LEGAL ALERT
Issue 29 – July, 2018: Volume 2

1. Law of Ukraine ‘On the Legal Status of Missing Persons’ comes into force

On 30 July 2018 the President has signed the Law of Ukraine ‘On the Legal Status of Missing Persons’\(^1\). The most crucial provisions of the Law remained unchanged since DRC reported its adoption in the first Parliamentary hearing in January, 2018\(^2\).

The following are the most important features of the final version:

<table>
<thead>
<tr>
<th>Extension of the Status</th>
<th>New Powers for Concerned Public Bodies</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Previously</strong>, the ‘missing person’ term included only individuals who have disappeared in areas of the Conflict</td>
<td>A new ‘search group’ is to be introduced for missing persons. Its powers will include ‘establishment of contacts with legal entities and individuals within the temporary occupied territories of Luhansk and Donetsk regions’</td>
</tr>
</tbody>
</table>

Previously, the ‘missing person’ term included only individuals who have disappeared in areas of the Conflict

**Now**, it also includes individuals who disappeared in riots within the State, natural or technological emergencies, or other incidents resulting in mass deaths

Social guaranties for missing persons are expanded as their family members are now also entitled to social protection, mainly by access to a pension on the grounds of loss of breadwinner

The Commission on missing persons is now also entitled to act in both the buffer zone and the non-government controlled areas of Eastern Ukraine. They are also entitled to negotiate with actors operating within these areas

National police are now entitled to involve citizens of Ukraine, NGOs, and private legal entities to search activities with their consent

The Criminal Code has been updated with Article 146\(^1\) concerning ‘forced disappearance’. The offence, which encompasses arrest, kidnapping, or duress combined with a refusal to admit facts or concealment of information on the person’s state and whereabouts. The Article considers offences committed by a ‘representative of a foreign state’. Apart from government servants and those acting under the support or with the consent of a government it also includes actors of so-called ‘LNR’ & ‘DNR’, and members of irregular armed groups and gangs.

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2. **Law on Children’s Right to Maintenance Gets Stricter**

The Law “On Establishment of Economic Preconditions to Strengthening Protection of Children’s Right to Due Maintenance”\(^3\) comes into force on 28 August 2018 with stricter obligations for the payment of child alimony. Child alimony is one of the major child rights issues dealt with by humanitarian actors, especially legal aid providers. Features of the new law include:

- **More flexibility in terms of movement abroad:** a parent no longer has to obtain an approval from another parent if the latter does not pay alimony payments for 4+ months. The law also provides an alternative procedure for a parent who is unable to take a child abroad as he/she cannot obtain approval from the other parent.

- **Adjustability in alimony size:** previously, the court was limited by the size of one’s declared income when calculating alimony. Now, the court can overrule this limitation if the person’s spending exceeds her/his declared income. Alimony is now also subject to indexing which can also be awarded retrospectively by the court.

- **Increased fines for non-compliance:** fines for non-compliance of court orders have been drastically increased for all type of violations. More interestingly, those who continue to violate a court order may face a ban on foreign travel and a ban on driving motor vehicles until the violation is resolved. The following chart provides a comparison between the old and new sanction policies:

<table>
<thead>
<tr>
<th>Form of Violation</th>
<th>Previous Sanction</th>
<th>Updated Sanction</th>
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<tbody>
<tr>
<td>Evasion from fulfilling parental responsibilities</td>
<td>17 – 51 UAH</td>
<td>850 – 1700 UAH</td>
</tr>
<tr>
<td>Abovementioned repeated within a year</td>
<td>34 – 68 UAH</td>
<td>1700 – 5100 UAH</td>
</tr>
<tr>
<td>Non-execution of lawful requirements of guardianship &amp; custody office’s</td>
<td></td>
<td>850 – 1700 UAH</td>
</tr>
<tr>
<td>Abovementioned repeated within a year</td>
<td></td>
<td>1700 – 5100 UAH</td>
</tr>
<tr>
<td>Non-execution of guardianship &amp; custody office’s decision on child upbringing or</td>
<td>To be introduced</td>
<td>1700 – 2550 UAH</td>
</tr>
<tr>
<td>access of other parent to communication with a child</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Abovementioned repeated within a year</td>
<td></td>
<td>2550 – 5100 UAH and limitation of right to travel abroad and drive a transport vehicle until the execution of a decision</td>
</tr>
<tr>
<td>Alimony debt over:</td>
<td></td>
<td>Additional penalty equaling to:</td>
</tr>
<tr>
<td>12 monthly payments</td>
<td></td>
<td>20% of the debt</td>
</tr>
<tr>
<td>24 monthly payments</td>
<td></td>
<td>30% of the debt</td>
</tr>
<tr>
<td>36 monthly payments</td>
<td></td>
<td>50% of the debt</td>
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</tbody>
</table>

3. **The President Signs Two Laws on Enhancement of International Cooperation Regarding the MH-17 Tragedy Investigation**

On 21 July 2018 the President of Ukraine has signed two Laws on ratification⁴ and implementation⁵ of the Tallinn Agreement signed between Ukraine and the Netherlands in relation to the 17 July 2014 Malaysian Airways MH-17 flight disaster.

**Background:** In July 2015 Russia vetoed⁶ a UN Security Council Draft Resolution to set up an ad hoc International Tribunal. Moreover, in November 2016 Russia withdrew from the International Criminal Court statute. As a result, in July 2017 members of the Joint Investigation Team (JIT) – comprised of Australia, Belgium, the Netherlands, Malaysia, and Ukraine – agreed⁷ on the jurisdiction of the Netherlands for trial of the suspects. The disaster took the lives of people from 17 different countries, including Dutch nationals, each of which could claim jurisdiction over the suspect under the passive personality principle. Through the ratification of the Tallinn Agreement, Ukraine has formally accepted jurisdiction of the Netherlands for any trial of suspects of the MH-17 disaster.

**Meaning:** The two laws signed by the President will support necessary conditions for prosecution of the offence in the Netherlands. They also provide mechanisms for transfer of cases, and international cooperation between the national investigatory bodies.

4. **The President Signs Law on Enhancing Social Protection of Affected Participants of Maidan Events**

On 20 July 2018 the President has signed the Law ‘On Enhancing Social Protection of the Affected Participants of the Dignity Revolution’⁹. The regulations cure certain legal defects of previous laws providing enhanced social protection to ‘Affected participants of the Dignity Revolution’ (‘APs’).

**Background:** In February 2014, the government made a register of APs who suffered major, moderate, or minor injuries during the public protests that took place between 21 November 2013 and 21 February 2014 (Maidan Events). As of August 2017, the register included 177 APs with heavy injuries, 251 with moderate injuries, and 566 with minor injuries.

**What Does the Status Provide?**

- Under a February 2014 law⁵, APs were initially entitled to 700 000 UAH, 500 000 UAH, and 200 000 UAH of monetary compensation depending on the level of injuries respectively.

- In November 2017 the APs were given the legal status of combatants¹⁰, thus provided with additional social benefits including: access to free medicines and preferential healthcare services, 75% discount for utility and housing fees, a number of labour and educational benefits, increased pension, and first-priority access to social housing for those of them who qualify.

The APs had previously faced legal obstacles to access enhanced social benefits as the corresponding primary laws regulating those social benefits were not amended to include the APs. The current law cures some of those defects.

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⁸Law of Ukraine No. 2443-VII dated 22.05.2018 – [http://zakon0.rada.gov.ua/laws/show/2443-19](http://zakon0.rada.gov.ua/laws/show/2443-19)
5. **Key Humanitarian Advocacy Agendas Acknowledged in the Statement of the EU-Ukraine Summit in Brussels**

On 9 July 2018 the President of the European Council\(^{11}\), the President of the European Commission\(^{12}\), and the President of Ukraine issued a Joint Statement\(^{13}\) following the 20\(^{th}\) EU-Ukraine Summit in Brussels. This is a positive step forward as it corresponds with key humanitarian advocacy agendas such as: movement of goods & persons, access to pension for NGCA residents, and creation of a national mine action centre. Through the Statement:

<table>
<thead>
<tr>
<th>The Three Presidents</th>
<th>The EU</th>
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<td>• highlighted the importance of further facilitation of movement of people and goods across the contact line</td>
<td>• announced further 16 million EUR funding support to the OSCE SMM and 4 million EUR to strengthen community resilience and reintegration of veterans of the Conflict</td>
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<td>• highlighted that Ukrainians living within NGCA have to have access to and fully benefit from their rights as citizens of Ukraine</td>
<td>• expressed its readiness to support reconstruction efforts ‘once the conditions allow’ and welcomed ongoing initiatives to provide targeted assistance to settlements in the affected region</td>
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<tr>
<td>• agreed on the need for Ukraine to establish a national mine action centre</td>
<td>• agreed on the urgent need to support the most vulnerable people in the east of Ukraine including IDPs</td>
</tr>
</tbody>
</table>

The Leaders also called upon Russia to:

- fully implement Minsk Arrangements
- allow access of international organisations and human rights actors to the NGCA and Crimea
- immediately release all illegally detained and imprisoned Ukrainian citizens
- accept its responsibility regarding the tragic downing of MH17 flight, and cooperate to establish accountability

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Some terminologies used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC.

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\(^{11}\) The European Council is the EU institute comprises the heads of state or government of the member states and defines overall political direction and priorities of the Union

\(^{12}\) The European Commission is an executive cabinet of the EU responsible for managing day-to-day business of the Union, implementing decisions, upholding the EU treaties, and proposing legislation