



DRC / DDG LEGAL ALERT: Issue 39 April 2019

1. Russia Provides Residents of ‘LPR’ & ‘DPR’ With Simplified Procedure for Applying for Citizenship

Background: On 18 December 2018 Russian Parliament [amended](#) the law ‘On Russian Citizenship’ granting the Russian President the power to ‘define, in humanitarian purposes, groups of individuals entitled to a simplified procedure for applying for Russian citizenship’. As indicated in the [explanatory note](#) to the amendment, it ‘will allow the provision of Russian citizenship to compatriots living in countries with complicated socio-political and economic situations where armed conflicts and (or) change of a political regime takes place’.

Simplified Citizenship Application

Residents of ‘DPR’ and ‘LPR’:	On 24 April 2019 the President of Russia signed Decree No. 183 entitling residents of so-called ‘DPR’ and ‘LPR’ ¹ a simplified procedure for obtaining Russian citizenship.
Ex-residents of Crimea:	On 29 April 2019 the President of Russia signed Decree No. 187 extending access to the simplified citizenship application procedure to: <ul style="list-style-type: none"> • Citizens of Ukraine and stateless persons who were born in Crimea and permanently resided there until 18 March 2014 (day of adoption of the ‘Agreement of Inclusion of Crimea into the Russian Federation’) and their children, spouses, and parents; • Ukrainian citizens who have obtained Russian residence permit and their children, spouses, and parents.

Scope of the simplified citizenship application:

- Normal requirement of 5 years of residence prior to filing citizenship application is waved;
- Applicant does not have to denounce previous citizenship;
- No requirement of proof of material resources necessary for subsistence;
- No requirement to pass an exam in Russian language;
- Timeframe for application consideration reduced from 1 year to 3 months.

2. Ukrainian Ministry of Foreign Affairs Responds To Russian Decrees On Simplified Citizenship Obtaining Procedure

On [24 April](#) 2019 and [30 April](#) 2019 Ukrainian Ministry of Exterior reacted to the Russian Decrees on simplified citizenship application procedure with two statements, making assertions including:

- *Russia brutally violates Ukrainian sovereignty and territorial integrity and breaks international law as well as fundamentally undermines the Minsk Agreements;*²
- *Ukraine calls upon international actors not to recognise Russian passports provided to Ukrainian citizens under the reported Decrees;*

¹ ‘Donetsk People’s Republic’ and ‘Luhansk People’s Republic’ are self-proclaimed entities in the East of Ukraine.

² Minsk Agreements, or Minsk II is a package of 13 measures designed to alleviate the ongoing hostilities in the East of Ukraine.

- *The Ministry considers the Decrees to be invalid and therefore not resulting in changes to citizenship of Donbas residents;*
- *“Passportisation” of Ukrainian citizens in Donbas testifies to the fact of Russian occupation of the related areas of Donetsk and Luhansk regions which Russia currently denies by referring to ‘internal conflict’;*
- *The Ministry is particularly concerned that such passportisation has been previously used by Russia in other contexts to legitimise its interventions from legal and humanitarian perspectives’.*

The United Nations Security Council [met](#) on the matter on 25 April 2019 on the request of Ukraine. No resolution was adopted during the session.

3. Parliament Adopts Law On Ensuring Functioning of Ukrainian Language As State Language

On 25 April 2019 the Parliament adopted Law [No. 5670-d](#) ‘On Ensuring Functioning of Ukrainian Language as State Language’. As stated within the law, one of its aims is to ‘*promote the learning of Ukrainian language by residents of the occupied territories*’.

The President signed the Law on 15 May 2019. The final text, however, is still to be published. General conclusions on the law are provided below.

General provisions of the law:

- *In governance, local administration, judiciary, and military services:* It is obligatory for state bodies, local authorities, judiciary, National police, and military service to use Ukrainian language in their duties. Related workflow and documentation also have to be recorded in Ukrainian;
- *Ombudsperson institution for the protection of the state language:* An ombudsperson institution on the protection of the state language is to be established. The Ombudsperson is to be appointed by the Cabinet and can be dismissed by it. The Ombudsperson is entitled to consider complaints from individuals and organisations on reported violations of their right to access information and services in Ukrainian and to impose fines for violations;
- *In education and services:* Healthcare, transportation, and hospitality service communications have to be provided in Ukrainian language. However, if an individual requests to be addressed in other language, the institution should follow the request wherever possible. Education will be provided in Ukrainian – though, primary education will be available in the languages of relevant minority groups;
- *Culture and access to information:* The law regulates use of languages in newspapers, books, websites, TV, radio, and information about goods. As the final text of the law is not available yet, it is not clear how far these requirements will extend to. However, it is clear that official languages of the European Union and languages of indigenous people and minorities will be provided exceptions.

The law does not extend to personal communication or religious affairs. As a whole, it comes into force on 16 July 2019. However, many of the provisions have their own dates of coming into force.

4. Parliament Removes Obstacle to Direct Donor Funding to Mine Action Operators

Background: In December 2018 the Parliament adopted the Mine Action Law.³ One of the major concerns raised about the law was related to the requirement of the allocation of all financial resources to a special state fund. This provision was viewed as an obstacle to direct donor funding to mine action operators and could have resulted in the cessation of humanitarian mine action in Ukraine.

Amendment to the law: On 25 April 2019 the Parliament adopted Draft law [No. 10180](#) amending the Mine Action Law to remove this obstacle. The President has already signed the law.

On obtaining approval for use of funds:

- Mine action operators still have to obtain approval from relevant government authorities on the purpose for which the funds will be used;
- Procedure for obtaining approval is yet to be adopted by the Cabinet. The procedure is not expected until the government completes legal and organisational frameworks for the specialised mine action authorities introduced by the Mine Action law;
- However, on 12 April 2019 the Ministry for Temporary Occupied Territories and IDPs requested humanitarian mine action actors to continue to follow existing procedures until the new institutional frameworks are introduced.

5. Cabinet Provides Rules For Marking Hazardous Areas And Procedures For Transferring Responsibility for Maintenance of Marking

Background: The Mine Action law of January 2019 did not sufficiently regulate the issue of responsibility for marking of hazardous areas and maintenance of marking. It also did not contain any provision as to who would certify whether cleared land should indeed be considered as hazard free. Humanitarian demining operators were in an onerous situation in the absence of such regulations. Following the initial physical marking of surveyed hazardous areas by operators, there was no mechanism for transferring responsibility to the local authorities for the maintenance of such marking.

Reported Issue: On 17 April 2019 the Cabinet adopted Resolution [No. 372](#). The resolution provides the procedure for transferring responsibility for maintenance of marking an identified hazardous area. It also provides unified rules for the marking of hazardous areas. Information on the marking system for hazardous areas will now be included in national and local mine risk education programmes.

Procedure for transfer of responsibility for maintenance of marking:

- Installation of permanent marking of the dangerous area by non-military mine action operator;
- Approach local state administration or local council to initiate the transfer;

³ For more information please see DRC-DDG [Special Legal Alert](#) Issue on Mine Action Law.

- Signing of an act of transfer of responsibility to state administration of local council (standard form is provided within the Resolution).

The Cabinet Resolution does not address the concern relating to the transfer of responsibility of cleared land.

6. President Signs Action Plan On Strategic Course of Ukraine Towards Joining European Union and NATO

In February 2019 the Constitution of Ukraine was amended to assign certain roles to the President, the Parliament and the Cabinet for ensuring Ukraine’s direction towards joining the European Union and NATO.⁴

On 20 April 2019 the President signed Decree [No. 155/2019](#) which adopts an Action Plan on the strategic course of Ukraine towards joining the European Union and NATO. The Action plan includes 31 action points directed to the Cabinet of Ministers (mainly) and the National Security and Defence Council. Most action points have particular deadlines while the others are marked as ‘permanent’.

Among others, the Action Plan includes the following (quoting):

- *Point 19 – Jointly, with the EU, examine opportunities for cooperation in fighting disinformation (to be completed by December 2019);*
- *Point 22 – Ensure cooperation with NATO on monitoring of situation in the Azov and Black seas and responding jointly in case of ‘Russian aggression’ (permanent);*
- *Point 23 – Ensure preparation of a draft application to the North Atlantic Council and Secretary General of the NATO for inclusion of Ukraine to NATO Membership Action Plan (December 2019).*

7. New Decree Enables Police to Issue Restraining Order in Domestic Violence Cases

On 19 April 2019 a joint Decree [No. 369/180](#) adopted by the Ministry of Social Protection and the Ministry of Interior came into force. The Joint Decree provided regulation to enable the national police to issue restraining orders in domestic violence cases. Provisions on the restraining orders introduced previously in December 2017 under Law [No. 2229](#) required adoption of an implementation procedure. Now, the procedure is in place.

An urgent restraining order can be issued for up to 10 days⁵ and can include the following:

- Vacation order:* requires the perpetrator to vacate the victim’s household. Refusal to comply with the order can be met by use of force by the police;
- Stay away order:* prohibits the perpetrator from entering and/or staying at a place where the victim is located;
- No contact order:* prohibits the perpetrator from attempting to contact the victim.

⁴ For more information on that please see DRC-DDG [Legal Alert](#) February 2019 Issue 37, Section 4.

⁵ Restraining orders can be issued for longer periods but exclusively through the court proceedings.

Procedure to be followed by the police:

- Interview victim or his/her representative and assess the case;
- Fill the standard assessment form annexed to the Decree;
- Mandatorily issue restraining orders if the assessment form reveals the risk level to be high;
- Use his/her own discretion to issue restraining order if the assessment form does NOT reveal the risk level to be high.

8. Electronic Prescription and More Pharmacy Choices Under the ‘Affordable Medicines’ Programme

Background: The Healthcare Reform introduced by the Cabinet in November 2016 has several components, some of which were rolled out in previous years. One of the components is the ‘Affordable medicines’ programme. Under the programme, some medicines are to be provided free of charge or at a subsidized rate. These medicines can be received based on a prescription issued by a doctor.

Reported issue: Starting from 1 April 2019, the following rules for affordable medicine shall apply:

- Individuals can obtain medicines under the programme from any pharmacy which has a sign ‘Affordable medicines’ (*Dostupni liky* – in Ukrainian) on it regardless of the location of the doctor and residence of the individual;
- Only electronic prescriptions will be acceptable. This is meant to prevent forging, damage, or loss of prescriptions. At the same time, it can be printed upon the individual’s request so it will not constitute additional protection concern for elderly people and others who might face difficulties with using the electronic copy.

Prior to the Reform, official policy of the state was to provide free healthcare for all. The policy led to widespread refusal of healthcare coverage and corruption due to shortage of resources.

9. The Cabinet Adopts Policy On Payment For Obligatory Service Under Martial Law

On 10 April 2019 the Cabinet adopted Resolution [No. 312](#). The Resolution defines minimal compensation standards for obligatory public services under a martial law legal regime:

- *For staff of enterprises* which continue to function under the martial law – equal to average salary at the enterprise;
- *For other individuals* – minimum salary level valid at the period of the martial law.

Obligatory public service can be imposed under the Martial Law but is not automatic. In November-December 2018 – the only time when the martial law was imposed in Ukraine⁶ - no obligatory public service was introduced.

⁶ For more information, please see DRC-DDG [Special Legal Alert](#) Issue on Martial Law in Ukraine.

10. Supreme Court Directs Pension Fund To Consider Documents Issued By NGCA De-Facto Authorities to Protect Pensioner’s Rights

Background: Law [No. 2268](#) which defines Ukraine’s policy in Donetsk and Luhansk regions reaffirms the government’s existing position that any document issued by the de facto authorities in Donetsk and Luhansk regions is illegal and does not result in any legal consequences except for documents testifying facts of birth or death within the NGCA. A similar provision of Law [No. 1207](#) concerning Crimea affirms invalidity of documents issued by the Russian administration in Crimea.

Reported Issue: In April 2019 the Supreme Court published its decision in a case between an individual and the pension fund where a related matter was brought up. The case considered whether documents issued by the so-called ‘DPR’ are valid to be referred to as proof of work experience when applying for pension. Prior to the Supreme Court decision, both the first instance court and the appeal court supported the plaintiff and required the pension fund to consider documents issued by the ‘DPR’.

The Supreme Court upheld the decision of the first instance and the court of appeal. In its decision, the Supreme Court referred to the ECHR⁷ jurisprudence stating, among others, the following:

- *“documents, issued by the occupying power, have to be recognized if otherwise it leads to a critical violation or limitation of an individuals’ rights;*
- *the obligation to disregard acts of de facto entities is far from absolute;*
- *life goes on in the territory concerned for its inhabitants. That life must be made tolerable and be protected; in the very interests of the inhabitants, the acts of these authorities cannot be simply ignored;*
- *to hold otherwise would amount to stripping the inhabitants of the territory of all their rights ... which would amount to depriving them even of the minimum standard of rights to which they are entitled;*
- *in exceptional circumstances, recognition of documents issued by the occupying power when done in a limited context of protection of rights of people residing within the occupied territories brings no recognition to the occupying power”.*

11. Ukraine Submits Claim Against Russia to the International Tribunal for the Law of the Sea Regarding Seizure of Ukrainian Navy Ships in November 2018

On 1 April 2019 Ukraine brought a claim against Russia to the International Tribunal for the Law of the Sea (the tribunal). The claim concerned seizure of three Ukrainian navy ships and its crew by Russian coastguards in November 2018 resulting in proclamation of Martial Law in Ukraine.⁸

On 16 April 2019 Ukraine requested provisional measures from the tribunal against Russia in this case. The measures sought by Ukraine include the release of seized naval vessels and the crew and suspension of related criminal proceedings by Russia.

⁷ ECHR – European Court of Human Rights. Hereby the Supreme Court refers to the cases of [Loizidou v. Turkey](#), [Cyprus v. Turkey](#), and [Mozer v. the Republic of Moldova and Russia](#).

⁸ For more information, please see DRC-DDG [Special Legal Alert](#) Issue on Martial Law in Ukraine.

Some terminology 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-DDG.

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