



DRC / DDG LEGAL ALERT: Issue 40 May 2019

1. After More Than 75 Years the Cabinet Provides Mechanism for Property Restitution and Compensation for Deported Persons and Their Successors

Background: Earlier in April 2014, the Parliament adopted Law [No. 1223](#) defining legal status of ‘deported persons’ and recognising their right – and right of their successors – to restitution or compensation. The status refers to violations of freedom of movement by the Soviet Union towards its citizens during and following World War II. Accordingly, the following Ukrainian citizens were considered as deported persons:

- Crimean Tatars and individuals of other ethnicities who had been forcibly deported from their permanent habitats within the territory of Ukraine (including Crimea) based on their ethnicity;¹
- individuals whose place of residence was forcibly defined by USSR authorities after their imprisonment, evacuation, or mandatory military or civil service in the World War II;
- individuals who were born in families of the deported persons before their return to the place of origin but not later than 13 August 2014.

Despite the adoption of the Law there has been no opportunity for the deported persons and their successors to access the restitution or compensation because of the lack of relevant procedure.

Recent Developments: On 24 April 2019 the Cabinet adopted Resolution No. [357](#) providing the following mechanism for restitution or compensation:

Scope of restitution and compensation	Application procedure
<ul style="list-style-type: none"> • <i>What property?</i> Housing and other real estate as well as any other property including movables confiscated from the person as a result of deportation; • <i>Restitution or compensation?</i> If the property still exists and is not occupied it is to be returned (restitution). If the property was destroyed or currently occupied, compensation will be applied; • <i>Who is eligible?</i> Those who have obtained deported person certificate and their successors; 	<ul style="list-style-type: none"> • Application to be filed within 3 years of acquiring deported person legal status [and in respect to the date of provision of this procedure]; • Application to be filed at local administration where the property is located. <ul style="list-style-type: none"> • If the property is located in Crimea or the so-called ‘LPR’ or ‘DPR’, application should be filed at the local administration of the person’s current whereabouts;

¹ In Decree [No. 493](#) dated 5 September 1967 Presidium of the Supreme Council of the Soviet Union recognised that ‘after liberation of the Crimea from the occupation facts of collaboration of some of the ethnic Crimean Tatars with the occupying power were – without any grounds – considered as committed by all the Crimean Tatars in Crimea’. However, it was only in November 1989 when the Supreme Council of the Soviet Union [recognised](#) the forced displacement acts committed to the Crimean Tatars and other ethnicities as ‘unlawful and felonious acts of repression’.

Scope of restitution or compensation	Application procedure
<ul style="list-style-type: none"> • <i>Previous compensations matter</i>: If the deported person has been provided with housing or compensation previously by the means of state or communal property, the value of such prior grant shall be offset from the current restitution and compensation claim. 	<ul style="list-style-type: none"> • The mechanism provides a list of documentations to be filed with the application. In case the applicant does not possess the required documents, facts about such documents should be established through relevant judicial processes.
Timeframe, grounds for refusal, and enforcement	

- Decision to be made by a Special Administrative Commission within 3 months of the application registration;
- Decision of the Administrative Commission can be appealed to the relevant court;
- Executive committee of the respective local administration has to enforce the decision within 1 month and provide the claimant with documentation necessary to register his/her property rights on the returned property if required;
- If compensation is awarded, it has to be paid within 5 years from a special fund created by the state or local budgets;

Significance of the development: Humanitarian actors have been actively advocating for HLP restitution and compensation for property damaged and destroyed by the conflict in Eastern Ukraine. The call has broadly remained unheard. The reported mechanism will not be available for persons affected by the current conflict. However, it is a welcome recognition of the right to property restitution and compensation of forcibly displaced persons and the state’s responsibility towards them.

2. **Further Development On Simplified Russian Citizenship Application Procedure for Residents of ‘LPR’ and ‘DPR’**

Background: On 24 April 2019 the President of Russia signed Decree [No. 183](#) on simplified procedure for obtaining Russian citizenship for residents of so-called ‘LPR’ & ‘DPR’.² On 29 April 2019 Russian President signed [another](#) decree extending access to the simplified procedure to Ukrainian citizens who have previously obtained Russian residence permit, and to their family members.³ The latest decree extended access to the procedure to citizens of Ukraine and stateless persons who were born in Crimea and resided there until 18 March 2014, and their family members.⁴ Facilitation of passportisation of these individuals was assigned to two divisions of Russian migration service to be specially established in Rostov region.⁵

² For more information on the issue please see DRC-DDG [Legal Alert](#) Issue 39: April 2019, Section 1.

³ Hereby we refer to children, spouses, and parents.

⁴ Please see above.

⁵ In particular, these are Russian migration service’s divisions in Pokrovskoe village and in Novoshahtynsk town.

Recent Developments:

- A. *Non-recognition of the passports:* On 8 May 2019 the Ukrainian Cabinet issued Order [No. 362-p](#) in response to the abovementioned decrees. The order provides that passports issued by the two specially established divisions of Russian migration service will not be recognised by Ukraine;

Previously, on 25 April 2019 Ukrainian Parliament adopted Resolution [No. 2713](#) urging the United Nations, OSCE, NATO, Council of Europe, European Parliament, European Union member states, USA, Canada, and embassies of foreign states in Ukraine to refrain from recognising Russian passports issued by the abovementioned special divisions of Russian migration service;

- B. *Draft law on property confiscation:* On 4 June 2019 Draft law [No. 10363](#), with radical measures, was registered in the Parliament by a single member of the Parliament. As of 20 June 2019 there has not been any manifestation of meaningful support of other MPs for the Draft law;

The Draft law provides scope for confiscation of movable and immovable property of Ukrainian citizens residing in ‘DPR’ and ‘LPR’ who voluntary obtain Russian citizenship. The Draft law also provides cancellation of the individual’s Ukrainian citizenship before the confiscation;

The Draft law is in flagrant violation of a number of well-established principles of human rights law, international humanitarian law, and constitutional law of Ukraine. Under Article 25 of the Ukrainian Constitution, Ukrainian citizens cannot be stripped off their citizenship.

- C. *On access to pensions*

	Re access to Russian pension	Re access to Ukrainian pension
Information	On 25 April 2019 Russian Pension fund communicated ⁶ to the media that residents of ‘LPR’ and ‘DPR’ using the simplified procedure would not receive Russian pensions unless they change their whereabouts and officially reside in Russia.	On 8 May 2019 the Minister of Veterans Affairs of Ukraine stated its intention to propose to the Cabinet for suspension of pension and social payments to such individuals. ⁷
Law and Practices	Currently Russian pension is paid to residents of so-called ‘Transnistria’ with Russian citizenship. In so-called ‘South Ossetia’ Russia covers the difference between the pension assigned by de-facto authorities of ‘South Ossetia’ and the size of average Russian pension in the North Caucasus region of the Russian Federation.	Ukrainian Law ‘ On Pension ’ provides an exhaustive list of grounds for suspension of pension. Obtaining foreign citizenship is not included as a ground for suspension. Furthermore, the law does not link right to pension to citizenship status: pension can be provided to foreign citizens and stateless persons as well.

⁶ As reported by the [Interfax](#) and [RBC](#) news agencies.

⁷ As reported by the [Interfax](#) and [BBC](#) news agencies.

D. *Statement of members of the Parliamentary Committee on human rights*: On 8 May 2019 members of the Ukrainian Parliamentary Committee on human rights released a [statement](#) underlining that any radical measure of citizenship cancellation would not only be unconstitutional, but would also provide legitimacy to the Russian action on passportisation. Instead, the Committee recommended the state to enhance access of ‘LPR’ and ‘DPR’ residents to Ukrainian administrative services including registration of birth and death, passportisation, education etc.

3. The Cabinet Develops Bylaws Necessary for Verification and Monitoring of State Assurances and Pensions

Background: Since December 2015⁸ the Ukrainian government has been developing and modifying verification processes for social payments and pension made from state and local budgets, and the pension fund. The verification is supposed to be conducted by the Ministry of Finance through collection and analysis of individuals’ personal data. The data is to be provided to the Ministry by state authorities, local councils, and banking institutions on the Ministry’s request which would be also entitled to store the data.

In October 2018 a related regulation was [quashed](#) by the Constitutional Court. In its decision, the Court outlined that the regulation failed to provide:

- Clear limitations on access and use of the collected data by the Ministry;
- Clear definition of what personal information can be collected and used by the Ministry;
- Timeframe for which the information can be requested;
- Terms of storage of the collected information.

The lack of such safeguards, the Court stated, would let the Ministry escape justice and accountability in cases of abuse of power or violation of individual’s privacy. In January 2019 the Cabinet registered Draft law [No. 9511](#) concerning the verification. The Draft law has not yet been considered by the Parliament as of May 2019.

Current Developments: Despite the fact that the Parliament has not yet considered the Draft law, the Cabinet has already adopted two bylaws pertinent to the implementation of the Draft law:

Cabinet
Resolution
[No. 443](#)
(adopted on
22 May 2019)

Updating the verification procedure

- Entitles the Ministry of Finance to collect and store information on person’s income and savings, property, residence, employment, and relevant information on the family members;
- Based on the collected data, the Ministry will provide its recommendations to social protection institution administrating the social or pension payment under the verification. The institution will further decide whether to grant, suspend, or continue the payment.

⁸ Hereby we consider adoption of initial regulation on verification of pensions and social assurances under Law [No. 914-VIII](#).

Cabinet
Resolution [No. 405](#)
(adopted on
3 April 2019)

Procedure for collection, use, and protection of personal information under the verification process

- Access to the personal information will be provided to the Ministry’s personnel only under different access levels depending on their position and role and based on the non-disclosure clause;
- All the operations with the personal information – including searching, reading, copying, editing, deleting – will be automatically recorded in the database allowing to identify the user;
- Special protection to be provided to prevent damage or loss of the information as a result of mistake or bad intention;
- Allows collecting data for *any period* related to the verification of person’s social assistance or pension profile (which is up to 30 or even 40 years in case of pension payments).

4. International Tribunal for the Law of the Sea Grants Provisional Measures In Case of Ukraine v. Russia

Background: As reported in April 2019 Legal Alert,⁹ Ukraine had filed a claim against Russia to the International Tribunal for the Law of the Sea concerning the seizure of Ukrainian navy ships and crew by Russia in November 2018. Ukraine had also requested for provisional measures from the Tribunal including the release of three seized naval vessels and 24 members of the crew and suspension of related criminal proceedings by Russia.

On 25 May 2019 the Tribunal [granted](#) the provisional measures and ordered Russia to immediately release the ships and crew. However, the Tribunal denied Ukrainian’s petition for the suspension of related criminal proceedings. The Tribunal also ordered Ukraine and Russia to refrain from taking any action which might aggravate or escalate the situation.

On perspectives of enforcement of the measures: Previously Russia refused to participate in the hearings stating that the Tribunal had no jurisdiction over the case. As such, it is possible that Russia will ignore the provisional measures.

5. Parliamentary Committee on Social Policy Recommends Cabinet to Create Framework for access to Facilitate Regulation Pension and Freedom of Movement for IDPs and NGCA Residents

On 15 April 2019 the Parliamentary Committee on social policy, employment, and pension [approved](#) recommendations to the Cabinet on pension insurance and social protection of IDPs and residents of the non-government controlled areas (NGCA) in the East of Ukraine. The recommendations encourage the Cabinet to:

- develop and submit to the Parliament a draft law providing a mechanism for NGCA-residents’ access to arrear pension payments for the period pension was not paid;
- immediately complete the development and adoption of a new draft procedure for entry/exit regime and movement of goods to/from the NGCA.

⁹ See DRC-DDG Legal Alert April 2019 Issue 39, Section 11 – <https://reliefweb.int/report/ukraine/ukraine-drc-ddg-legal-alert-issue-39-april-2019-enruuk>

6. Cabinet Adopts Concept of Development of the System of Medical Emergency Services

On 22 May 2019 the Cabinet issued Decree [No. 383-p](#). The Decree provides the Concept of emergency services system as a part of the large-scale healthcare reform launched back in 2016.

The Concept provides the following:

- IT infrastructure to be created to provide information on status of any hotline call in real time;
- New vehicles to be bought for the emergency purposes, salary of the staff to be increased;
- New emergency centres to be created at local levels to cover low-access in villages and towns.

The Concept also divides medical emergency services into *extreme* and ordinary categories :

Extreme medical emergency – to be provided within 10-20 minutes in cases of immediate threat to life including	Medical emergency – to be provided within 2-3 hours in cases of threat to health including
<ul style="list-style-type: none"> • serious traumas; • anaphylactic shock; • stroke; • heart attack; 	<ul style="list-style-type: none"> • coma; • premature birth; • heavy bleeding, etc.
<ul style="list-style-type: none"> • rise of temperature; • abnormal blood pressure; • pain in joints, spine, throat, ears, or other kinds of intense pain 	

The changes are supposed to be implemented in several steps, the first to include the launch of pilot projects in Kyiv and 5 regions of Ukraine including Donetsk, Poltava, Vinnytsya, Odesa, and Ternopil regions. The government has to develop an action plan on the Concept in one month.

7. Cabinet Defines Framework for Functioning of the State Social Service

In December 2018 the Cabinet [established](#) the State Social Service institution to function as the central executive body of the government on social protection. However, real functioning of the Service was delayed for lack of bylaws. On 22 May 2019 the Cabinet adopted Resolution [No. 458](#) providing the framework.

Functions of the Service shall include:

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| <ul style="list-style-type: none"> • Social protection of: <ul style="list-style-type: none"> • IDPs and veterans; • Persons with disabilities; • Deported persons; • Families and children; • Homeless persons; • Former detainees and prisoners. | <ul style="list-style-type: none"> • Provision of social services; • Prevention and countering of human trafficking and domestic violence; • Control over the use of the state funding on social protection. |
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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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