

Legislative Update

UNHCR update on displacement-related legislation | May 2019

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Adopted legislation

Subventions to local budgets under the Emergency Credit Program to Restoration of Ukraine

On 24 April¹ and 5 May², the Government adopted two Resolutions specifying the amount of subventions to local budgets from the state budget under the Emergency Credit Program to Restoration of Ukraine (the Program)³. The Program adopted back in 2014 envisages that the European Investment Bank shall disburse 200 million EUR over 2014-2020. Ukraine received the first tranche in 2015. The balance was reallocated to the State budget program on granting subventions to local budgets⁴, coordinated by the Ministry for Regional Development. In 2019, oblasts benefiting from subventions include Donetsk, Luhansk, as well as Dnipropetrovsk, Zaporizhzhia, Kharkiv, Odesa and Poltava (in these oblasts the local authorities are to co-finance restoration from their budgets).

¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-stanovi-kabinetu-ministriv-ukrayini-vid-25-listopada-2015-r-1068?fbclid=IwAR3SoiAz7kmlPIMBcavW9LjO2JJCjfcKfakkfwY4qSXuMXmBlqhoLMIPBAs>

² The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vikoristannya-koshtiv-peredbacheni-h-u-derzhavnomu-byudzheti-za-programoyu-realizaciya-nadzvichajnoyi-kreditnoyi-programi-dlya-vidnovlennya-ukrayini>

³ The legal background for the Emergency Credit Program to Restore Ukraine and its implementation is the Financial agreement between Ukraine and the European Investment Bank signed on 22 December 2014 and ratified on 22 April 2014. The full text available online (in Ukrainian): https://zakon.rada.gov.ua/laws/show/971_014

⁴ Subventions should be granted and spent in 2019

Subventions should cover implementation of projects linked to the Program in the sectors of settlement/housing and civic engineering. The restored housing shall remain public property. The needs of persons with disabilities shall be taken into account. The restored objects shall be used for housing purposes during twenty years after the completion of the program, thus ensuring that long-term housing needs of IDPs and conflict-affected population are satisfied. Prior to identifying objects to be restored, the local authorities shall conduct needs assessments of the local population and IDPs in order to avoid internal tensions and contribute to the effective integration of the displaced population.

Non-recognition of Russian passports issued to non-government controlled area (NGCA) residents

On 8 May, the Government adopted two by-laws linked to the Order of the President of the Russian Federation on simplified procedure for granting Russian citizenship to NGCA residents⁵. In its Resolution #444⁶ the Government stated that in cases where another state issues passports in violation of international law with the aim to threaten Ukraine's state sovereignty, independence, territorial integrity and national interests, the Cabinet of Ministers may decide on non-recognition of such identity documents. Non-recognized passports will not be registered⁷ at the international border crossing checkpoints⁸. The Resolution did not mention the Russian Federation. On the same date, the Government adopted its Decree #362-p⁹ on non-recognition of passports issued by the two local departments of the Federal Migration Service of the Russian Federation in Rostov oblast¹⁰.

This decision does not pose any immediate threats to residents of NGCA who might decide on acquiring citizenship of the Russian Federation. However, it is recommended that UNHCR and partners monitor the developments related to the issuance of documents to IDPs and conflict-affected populations.

Presidential Order on additional measures for supporting parentage and childhood

On 11 May, the President signed the Order 214/2019¹¹, introducing additional measures for supporting families, parentage and children, among others on housing related issues. In particular, the President requests the Government to elaborate amendments to the 2019 State Budget. These amendments should increase funding for:

- building/purchasing affordable housing,
- preferential long-term credits for building/purchasing housing to young families and single youngsters;
- reducing mortgage loan prices for affordable housing for those in need of more favourable living conditions; and
- partial compensation of interest on commercial bank loans for young families and single youngsters for building/purchasing housing.

⁵ The full text available online (in Russian): <http://kremlin.ru/acts/news/60358>

⁶ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-tracyiyi-pasportnih-dokumentiv-inozemciv-ta-osib-bez-gromadyanstva-v-punktah-propusku-cherez-derzhavnij-kordon>

⁷ Registration means putting "Entry" mark in a passport document or an immigration card of foreigners and stateless persons, as well as reflecting data of foreigners and stateless persons in a thematic register;

⁸ This is provided for in Resolution #798 of 3 October 2018. The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/798-2018-%D0%BF>

⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-neviznannya-ukrayinoyu-pasportnih-dokumentiv-vidanih-upovnovazhenimi-organami-inozemnoyi-derzhavi>

¹⁰ Inter-rayon Department of Russian Federal Migration Service Division in Pokrovske village and Department of Russian Federal Migration Service Division in Novoshakhtinsk (Rostov oblast).

¹¹ The full text available online (in Ukrainian): <https://www.president.gov.ua/documents/2142019-26794>

Also, the President recommends local authorities to allocate local budget funds for affordable housing for those in need of improved living conditions, young families and single youngsters.

Housing has been a persistent issue raised by IDPs, including during UNHCR's participatory assessment conducted in 2019¹². UNHCR considers these as positive developments which could potentially contribute to IDP integration. The Order requires the Cabinet of Ministers to elaborate a draft law to amend the 2019 State Budget. Since the scope of issues to be regulated is wide, implementation of the Order may take longer and require additional budgetary and/or donor funds. Additionally, recommendations to local authorities are not obligatory for implementation. Although positive, the Order has little chances for implementation, but could be used for advocacy purposes, including on the local level.

Processing and protecting personal data during verification and monitoring disbursement of state benefits

On 21 May¹³, the Government promulgated the Resolution #405¹⁴, introducing the Order of processing and protecting personal data during verification and monitoring of disbursement of pensions and other social benefits. The Ministry of Finance (MinFin) solely conducts the verification and monitoring as well as defines the procedure to access personal data of beneficiaries of state financial support, including pensions.

The Order is rather general and lacks clarity regarding the possible impact on IDPs and conflict affected population. The Order contains no specific safeguards for protection of personal data. Previously, verification exercises conducted with regard to the payment of pensions resulted in overwhelming majority of suspensions affecting IDP pensioners in comparison to other citizens of Ukraine¹⁵. Due to the previous negative experience with personal data leaks in the course of verification conducted by the Ministry of Finance, the implementation of Resolution #405 will be monitored closely by UNHCR and its partners.

Extending the ATO-related benefits to the Joint Forces Operation (JFO)

On 22 May¹⁶, the Government adopted a Resolution extending benefits for children linked to the Anti-Terrorist Operation (ATO) to the situation of the Joint Forces Operation (JFO). These benefits include access to family-type orphanages, adoptive families, ATO-related child protection benefits, state-funded recreational facilities for children and medical treatment for displaced children.

These developments are next in the series of earlier adopted amendments, which equal the situation of the ATO and JFO in relation to different privileges (including for IDPs and residents of territories along the line of contact).

Adding Gladosovo village to Bakhmut rayon

On 28 May, the Verkhovna Rada adopted its Resolution #8576¹⁷, introducing amendments to the administrative and territorial structure of Donetsk oblast. In particular, it approved the decision to subordinate the Gladosovo village to the Bakhmut rayon (previously, the village was subordinated to the non-controlled Horlivka city council). This change of administrative subordination ensures that residents of the Gladosovo village have now access to

¹² Participatory assessment 2019 is available in English here: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/06/UNHCR_Ukraine_Participatory_Assessment_2019_FINAL.pdf

¹³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vkabinetu-ministriv-ukrayini>

¹⁴ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/405-2019-%D0%BF?fbclid=IwAR3F2sVbaO14rbwq8La90xvKojrPcU2cftEpHWqCJs-VAZUcnBP-f9v3tf4#n8>

¹⁵ See the UN briefing note on pensions here:

https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/briefing_note_on_pensions_updated_24_july_2018.pdf

¹⁶ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vkabinetu-ministriv-ukrayini>

¹⁷ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64384

pensions, other social benefits, administrative and social services without additional obstacles. Prior to this change, the residents were forced to register as IDPs even if they continued living in the same location and were not factually displaced only to be able to access administrative services, social benefits and pensions.

Draft legislation

Amendments to labour legislation on foreigners and stateless persons

On 6 May, MPs registered in the Verkhovna Rada the draft law #10272¹⁸, proposing to abolish disproportionate bureaucratic obstacles imposed on foreigners and stateless persons working in Ukraine. In particular, authors suggest eliminating the obligation of the State Labour Service to issue working permits for foreigners and stateless persons and maintain their record. Now, employers may receive working permits¹⁹ for all categories of foreigners and stateless persons²⁰ issued by territorial bodies of the State Migration Service (SMS). The price of such permits amounts to one minimum subsistence allowance²¹. Prolongation of its validity is free of charge.

In case of adoption, the draft could contribute to local integration of UNHCR persons of concern through a simplification of recruitment requirements.

Validity of a book-shaped Ukrainian identity document (or internal passport)

On 17 May, the Cabinet of Ministers registered in the Verkhovna Rada the draft law #10311²², specifying the validity of a book-shaped Ukrainian identity document (or internal passport) which confirms the belonging to the Ukrainian citizenship prior to the introduction of new ID cards in January 2016²³. According to the suggested amendments, book-shaped IDs will lose their validity when the owner reaches the age when the photograph in the passport must be changed (i.e. at 25 and 45 years). Book-shaped IDs of persons aged 45+ would remain termless²⁴. The Government would be required to elaborate an order on withdrawal of the book-shaped Ukrainian IDs, their return to the State and invalidation, as well as on the exchange of a book-shaped Ukrainian ID for a new ID-card.

If adopted, the draft would result in the replacement of the majority of book-shaped IDs by ID-cards. Issuance of ID-cards is a paid service²⁵. Additionally, in ID-cards information regarding registration of the place of residence is placed on the e-chip and is not visual. In case of the mass exchange of book-shaped IDs, many IDPs and conflict-affected persons may lose the documentary evidence to prove the registration of their residence in NGCA or the Autonomous Republic of Crimea and the city of Sevastopol, Ukraine, temporarily occupied by the Russian Federation (Crimea). In turn, this situation may impede their access to political rights (especially for those who were not previously registered in the Unified Registry of Voters), cause difficulties in crossing of the contact line to NGCA and administrative border with Crimea etc. Thus, the suggested draft does not take into account specifics situation of IDPs and conflict-affected populations and in case of adoption will impede for them access to certain civil and political rights.

¹⁸ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65898

¹⁹ The duration of a working permit corresponds to duration of the labour contract but not exceeding three years.

²⁰ Current rules allow working permits only for foreigners and stateless persons with documents confirming refugee status or complimentary protection

²¹ The minimum subsistence allowance amounts to 1853 UAH, which increases quarterly

²² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65963

²³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/news/248752110>

²⁴ The rule shall be applicable to those who pasted a new photo in the age of 45 before the draft law will have entered into force.

²⁵ The procedure of obtaining ID during 20 working day costs 279 UAH. The fast procedure of obtaining ID during 10 working days costs 366 UAH. The full text available online (in Ukrainian): https://dmsu.gov.ua/poslugi/pasport-gromadyanina-ukrajni/id-oformlennya-pasporta-gromadyanina-ukrajni-u-formi-kartki-u-razi-obminu-pasporta-zamist-vtrachenogo-abo-vikradenogo.html?fbclid=IwAR3OfvCswN42uR1UfGovYe9smSzTa7D_JCuLVkwG8nsMhRzb4oadGJqERw
From 1 July, the mentioned prices are expected to be increased

Measures on ensuring the right to health care

On 20 May, MPs registered in the Verkhovna Rada the draft law #10313²⁶, suggesting amendments to enhance access to health care. Apart from its main goal – regulating the usage of cannabis for medical purposes – the draft suggests amending the “Law on the temporarily occupied territory (TOT) of Crimea” and the Law on IDPs in order to strengthen the right to qualified medical aid (free choice of doctor, treatment methods and access to medicines) for IDPs and conflict-affected population residing in NGCA/Crimea and in settlements along the line of contact.

Protection of critical infrastructure

On 28 May, the Cabinet of Ministers registered in the Verkhovna Rada the draft law #10328²⁷, suggesting a consolidated legal framework for the protection of critical infrastructure during peacetime and in emergencies. It does not cover situations of the martial law/armed conflicts.

Proposed criteria for assessing criticality include:

- level of threats;
- significant damage to population;
- level of vulnerability²⁸ and gravity of possible negative consequences to life and health of population, social protection and economy systems;
- scale of the negative consequences for a state;
- time needed for eliminating the negative effects.

The response to natural and man-made emergencies is structured along the regular state structures, with a specialized coordination body to be established by the Cabinet of Ministers. The draft outlines responsibilities and actions required at all levels and includes cooperation with the non-governmental sector. Positively, the draft contains different modes of operation for the state authorities, which include risk mitigation, threats prevention, addressing emergency and restoring normal operation. This draft may contribute to a clearer emergency response in Ukraine and potentially contributing to a greater level of protection of residents of hazardous areas, including in conflict zones.

Other developments

NGO Shadow Report on Ukraine’s compliance with the International Covenant on Civil and Political Rights (ICCPR)

In May²⁹, OHCHR promulgated the text of the Shadow report on Ukraine’s compliance with the International Covenant on Civil and Political Rights (ICCPR) prepared by a coalition of NGOs, including UNHCR partners. According to the UN human rights mechanisms to which Ukraine adhered, Ukraine is obliged to report on its activities regarding the protection of civil and political rights and NGOs may submit their assessment of the human rights situation in the country through “shadow” reports. After assessing information from official and shadow reports, the Human Rights Committee provides Ukraine with its recommendations.

Key recommendations of the shadow report correspond to UNHCR advocacy messages and include the following:

²⁶ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65969

²⁷ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65996

²⁸ To be counted by number of victims, dead, injured and evacuated population

²⁹ The full text available online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/SessionDetails1.aspx?SessionID=1317&Lang=en

- adopting Governmental Regulations on crossing the line of contact in accordance with human rights standards;
- elaborating a clear list of items prohibited for transfer through the line of contact;
- improving procedures on crossing the administrative border with Crimea;
- adopting an administrative procedure on birth registration in TOT of Crimea and NGCA of Donetsk and Luhansk oblasts;
- adopting the draft law #6240 allowing IDPs to vote in local elections.

Projects on protection of conflict-affected populations supported by the Swiss Government

On 22 May³⁰, the Ministry for temporarily occupied territories and IDPs and the Swiss Government agreed on cooperation in launching three projects to support conflict-affected populations:

- targeted assistance to individuals injured by mines and explosive remnants of war (ERW) in the form of compensations for medical services, psychosocial rehabilitation, labour-related requalification and other possible assistance;
- free legal aid for IDPs, ATO/JFO participants and members of conflict-affected communities through a legal clinic at the Kremenchuk National University;
- and support to communities in preventing internal conflicts by capacitating them through trainings and facilitation projects.

No need to submit documents confirming the factual place of residence during temporary change of voting address

On 29 May³¹, the Central Electoral Commission adopted amendments to its Resolution #893³², withdrawing an obligation to provide documents confirming the factual place of residence³³ to ground the need for temporary change of the voting address. Now, a person who needs to change his/her voting address (e.g. due to internal displacement or internal migration) can submit an application and his/her passport without any additional supporting documents to a division of the State Registry of Voters of his/her choice.

The adopted initiative would simplify access of IDPs to their voting rights by eliminating additional bureaucratic obstacles.

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³⁰ The summary available online (in Ukrainian): https://mtot.gov.ua/ua/mtot-ta-posolstvo-shvecarii-domovilis-pro-start-troh-novih-proektiv?fbclid=IwAR2vA3Ti0hhmyCy_oeHsG7AZGE100KqUirhh79hbAVROV-oFiRdAE8gZvs

³¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vkabinetu-ministriv-ukrayini>

³² To the moment, the official text is unavailable. Screenshot available online (in Ukrainian): https://www.vplyv.org.ua/archives/3332?fbclid=IwAR3FvuldiSCI5-92oVZWwRHlgNA3i0Sh31hsLDfegeqdAlyH_fPQcfsEfxD4

³³ This document may be one of the following: rental agreement with the address of the factual place of residence; document confirming entrepreneurial services in the factual place of residence issued by state/local self-government body; document confirming property rights on the factual place of residence; IDP certificate; document confirming the provision of nursing services to a person registered in the factual place of residence; document confirming the marriage/family links with the person registered in factual place of residence.