

DRC-DDG LEGAL ALERT: Issue 51 April 2020

1. COVID-19 Legislative Measures Update: 30 April 2020

Background: A wide array of legislative measures have been introduced since March 2020 to respond to the outbreak of the COVID-19 ('coronavirus'). Measures developed as of 30 March 2020 are reviewed in DRC-DDG [Legal Alert](#) Special Issue on COVID-19 and [Legal Alert](#) Issue 50. Below are further measures taken since the last review:

- Cabinet Resolutions [No. 255](#) (dated 2 April 2020), [No. 262](#), [No. 266](#) (8 April 2020), and [No. 291](#) (22 April 2020) on the prevention of COVID-19 spread;
- Law [No. 540](#) 'On Social and Economic Guarantees in Terms of COVID-19,' dated 30 March 2020;
- Law [No. 555](#) 'On Prevention of COVID-19 Spread,' dated 10 April 2020;
- State Unemployment Insurance Fund Resolution [No. 217](#), dated 8 April 2020;
- Cabinet [Resolution](#) 'On Social Protection of Families with Children,' dated 22 April 2020.

The Timeframe of the Quarantine Restrictions: As of 30 April 2020, the number of confirmed COVID-19 cases [has grown](#) to 10,406; 261 of them were fatal, 1,238 cured. While the quarantine period is **prolonged** until 11 May 2020,¹ none of the previously imposed quarantine measures has been lifted. On 24 April 2020, however, the Cabinet [announced](#) a five-stage plan for lifting the restrictions based on the dynamics of the COVID-19 spread:

	Stage 1	Stage 2	Stage 3	Stage 4	Stage 5
	Stage applies if the condition below persists for ten days in a row				
Condition	The ratio of positive results among tested individuals does not increase more than for 5% per day	Percent of positive results decreases daily; the number of recovered individuals grows.	The number of recovered individuals surpasses the number of new infections (by two times or higher). COVID-19 occupies less than 10% of healthcare facilities.	The number of new and unrelated cases of infections is under five cases per region.	There are only isolated cases, caused exclusively by external (foreign) factors.
Restrictions to be Lifted	<ul style="list-style-type: none"> • Wholesale and retail trade of non-food goods; • Notaries, attorneys, auditors. 	<ul style="list-style-type: none"> • Household (consumer) services; • In-class studying for graduate education; • Hotels. 	<ul style="list-style-type: none"> • Educational institutions on an individual consideration; • Intercity travels within regions; • Shopping and entertainment centres, cinemas and theatres; • Cafes. 	<ul style="list-style-type: none"> • All public land transports; • Entertainment industry; • Cultural events; • Educational institutions; • Planned medical services. 	<ul style="list-style-type: none"> • All other national measures; local measures can still be imposed by local governments.

Below are major additional measures taken by the government as of 30 April 2020, the most crucial of which relate to the freedom of movement.

¹ **Important:** On 4 May 2020 the Cabinet [announced](#) the quarantine to be prolonged until 22 May 2020.

Freedom of Movement

The most pressing restrictions of freedom of movement are faced by the NGCA residents who previously entered GCA through the entry-exit checkpoints (EECPs) – please refer to Legal Alert Issues [No. 49](#) and [No. 50](#). Following are additional major freedom of movement restrictions:

	Self-Isolation Regime	Regime of Mandatory Observation (Controlled Isolation)
Individuals Falling Under Restrictions	<ul style="list-style-type: none"> • <u>At or over 60 years of age</u> (with exceptions); • <u>Agreed</u> to undergo self-isolation instead of the mandatory observation (see on the right) after crossing the state border/EECPs; • <u>Suspected</u> to be or infected by COVID-19 but not requiring hospitalisation; • <u>Individuals who were in contact</u> with a confirmed COVID-19 infection without special protection means. 	<ul style="list-style-type: none"> • <u>Cross the state border</u> – with exceptions;² • <u>Enter GCA from NGCA</u> or Crimea – with the same exceptions; • <u>Repeatedly</u> violated self-isolation regime; • <u>Contacted</u> with COVID-infected individuals and refuse to pass medical inspection (based on prescription); • <u>Voluntarily</u> go under observation.
What Does the Restriction Imply	<ul style="list-style-type: none"> • <u>Individuals have to stay</u> in chosen places (homes) and refrain from contacting other individuals except other household dwellers; • <u>Allowed outdoor activities</u> include going out within a 2km area to buy groceries and medicines or for dog walking. 	<ul style="list-style-type: none"> • <u>Forced hospitalisation</u> of a person for 14 days; • <u>Regional state administrations</u> secure the dwellers’ subsistence (food costs are not covered).
Sanctions for Breaking the Regime	<ul style="list-style-type: none"> • <u>Considered as an administrative offence</u> with a fine ranging between UAH 17,000 to UAH 34,000 (size is defined by the police within the given range); • <u>Criminalised</u> if resulted – or expected to have resulted – in an infection of another person or grave consequences, sanctions may increase to a fine of up to UAH 51,000, arrest or imprisonment (up to 3 or 8 years). 	

iii) Other freedom of movement restrictions:

- Movement of persons in groups of 3 or more is prohibited (with certain exceptions);
- Whenever going out in public places (including streets), individuals have to wear medical masks or respirators and bear identification documentation;

² Exceptions are provided for staff of embassies and international organisations accredited in Ukraine and their family members, servicepersons of cargo vehicles – unless there is evidence that the person has been in contact with an infected individual.

- Children under 14 years old are allowed to go out only accompanied by an adult family member or guardian;
- Going out to parks and recreation zones is prohibited – except for dog walking purpose;
- Movement between regions of Ukraine (‘oblasts’) can be restricted by regional state administrations; additional control measures can be imposed at the regional borderlines.

Social Protection	Economic Stimuli
<ul style="list-style-type: none"> • <u>Automatic extension of assistances</u> scheduled to expire – applicable for low-income families, disabled, and unemployed (IDP benefits and pensions were secured already in March 2020); • <u>Assistance on unemployment is increased</u> from UAH 650 to UAH 1,000; assigned from the first day of unemployment registration instead of the 91st day (online application available); • <u>Additional UAH 1,000 payment</u> is to be provided on a one-time basis for pensioners whose pension is lower than UAH 5,000; • <u>Indexation (proportional increase) of pensions</u> is targeted by the Cabinet after the quarantine is over; • <u>List of ‘socially important goods’</u> (mainly food items) is to be defined by the Cabinet who will set maximal price levels for these goods. Violation of the pricing policy for these items and medical goods will result in fines and confiscation of the ‘excessive profit;’ • <u>Bonuses to salaries</u> are now possible (although not automatic, require implementation by the Cabinet) for healthcare staff (up to 300% of basic salary) and social workers directly involved in COVID-19 response (up to 100% of basic salary). 	<ul style="list-style-type: none"> • <u>A certain level of salary to be maintained (partially refundable):</u> <ul style="list-style-type: none"> ○ For employees who cannot work (work cannot be done remotely), employers cannot reduce salary lower than 2/3 of the usual rate; ○ Employers can request reimbursements from the government for socially-insured employees. However, it is limited to UAH 4,723 per month per employee and requires significant paper work. Also, the application deadline is 30 days after the enterprise’s shutdown. • <u>Unified social tax (USC) bracket is expanded</u> (entrepreneurs are likely to be eligible for more preferential taxation rates); • <u>Documentary and physical inspections are prohibited</u> until 31 May 2020 (and in some cases until 30 June 2020); • <u>It is prohibited to increase interest rates</u> under existing loan agreements; • <u>Monthly assistance for children under 10 years old</u> will be provided to individual entrepreneurs of first and second taxation groups (UAH 1,779 or UAH 2,218 per child) up until 30 days after quarantine termination.

Access to Justice

- Online access and participation is provided in administrative, commercial, and civil judicial proceedings;
- Time limits for judicial proceedings are prolonged (for claim submissions, appeal, cassation, replies etc.) in administrative, commercial, and civil proceedings – until the quarantine termination;
- Defining timeframes for decisions (including the date of the decision entering into force): the court cannot assign a date before the end of the quarantine. Therefore, recently issued court decisions cannot enter into force until the end of the quarantine.

2. Parliament Amends State Budget 2020

On 13 April 2020, the Parliament adopted Law [No. 553](#) revising State Budget 2020 to adjust to the COVID-19 reality. The table below reviews budget lines related to humanitarian operations and conflict response. All the values below are indicated in UAH.

Explanation to the table:

- Budget lines that were reduced are marked in **RED**;
- Budget lines that were increased are marked in **GREEN**;
- Certain budget lines that are to be further reduced at the discretion of the Cabinet are marked in **BLUE**;
- Budget lines that remained unchanged are marked in **GREY**.

Institution or Purpose of Use of Funding	State Budget 2020	State Budget Amendment
Ministry for Reintegration of Temporary Occupied Territories	1,800 million ³	634
Ministry of Veterans Affairs		988
<i>Psycho-social rehabilitation of 'ATO'/JFO Veterans and Maidan Participants</i>	246 million	Unchanged
<i>Mine action activities</i>	5 million	To be decreased by the Cabinet
<i>Support for veterans' associations & commemoration events</i>	18 million	9 million
<i>Support to the individuals illegally captured by NGCA authorities or Russia and their family members, as well as the reintegration of NGCA residents</i>	66 million	To be decreased by the Cabinet
<i>Pilot projects on solving challenges of internal displacement and 'returning of combatants'</i>	7 million	To be decreased by the Cabinet
<i>Subventions to local communities for the support of conflict-affected territories</i>	20 million	To be decreased by the Cabinet
<i>Compensation for housing 'damaged or destroyed as a result of Russian aggression'</i>	40 million	To be decreased by the Cabinet
<i>Subvention to local budgets on housing for IDPs</i>	485 million	To be decreased by the Cabinet
Ministry of Healthcare	116 billion	131 billion
State Emergency Service	15 billion	Unchanged

³ As of the initial adoption of the State Budget 2020 in Autumn 2019, the Ministry of TOT and the Ministry of Veterans Affairs were merged into one ministry. Early in 2020, however, the two ministries were divided back again.

Institution or Purpose of Use of Funding	State Budget 2020	State Budget Amendment
Ministry of Social Policy	294 billion	321 billion
<i>The Pension Fund</i>	173 billion	202 billion
<i>The Fund for Social Protection of People with Disabilities</i>	1,834 billion	1,474 billion
<i>Social protection of families, children, women, and other most vulnerable social groups</i>	88 million	85 million
<i>Provision of monthly utility benefits to IDPs</i>	3 billion	Unchanged
<i>Specialised assistance on prosthetics and rehabilitation</i>	29 million	Unchanged
<i>Sanatorium treatment for veterans and differently-abled individuals</i>	213 million	Unchanged
<i>Provision of 'some kinds of benefits, compensation, and services to certain social groups'</i>	63 billion	61 billion
Ministry of Regional Development and Territories	15 billion	8 billion
<i>Subvention to local communities for the implementation of projects under the Extraordinary Loan for Restoration of Ukraine</i>	1,275 billion	Unchanged
<i>Free Legal Aid System (under the Ministry of Justice)</i>	822 million	821 million
<i>Preparation for the mobilisation of industries of the national economy (under the Ministry of Economic Development)</i>	78 million	60 million

Change of the State Budget Expenses on Housing:

Among over 20 State Budget lines on housing only 6 are to be reduced. However, the reduced ones include 3 IDP housing programs. For example, the future of UAH 485 million, initially committed for IDP housing, is now uncertain as the revised budget gave discretion to the Cabinet to reduce the budget. All the values below are provided in UAH, million.

Purpose of the Fund Use	2020	Amendment
Subvention to local budgets for 'IDP housing' projects	485	To be decreased by the Cabinet
Funding for Affordable Housing	100	To be decreased by the Cabinet
Partial coverage of interests on housing loans under social housing programmes	41	Unchanged
'Compensation for housing destroyed as a result of the Russian aggression'	40	To be decreased by the Cabinet
Partial coverage of interest on housing loans under the youth housing programme	23	Unchanged
Increase of Statute Capital of the State Fund for Youth Housing Construction	28	Unchanged
Financial support to the State Fund for Support of Youth Housing Construction	7	Unchanged

3. Government Further Expands ‘Preferential 5-7-9% Loans’ Programme for Micro and Small Enterprises

Background: In January 2020, the Cabinet created a framework for the ‘Affordable 5-7-9% Loans’ programme for micro- and small-sized businesses and further expanded it in March 2020.⁴ The Programme offered up to UAH 2 million in loans – under specific purposes – for terms up to five years with yearly interest rates ranging from 5% to 9%.

Recent developments: On 15 April 2020, the Cabinet issued Resolution [No. 283](#) further expanding the Programme, followed by [another amendment](#) on 29 April 2020. Salient novations include:

- Maximum size of the loan is increased up from UAH 2 million to UAH 3 million;
- Eligibility on maximum annual sales is increased from UAH 50 million to UAH 100 million.

The most significant novation is the provision of a new eligible loan purpose – refinancing debt. Provided under special terms, such loans will be preferred over the standard programme provisions:

- No maximum size limit for the loan (however, restriction regarding the maximum level of state assistance within the last three years – EUR 200,000 – still applies);
- 0% (zero) interest rate applies;
- The maximum term of the loan – 31 March 2021.

Related Concerns:

- Increase of the maximum applicable annual sales might eventually decrease the number of micro- and small-sized businesses reached by the Programme, who will face increased competition from bigger enterprises to access the programme;
- Inclusion of debt refinancing as an eligible purpose of the loan and superiority over the programme’s other purposes might compromise the efficiency of the Programme implementation.

When first launched, this programme created hopes to the struggling micro and small enterprises in the conflict-affected region. With the recent changes, it needs to be seen whether such enterprises will be able to compete with their much more affluent peers.

4. Cabinet Approves Agreement with German Government on IDP Housing Project

On 22 April 2020, the Cabinet [approved](#) an agreement with the government of the Federal Republic of Germany on the provision of EUR 25.5 million under the ‘IDP Housing’ project designed to provide IDPs with durable housing solutions. The agreement is yet to be signed by the Minister for Reintegration of TOT and afterwards to be approved by the Parliament.

5. Supreme Court Affirms Right to Compensation for Property Damaged in NGCA; Grants Punitive Compensation for State’s Failure to Provide Compensation Mechanism

On 25 March 2020, the Supreme Court of Ukraine delivered a [judgement](#) in case No. 310/1739/17, considering over UAH 500,000 compensation claims for housing destroyed as a result of the conflict within NGCA (Shakhtarsk). The fact of the housing destruction was testified by a certificate issued by the so-called ‘DPR’. Previously, the First Instance Court and the Court of Appeal denied the claim, inter alia, for lack of sufficient evidence of the destruction.

⁴ For additional information, please see DRC-DDG [Legal Alert](#) Issue 48: January 2020, Section 2; DRC-DDG [Legal Alert](#) Issue 50: February-March 2020, Section 4.

The Decision of the Court: The Supreme Court denied the compensation claim for the reason of the absence of a mechanism (not on merit). The Court, however, awarded the claimant UAH 50,000 punitive damage on account of “the State’s failure to compensate damages” after a significant period of time and “failure to provide procedure” for the compensation.

Significance of the Court Ruling: This decision of the Supreme Court is not the first one on granting punitive damages to an IDP for the State’s failure to provide a compensation mechanism for the destroyed housing.⁵ However, the ruling has set a number of new developments in the existing national jurisprudence:

- It has affirmed claimant’s right to compensation despite the property being located in NGCA and established Ukraine’s responsibility to provide a mechanism for such compensation;
- It has accepted damage certificate issued by the de facto authority as admissible evidence under the Principle of Namibia Exception.⁶

Significant Observations of the Court:

- Regarding the absence of regulation for the destroyed housing compensation: “lack of [such] /.../ provisions do not affect the claimant’s right to demand compensation for the violated property right” and “the claimant has a right to compensation for the State’s failure to fulfil its positive obligations in regards to [right to property];”
- Regarding UAH 50,000 punitive damages for the state’s failure to provide the compensation: “[Although there is no legal provision for such award] /.../, it is a duty of the Supreme Court to fill the existing gaps in the legislation with its practice, based on the rule of law principle and priority of human rights protection;”
- Regarding the conflict dimension of the case: “obligations of the State regarding the protection of rights do not fade away in terms of armed conflicts /.../ although it still permits the possibility of certain derogations;” “responsibility of the State is absolute /.../ thus the State shall be responsible to provide compensation for actions of unidentified persons or terrorists [even] in terms when the State admits its inability to maintain order and safety.”

This is a significant departure from the existing legal and political discourses regarding the right to compensation. The decision has a potential for the expansion of Ukrainian courts’ jurisdiction to protect the compensation rights of the conflict-affected people on both sides of the contact line.

Some of the terminology used in this issue of the Legal Alert was taken from draft laws or current legislation and does not necessarily reflect the position of DRC-DDG.

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⁵ See Decision of the Supreme Court of Ukraine in case No. 423/2245/16, dated 19 February 2020.

⁶ Outlined under the jurisprudence of the International Court of Justice, the Namibian exceptions principle provides that documents issued by regimes considered illegal still have to be recognised for the sake of protection of individuals’ rights and do not lead to recognition of authority of such regimes.