹, described in the UNHCR September Legislative Update² entered into force. Internally Displaced Persons (IDPs) with disabilities (irrespective of their age) and their family members may now submit an application to be included into the registry of persons in need of social housing. The law contains a list of all the necessary documents that need be submitted with the application.

Prolongation of the validity of the Law on the special order on local self-government in certain areas of the Donetsk and Luhansk oblasts

On 4 October, the Parliament amended Article 1³ of the Law of Ukraine "On Special Local Self-government Regime in Certain Areas of the Donetsk and Luhansk Oblasts", prolonging its validity until 31 December 2019. This change was adopted in order to fulfil Ukraine's obligations under the Minsk peace process including preservation of stronger links with the non-government controlled areas (NGCA) of Donetsk and Luhansk regions.

¹ The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2546-viii>

² https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/11/2018-09-Legislative-Update_final_EN.pdf

³ The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2588-viii>

Amendments to Government resolutions ensuring protection of and financial assistance to persons deprived of their liberty in the NGCA/TOT⁴ and their family members

On 3 October, the Government adopted its Resolution #803,⁵ amending the procedure on ensuring protection of persons deprived of their liberty in the non-government controlled areas (NGCA)/ temporarily occupied territories (TOT).

The adopted amendment excludes the Ministry of Finance from the list of members of the special Commission that has to be created by the Ministry for the Temporarily Occupied Territories and IDPs (MinTOT). Consequently, the Commission headed by the MinTOT shall include representatives of the Ministry of Justice, the Ministry of Social Policy, the Ministry of Interior and the State Security Service of Ukraine.

On 17 October, the Government also amended another Resolution regulating the State financial assistance for those deprived of their liberty in NGCA/TOT as well as for their families and those released on 27 December 2017 and 24 January 2018.⁶

The amendments specify the procedure of allocating special Presidential scholarships. In addition, the MinTOT is designated as a budget holder to distribute these types of scholarships.

The abovementioned amendments may facilitate the implementation of the State financial assistance program elaborated to support the individuals deprived of their liberty in NGCA/TOT and/or their family members.

Amendments to the procedure on issuing IDs

On 5 October, amendments to the Government Resolution #302⁷ regulating the technical procedure on issuing Ukrainian passports and ID cards entered into force.

Now, the passport in a form of a paper booklet shall be changed to a plastic ID card when an individual failed to replace his/her photo in a booklet passport within a month after turning 25 or 45. Any booklet passport holder may exchange it to an ID card, but is not requested to do so.

Until now, plastic ID cards were issued only in the case of (1) substitution of a lost or a stolen booklet passport and (2) for persons who have reached the age of 14 and received a passport for the first time.

Although no direct risks have been identified, the issuance of a plastic ID card for booklet passport holders who reside in NGCA or Crimea will result in significant delays linked to the identification process. If the exchange of the photo in the booklet passport usually happens within one day, the issuance of a plastic ID card might take for those residents up to two months and, in extreme cases, up to six months. UNHCR and its partners shall monitor the impact of these amendments.

Elaboration of a procedure on affordable housing

On 10 October, the Government adopted its Resolution #819⁸ on elaborating the application process to the State program on affordable housing including the following provisions:

⁴ The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/prodku-vikoristannya-koshitiv-peredbganskoyi-oblastej-de-organi-derzhavnoyi-vladi-timchasovo-ne-zdijsnyuyut-svoyi-povnovazhennya-ta-timchasovo-okupovani-teritoriyi-ukrayini-takozh-pidtrimki-zaznachenih-osib-ta-chleniv-yih-simej>

⁶ The Resolution #868 (<https://www.kmu.gov.ua/ua/npas/prodku-vikoristannya-koshitiv-peredbganskoyi-oblastej-de-organi-derzhavnoyi-vladi-timchasovo-ne-zdijsnyuyut-svoyi-povnovazhennya-ta-timchasovo-okupovani-teritoriyi-ukrayini-takozh-pidtrimki-zaznachenih-osib-ta-chleniv-yih-simej>) amending Resolution #328 dd. 18 April 2018. For more details, please see the Legislative update for March 2018.

⁷ The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/302-2015-%D0%BF>

⁸ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/deyaya-zabezpechennya-gromadyan-dostupnim-zhitlom>

- A State budget coverage of 50% of the costs of the housing for IDPs and participants in the Antiterrorist operation (ATO), and 30% for other citizens with housing conditions below standards;
- The applicants' right to choose an investment object is not restricted, as it was previously the case when the choice was made by a special Commission established by the Ministry for Regional Development;
- The applicant's right to include housing still under construction;
- The possibility to reserve a place in the waiting list in case of change in the family status (birth/death/marriage/divorce);
- The possibility to apply for a loan in any bank of the applicant's choice.

The conditionality of the program includes a prohibition to sell the housing over three years. To participate in the State program on affordable housing, the family shall generate income not exceeding three average monthly salaries for the region considered per family member⁹.

The adopted initiative is expected to simplify the access to affordable housing for different categories, including for IDPs. However, the implementation of the program requires additional monitoring at all stages.

[Amendments to the Criminal Code of Ukraine on liability for illegal crossing of the State border](#)

On 18 October 2018, the Parliament adopted¹⁰ amendments to the Criminal Code of Ukraine on liability for illegal crossing of the State border¹¹.

The Law establishes criminal liability for illegal crossing of the border committed with the purpose of harming the interests of the State or if the illegal crossing is committed by (i) a person who is banned from entering the territory of Ukraine or by (ii) representatives of units of the armed forces or other law enforcement agencies of an aggressor State, in any way outside the border-crossing check points. The perpetrator may be imprisoned for up to three years; in the case of a repeated violation or a violation committed with the use of weapons the period of imprisonment shall be extended to a total of five years.

Draft legislation

[Amendments to legislation ensuring access and realization of economic and inheritance rights for citizens living in rural areas](#)

On 1 October 2018, a group of MPs registered a draft law #9140¹² introducing amendments to several legislation acts in order to ensure access and realization of economic and inheritance rights for citizens living in rural areas. For IDPs, this would include a 50% decrease in State fees for notary actions.

[Law on local elections](#)

On 2 October 2018, a group of MPs registered a draft law #9100-1¹³ on local elections. The draft initiative defines a detailed procedure for local elections and introduces amendments to the thematic legislation in force. In particular, it suggests to add the IDP certificate to the list of documents confirming the factual place of residence,

⁹ Amount of average month salary in Ukraine does not exceed 27423 UAH

¹⁰ The law was signed by the President on 7 November and entered into force on 11 November 2018.

¹¹ The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2599-viii>

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64719

¹³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64720

thus justifying the change of a voting address. The suggested amendments to the Law on IDPs would allow them to vote in all types of elections and referenda.

Law on freedom of movement and free choice of place of residence

On 18 October, a group of MPs registered the draft law #9218¹⁴ on the freedom of movement and free choice of the place of residence in Ukraine. Among other things, the draft initiative proposes to define the registration of an IDP's place of residence in accordance with the requirements of the Law on IDPs. The amendments would allow individuals to request that the residence registration data be recorded in their IDP certificate. The residence registration data would be shared with local self-government bodies with the subsequent inclusion of IDPs to members of a respective territorial community. Expectedly, this should result in the extension of a right to vote in local elections to IDPs.

The draft law suggests introducing a limitation on the freedom of movement in NGCA and would actually prohibit recording NGCA or Crimea as the registered place of residence in the national passport.

The draft initiative raises several concerns from a protection perspective. The absence of clarification on what exactly constitute "data necessary for registration" may lead to a discretionary interpretation. As a result, some organs might require information that is either impossible to obtain or that would be in breach of the data protection legislation. The suggested rule authorizing the Ministry of Social Policy to define the procedure of informational cooperation raises additional concerns, including the risk that it may further restrict the right of movement of IDPs, in violation of the Constitution of Ukraine and of Ukraine's international obligations.

Other Important Developments

Supreme Court decision on benefits upon birth in NGCA/TOT

On 2 October, the Supreme Court of Ukraine issued a decision allowing the payment of benefits upon birth after the delay for application to such benefits expired.¹⁵

Referring to the Convention of the Rights of the Child, the Court highlighted that this assistance is granted for the benefit of the child *per se* in order to ensure that he/she has access to proper material support. Therefore, the parent(s) [objective] impossibility of timely application for such benefits leads to a violation of the rights of the child.

Constitutional Court decision concerning the Ministry of Finance's authority to collect personal data

On 11 October, the Grand Chamber of the Constitutional Court of Ukraine examined the issue of the Ministry of Finance's authority to collect personal data.¹⁶ The Ombudsperson's Office raised its concern that such special powers referred to in the transitional provisions of the Budget Code might violate the Constitution.

The Constitutional Court concluded that abovementioned powers granted to the Ministry of Finance as formulated in the Budget Code are discretionary and do not contain any measure protecting the personal data of individuals. The Court confirmed that the existence of such powers violate the Constitution and therefore are not acceptable.

¹⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64825

¹⁵ The full text available online (in Ukrainian): <http://reyestr.court.gov.ua/Review/76884600>

¹⁶ The full text available online (in Ukrainian): http://ccu.gov.ua/sites/default/files/docs/7-p_2018.pdf

The consequences of this decision still require additional monitoring. As the Court did not elaborate further on the disputed rule, the decision might not affect the current situation regarding payment of pensions to IDPs whereas the Ministry of Finance could still obtain data on individuals from databases owned by central and local authorities.

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