

## UKRAINE

### LEGISLATIVE UPDATE

18 February – 10 March 2017

## LEGISLATIVE DEVELOPMENTS

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This update provides information on legislative developments that occurred during the reporting period. Recently adopted legislation includes new rules on the transfer of goods to and from certain areas of Donetsk and Luhansk regions will influence the delivery of humanitarian aid and provide the Ministry of Temporarily Occupied Territories and Internally Displaced Persons (MTOTIDPs) with additional functions. Draft legislation has been prepared in the areas of access to higher education for residents of Crimea, the definition of settlements along the contact line, and IDP rights to housing. Parliament also adopted the recommendations on rights of children, which may serve as a guide for possible advocacy activities.

### Adopted legislation

#### Order on the transfer of goods to and from the non-government controlled areas

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On 1 March 2017, the Cabinet of Ministers adopted resolution no. 99, “*On the Order of Transfer of Goods to and from the Anti-Terrorist Operation area*”.<sup>1</sup> The main provisions include:

- MTOTIDPs shall develop a list of goods and items that can be sold or distributed at humanitarian-logistics centers and transferred across the line of contact;
- Individuals can transfer goods in their hand luggage or in the vehicle in which they are travelling (as per the list to be developed by the MTOTIDPs);
- Legal entities shall apply to the State Fiscal Service to be included in the registry of entities transferring goods across the line of contact;
- The Ministry of Energy and Coal Industry shall put together a list of enterprises which are expected to receive coal from the non-government controlled areas (NGCAs). Coal is to be transported exclusively by rail;
- Legal entities are prohibited from transferring goods across the line of contact with the exception of food and medicines for humanitarian purposes, goods and products for metallurgical and mineral processing, mining and power generating sectors, and critical infrastructure. In case of a critical humanitarian situation, bans and restrictions may be lifted to prevent harm to the life and health of residents of the NGCAs, as well as disruption to energy and water supplies;
- Road and rail checkpoints are expected to function around the clock, with possible security restrictions ordered by the head of the Anti-Terrorist Center;
- If a humanitarian convoy transports assistance from various donor organizations, representatives of all organizations shall accompany their goods. Alternatively, a power of attorney may be given by each organization to a representative of another organization accompanying the humanitarian aid.

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<sup>1</sup> The full text is available online (in Ukrainian): <http://www.kmu.gov.ua/control/uk/cardnprd?docid=249790429>

UNHCR jointly with other UN agencies will advocate for: (i) people's ability to move any personal belongings freely while moving to or from the NGCAs; (ii) the list of items or goods to be prepared by the MTOTIDPs to be expansive; (iii) an updated Cabinet of Ministers resolution specifically on the delivery of humanitarian aid across the line of contact introducing definitions of humanitarian assistance in line with draft law no. 4,360, "On Humanitarian Assistance in Emergency Situations".

## Executive amendments allow for compensation of housing costs for IDPs disabled due to participation in hostilities

On 21 February, Cabinet of Ministers resolution no. 199<sup>2</sup> amended several resolutions improving the mechanism for targeted financial assistance for procurement of housing for IDPs disabled due to their participation in hostilities in eastern Ukraine and for members of their families. In case the said individuals are in need of improved housing conditions, they may opt to buy a home and receive partial compensation (up to the cost of housing offered by state authorities). Previously, financial compensation was not available and the only option for the improvement of housing conditions was based on the provision of homes by designated state authorities.

## Draft legislation

### IDP related draft laws

Members of Parliament registered draft law no. 6,142 "On Amendments to the Law of Ukraine "On the rights and freedoms of internally displaced persons" to protect the housing rights of students",<sup>3</sup> concerning recent university graduates who cannot return to their place of origin. The draft law aims at ensuring that such graduates: (i) can stay in student residences after graduation for a period of up to six months with the possibility of prolongation free of charge (the cost of utilities is not included); and (ii) can request that the registration stamp in their passport contains information regarding their original place of residence (either Crimea or the NGCAs). The draft law does not take into account the possible housing burden on universities, which may already lack student housing places and will not be able to extend the stay of students. UNHCR supports the idea of confirming the previous registration of the place of residence, since this will facilitate access to IDP related privileges and rights.

Another initiative concerning the housing rights of IDPs implies amendments to the Tax Code of Ukraine. Draft law no. 6,152<sup>4</sup> suggests that any sum paid by IDP taxpayers under formal tenancy agreements can be included in their tax rebate. IDPs who are individual entrepreneurs may benefit from this initiative, which may also contribute to their further economic and social integration in their place of displacement.

### Draft laws related to conflict-affected populations and permanent residents of Crimea

On 22 February, draft law no. 6,116 "On Amendments to the Law of Ukraine "On Higher Education" regarding the right to higher education of persons whose residence is temporarily occupied territory of Ukraine"<sup>5</sup> was registered in Parliament. It is aimed at ensuring the right to higher education for permanent residents of the "temporarily occupied territory". The draft suggests that individuals permanently residing in Crimea will be granted a right to enter universities and other educational institutions in southern regions of Ukraine (Zaporizhzhia, Odesa, Mykolaiv, Kherson). The following conditions apply: (i) applicants must have obtained their secondary education certificate; (ii) there is a quota 1,000 admission places<sup>6</sup>; (iii) students accepted under the amended law will be required to take a course in Ukrainian language upon admission.

While the draft law appears encouraging, it is inconsistent with the Law of Ukraine "On Ensuring Rights and Freedoms of Citizens and Legal Status of the Temporarily Occupied Territory of Ukraine", which provides for the possibility of acquiring

<sup>2</sup> The full text is available online (in Ukrainian): <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249795593>

<sup>3</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61244](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61244)

<sup>4</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61258](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61258)

<sup>5</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61199](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61199)

<sup>6</sup> Preferential conditions suggested in the draft law will be available to no more than 1,000 individuals per annum in all four regions. In 2016, 153 individuals from Crimea registered as first year students.

state-funded higher education in any region of Ukraine. Additionally, a special order ensuring IDPs access to higher education was introduced by a decree of the Ministry of Education on 24 May 2016. The decree established “Crimea – Ukraine” educational centers in Kyiv, Dnipro, Zaporizhzhia, Lviv, Mykolaiv, Kharkiv and Kherson to assist recent Crimean high school graduates applying for higher education in Ukraine. The process of acquiring Ukrainian secondary education certificates is very complicated, leading to a decrease in the number of individuals from Crimea entering university in Ukraine.

In support of the Government’s endeavors ensuring access to higher education for the permanent residents of the Autonomous Republic of Crimea, UNHCR suggests that a simplification of the process is necessary regarding admissions to universities for permanent residents of the NGCAs and Crimea. In addition to the External Independent Assessment, high school graduates are required to receive Ukrainian school certificates (since those issued in the NGCAs and Crimean schools are not valid). As a result, high school graduates are required to pass a large number of exams/attestations to receive a Ukrainian school certificate. More information on the current procedure is available on the website of the Ministry of Education.<sup>7</sup>

There have been recent discussions on the need to update Cabinet of Ministers resolution no. 1085 containing the list of settlements where Ukrainian authorities do not perform their functions and the list of settlements near the line of contact.<sup>8</sup> In that regard draft law no. 6,124, amending the Law of Ukraine “*On temporarily measures for the period of the Anti-Terrorist Operation*”,<sup>9</sup> **providing a definition of settlements along the line of contact**, may positively influence the situation. The suggested definition reads, “Settlements along the line of contact are the settlements listed by the Cabinet of Ministers of Ukraine, situated in the zone of the Anti-Terrorist Operation between the settlements where the state authorities of Ukraine do not completely fulfil or partially fulfil their functions and the settlements in the government-controlled areas”. Thus, the definition would concern those settlements in Luhansk and Donetsk regions situated in areas near the line of contact. The Cabinet of Ministers would remain responsible for clear identification and timely updating of the list of settlements. There is a need for empirical verification of the notion in order to see if geographical criteria would suffice or if a needs based approach is necessary.

## Draft laws on criminal responsibility in relation to the Anti-Terrorist Operation and temporary occupation

The draft law no. 6,147<sup>10</sup> amends the Criminal Code of Ukraine introducing **criminal liability for the illegal movement of goods across the line of contact**. In particular, any illegal transfer of food, non-food items and medicines across the line of contact may result in a 3 to 7 year prison sentence; the same premeditated actions conducted by a group of people and/or with the involvement of civil servants may result in a 5 to 12 year prison sentence. These amendments to the Criminal Code will only apply during the “Anti-Terrorist Operation”.

Another draft law suggests introducing severe criminal responsibility (12-15 years in prison) for collaborating with “Russian occupying authorities and with illegal armed groups established or supported by the Russian Federation in the Autonomous Republic of Crimea, Sevastopol and some parts of Donetsk and Luhansk regions” (Article 2). These provisions are enshrined in **draft law no. 6,170 “On the prohibition of collaborationism”**.<sup>11</sup>

Draft law no. 6,170 contains many dangers for individuals permanently residing in the Autonomous Republic of Crimea and in the NGCA. It does not provide a clear identification of “acts of collaborationism” which may result in blanket coverage of residents and additional displacement in order to avoid any prospect criminalization by the simple fact of living in the non-government controlled areas.

The draft law lists and forbids the following forms of “collaborationism”:

<sup>7</sup> A step-by-step instruction on “How to obtain a Ukrainian school certificate for graduates” is available online (in Ukrainian):

<http://mon.gov.ua/activity/education/dlya-zhiteliv-donbasu-i-krimu/pokrokovyi-instrukciyi.html>

<sup>8</sup> The decree is available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/1085-2014-%D1%80>

<sup>9</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61208](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61208)

<sup>10</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61251](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61251)

<sup>11</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61312](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61312)

- Organization and participation in demonstrations supporting Russian occupation, as well as in referenda and elections conducted by the occupying power (UNHCR finds the provision indiscriminate and that it does not differentiate between any intent or will behind the activities; in particular, participation in demonstrations and other gatherings could be enforced or under duress; views expressed during elections or referenda could be supportive of Ukraine, but it would be extremely difficult to prove, in particular when there are accusations of election flaws);
- Public appeals to support or cooperate with the Russian occupying authorities;
- Involvement in economic activities with the Russian occupying authorities and entities situated in the Autonomous Republic of Crimea and in certain areas of Donetsk and Luhansk regions, irrespective of their place of registration (UNHCR finds that this norm covers enterprises and individuals throughout Ukraine. This may result in the impossibility to buy or sell even such essential supplies as energy or water by public, state owned enterprises);
- Receiving or using passports or other documents of “illegal organizations”<sup>12</sup> (UNHCR finds that this constitutes a major risk for holders of any documents issued by de facto authorities, such as school certificates, birth or death certificates, driving licenses, pension cards, certificates or documents issued by social services, etc. In many instances, people permanently residing at the NGCAs would not be able to carry on with their daily lives without such documents. Introducing this provision would result in cutting off the movement of any holders of such documents in the view of possible criminal liability);
- Working for the Russian occupying authorities (UNHCR finds that since the definition of the “occupying authorities” is all-embracing, people working as social inspectors, workers of “state banks”, librarians or other workers of any institution supported by a state budget may become criminally liable);
- Any other forms of cooperation with Russian occupying authorities and with illegal armed groups established or supported by the Russian Federation (UNHCR finds that the lack of a clear criminal definition may lead to the disproportionate or ungrounded criminalization of any behavior and thus undermine a right to protection, right to a fair trial, the prevention of arbitrary detention, etc.).

## Draft Parliamentary resolutions

On 21 February, draft resolution no. 6,105 was registered in Parliament. The resolution calls for **changes in the administrative and territorial composition of the Slovyansk district of Donetsk region**.<sup>13</sup> As a result, Slovyansk district shall absorb the territory of Svyatohirsk and the nearby villages of Mayaky, Khrestyshche and Dolyna. These villages and Svyatohirsk will unite in one territorial community with the local council located in Svyatohirsk.

The draft Resolution no. 2,159/p<sup>14</sup> **suggests adopting draft law no. 1,259** on amending Article 3 of the Law of Ukraine “*On ensuring rights and freedoms of citizens and on the legal regime in the temporarily occupied territories*”.<sup>15</sup> The draft law includes subsoils, coastal waters, natural resources, cultural and historical heritage located on the Crimean peninsula in the list of temporarily occupied territories. If adopted, the draft law will not influence the situation of the persons of concern, but may provide Ukraine with additional arguments in its international judicial claims.

After a negative conclusion of the Parliamentary Human Rights Committee on 22 February on draft law no. 2,488,<sup>16</sup> “**On crossing of the line of contact**”, a **resolution on rejection** of the draft was registered in Parliament.<sup>17</sup> The to-be-rejected draft law provided for the unhindered movement of Ukrainian nationals holding a passport or other ID documents to or from the NGCAs and abolished the e-pass system introduced by the State Security Service (SBU), while preserving the permit system for non-nationals. UNHCR advocated for the positive consideration of the drafts, since they were expected to contribute to emergency protection and recovery in conflict-affected areas.

Draft Resolution no. 3,606/p<sup>18</sup> suggests returning draft law no. 3,606 (amending Article 10 of the Law of Ukraine “*On ensuring rights and freedoms of citizens and on the legal regime in the temporarily occupied territories*”<sup>19</sup>) to its authors

<sup>12</sup> Under “illegal organizations” the draft law means the so called “Donetsk People’s Republic” and “Luhansk People’s Republic”.

<sup>13</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61185](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61185)

<sup>14</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61237](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61237)

<sup>15</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54085](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54085)

<sup>16</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=54568](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54568)

<sup>17</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61238](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61238)

<sup>18</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=61240](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61240)

<sup>19</sup> The full text is available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=57339](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=57339)

for re-working. The draft law **prohibits the entry of vehicles with Russian car plates from the territory of Crimea** to the government-controlled area of Ukraine. This draft law could greatly restrict the freedom of movement of residents of Crimea.

## Other important legislative developments

### Rights of children in Ukraine: Parliament adopts its recommendations

On 22 February, Parliament adopted the recommendations of the Parliamentary Hearings on the rights of children in Ukraine<sup>20</sup>. The recommendations of the Parliamentary Hearings are not binding in nature. However, they highlight the type of problems existing in different areas and suggest possible normative and administrative solutions. Any Parliamentary Hearings involve representatives of areas of concern, persons with the necessary expertise and civil society representatives.

Some of the recommendations cover UNHCR's persons of concern:

- Parliament is recommended to adopt the law introducing criminal liability for recruiting children into hostilities or armed groups;
- The Cabinet of Ministers is expected to develop state programmes on social protection for conflict-affected children and ensure budgetary support to such programmes;
- Local authorities in the places of displacement of IDP children are recommended to enhance the protection of the rights of children displaced from the NGCAs and Crimea, while the Ministry of Social Policy is expected to control the quality and quantity of such protection activities;
- MTOTIDPs is recommended to ensure cooperation with international and civil society organizations in the area of the protection of the rights of children permanently residing in the NGCAs and Crimea;
- The Ministry of Defence is asked to raise awareness among children regarding explosive remnants of war.

The provisions mentioned above could be used to enhance advocacy messages by UNHCR, its partners or other interested organizations.

In November 2016, UNHCR submitted its comments and suggestions to Parliament for them to be included into the recommendations. UNHCR's observations concerned stateless, asylum seeking, refugee and IDP children. Unfortunately, most of UNHCR comments and suggestions (including those related to documenting births in the NGCAs, ensuring access to education and health services for stateless children, with special attention to Roma children) were not included.

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