

Legislative Update

UNHCR update on displacement-related legislation | September 2018

Adopted Legislation

- Amendments to the Law on social housing fund
- Coordination of activities relating to the prevention and combat of gender-based and domestic violence
- General order of paying pensions under court decisions
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Draft Legislation

- Amendments to the Budget Code on execution of court decisions on paying social benefits
- Amendments to the 2018 State Budget to provide financial assistance to individuals deprived of their liberty in the NGCA and/or TOT
- Amendments to several ATO-related laws
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- State Budget 2019
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Other important developments

- Amendments to the Law on Free Legal Aid entered into force, enabling the beneficiaries to continue being represented in court by the lawyers of the Free Legal Aid Centers
- Final decision of the Supreme Court on the pension-related model case
- Simplification of the procedure of temporary change of voting address

Adopted legislation

Amendments to the Law on social housing stock

On 18 September, the Parliament adopted the Law #2543¹ that introduced amendments to the Law on social housing fund.

The adopted amendments allow IDPs with disabilities (including children) and their family members to be included into the registry of those in need of social housing, if they do not possess housing on government-controlled area (GCA) or their housing was damaged/destroyed in the course of the Anti-terrorist operation (ATO) and/or the Joint Forces Operation (JFO).

The adopted initiative could simplify access to housing for one of the most vulnerable group of conflict-affected population. However, it would require extensive implementation steps to be taken by local authorities, as currently social housing stock is limited or non-existent in many locations.

¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62916 . At the time of the preparation of this update, the law was signed by the President

Coordination of activities relating to the prevention and combat of gender-based and domestic violence

On 22 August, the Government adopted its Resolution #658² establishing the Order on the coordination of activities relating to the prevention and combat of gender-based and domestic violence. The detailed description of its provisions were provided in the April 2018 Legal Update and no major changes were presented to the text.

General order of paying pensions granted by court decisions

On 22 August, the Government adopted its Resolution #649³ related to the payment of pensions under the court decisions. The Pension Fund of Ukraine (PFU) now has a separate budget line to cover these expenses.

It is a general procedure covering all accumulated pension debts, including those of IDPs, payable under the court decisions. The sum allocated to this aim until the end of 2018 is 50 million UAH. The process described in the Resolution involves multiple steps and may take time until the money reach the recipient.

Unification of conflict-related terminology in Governmental resolutions

On 05 September, the Government adopted its Resolution #713⁴ on extending the notion of the temporarily occupied territory (TOT)⁵ to Donetsk and Luhansk oblast.

The adopted Resolution unifies terminology in IDP-related Resolutions #600, #505, #509, #365 and #646 as per the law on particular aspects of public policy aimed at safeguarding the state sovereignty of Ukraine over the temporarily occupied territories of the Donetsk and Luhansk regions (Law #2268).

Therefore, “TOT of Ukraine” is replaced by the “TOT of the Donetsk and Luhansk regions, Crimea and Sevastopol”, and “ATO measures” (except for damaged and/or destroyed housing) – by “measures on cutting off and containing of the armed aggression of the Russian Federation” (JFO measures). Meanwhile, the notions of non-government controlled area (NGCA) and settlements on the contact line remain in force.

Draft legislation

Amendments to Budget Code on court decisions on paying social benefits

On 21 August, a group of MPs registered the draft law #9021⁶ introducing some amendments to the Budget Code. The draft suggests adding to the definition of the “state debt” the accumulated debts under court decisions on the payment of social benefits.

The proposed formulation covers all such decisions including those concerning IDPs. Although for its implementation the draft would require amendments to certain thematic laws and by-laws, it may be a step towards the elaboration of the state policy on tackling the issue of unpaid pensions, including to permanent residents of NGCA. If adopted, this may allow advocating for next steps such as the establishment of a reserve funds to pay out the accumulated pension related debts to conflict-affected population.

² The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vzayemodiyi-subyektiv-shcho-zdiysnyuyut-zahodu-sferi-zapobigannya-ta-protidiyi-domashnomu-nasilstvu-i-nasilstvu-za-oznakoyu-stati>

³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pitannya-pogashennya-zaborgovanosti-z-pensijnih-viplat-za-rishennyami-sudu>

⁴ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesenostanov-kabinetu-ministriv-ukrayini>

⁵ The terminology “Temporarily occupied territories” is quoted from the official legal act and does not reflect UNHCR position

⁶ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64516

Amendments to the Law on state budget for 2018 for providing assistance to those deprived of their liberty in relation to the conflict

On 30 August, the draft law #9026⁷ was registered suggesting amendments to the 2018 State Budget. This technical draft may open the door towards the implementation of the earlier announced financial assistance⁸ to individuals released from captivity, as well as to family members of those deprived of their liberty in the NGCA and Crimea.

Amendments to several ATO-related laws

On 04 September, the Government registered the draft law #9041⁹ aiming at removing provisions requesting the Government of Ukraine to elaborate rules on the termination of enterprises located in the NGCA and Crimea. Such provisions are contained in the Law on ensuring the rights and freedoms of the citizens and the legal regime on TOT of Crimea, the Law on temporary measures for the period of the ATO and the Law on the State obligatory pension insurance. In the Explanatory note to the draft, the Cabinet of Ministers stated that every aspect of such termination is regulated in the current legislation, in particular in the Civil Code, other laws and by-laws. The effect of this draft is hard to assess. Previously, UNHCR has not identified any protection-related risks related to this.

Mine action legislation

On 13 September, a group of MPs registered the draft law #9080¹⁰ introducing into the Ukrainian legislation the definition of mine action, in line with international standards. Subsequently, three alternative drafts were registered within the next two weeks¹¹.

The draft initiative proposes the definition of the main terms, considering making a distinction between demining and humanitarian demining, and the protection of affected persons. It suggests the procedure and measures of humanitarian demining (including the regulation of dual-use goods) simultaneously providing the persons involved with social insurance, pension payment, access to health care and single-pay assistance in case of death or obtaining disability compensation payment.

The draft designates the central executive body - the National Mine Action Agency – to be responsible for the overall coordination of the mine action activities and the development of a key thematic document, the National Mine Action Strategy. The roles of the other state bodies concerned are planned as follows:

- The Parliament would adopt the National Mine Action Strategy and organize regular Parliamentary hearings on its implementation;
- The Government would coordinate the activity of the National Mine Action Agency and implement the National Mine Action Strategy.

In case of adoption, the draft initiative would define the legal basis for mine action activities and the framework of their performance involving all stakeholders concerned.

⁷ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64521

⁸ Details on the types of support were provided in the July 2018 Legal Update.

⁹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64537

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64593

¹¹ Links to each of alternative drafts available online (in Ukrainian):

http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10009&num_s=2&num=9080&date1=&date2=&name_zp=&out_type=&id=

Alternative draft laws regulate the same scope of issues, but provide different outlooks on the establishment of a national mine action authority and on the distribution of functions between the central and the local state authorities.

Draft state budget for 2019

On 15 September, the Government registered the draft law #9000¹² proposing the estimated state budget for 2019. The main protection-related sums¹³ are listed below:

Overall state budget calculations	
Income	1.008.375.099,7
Expenditures	1.094.368.288,1
Credits return	9.728.634,9
Credits given	13.724.766,5
Limit of deficit	89.989.320,0

The following findings concern certain elements of the work of UNHCR:

- The proposed allocation for the Ministry of the Temporarily Occupied Territories has decreased by 15%. A significant proportion of its budget (59%) is dedicated to the protection of persons deprived of liberty and their families in areas outside the Ukrainian government's control. The Ministry's proposed budget includes 10 mln UAH (~\$357,000) for support to housing of IDPs and 5 mln UAH (~\$179,000) to be allocated for mine risk education.
- While the proposed allocation for the Ministry of Social Policy has slightly increased, the amount for monthly financial assistance to IDPs (including to subsidize housing) has decreased slightly, but still amounts to \$109 mln. The Ministry proposes a new allocation of \$893,000 for housing support to IDPs who are veterans of the conflict.
- The proposed allocation for the Pension Fund is an increase of nearly 20%, up to \$5.95 bln¹⁴.
- The proposed allocations for health and education represent increases of 16% for the Ministry of Education and 29% for the Ministry of Health. The budget of each respective ministry is proposed at about \$1.3 bn.
- The Ministry of Justice's budget would also increase, including a separate increase by 38% (to \$26 mln) for the Free Legal Aid Centers
- For the Ministry of Regional Development, the proposed budget decreases. The proposed allocation for affordable housing programs is the same as last year, an insufficient \$3.6 mln.
- There are increases in the funding of: the Ministry of Defence by 17% (up to \$3.6 bln), the State Emergency Services by 16% to \$480 mln, the State Migration Service by 52% to \$156 mln, and the State Border Guard Service by 16% to \$386 mln.

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64598

¹³ The sums are reflected in thousands UAH

¹⁴ According to the available information, in 2018 there is a considerable deficit of the Pension Fund budget, due to the need to pay out accumulated debts to IDPs and conflict-affected population. Therefore, such an increase is expected, but may not cover all the needs.

Although, it is too early to draw conclusions, a preliminary analysis suggests the following:

- The preservation of the amount of financial monthly assistance to IDPs (including for subsidizing housing expenses) demonstrates that there is a lack of focus on durable solutions for IDPs. Although there are some additional budget lines aimed at resolving housing issues, they are not proportionate to the existing needs;
- There is a move towards strengthening of the defence sector, as well as capacitating the border guards, the emergency and the migration services workers, which is an indicator of prioritizing the security sector. At the same time, increasing the budget for free legal aid may hint at building stronger rule of law and legal awareness in the society.

UNHCR will aim at advocating for prioritization of durable solutions for IDPs in the budgeting process.

Introduction of a Statelessness Determination Procedure in Ukraine

On 21 September, the draft law #9123¹⁵ that would introduce a Statelessness Determination Procedure (SDP) in Ukraine was registered with the Parliament.

The draft law foresees the main following elements:

- The applicants to the procedure would be documented with an ID issued by the State Migration Service (SMS) that would enable them to reside legally on the territory of Ukraine. The initial validity of the ID is of six months and is subject to an extension of up to twelve months or during the appeal period;
- The procedure would consist in an interview with the applicant with clear guidance on the burden of proof between the applicant and the SMS. Among others, the SMS would receive the competence to directly collect information from the applicant's place of birth, domicile or country of its family members' citizenship. A delay of 20 working days is foreseen for the submission of an appeal on the SMS decision to the administrative courts;
- The applicants would benefit from the services of a free of charge interpreter (or translator for essential documents) if necessary, as well as from the services of free of charge secondary legal assistance to be provided by the Free Legal Aid Centers lawyers and advocates; access to free justice is also ensured with specific provisions exempting applicants from court fees on appeal against SMS rejections;
- Following UNHCR lobbying, amendments to the Law on Employment of Population are also included in the above mentioned draft law that would enable recognized stateless persons to immediately work legally in the country without having to apply for a working permit;
- The applicants who would be granted the status of a stateless person in Ukraine following the procedure would be eligible to apply for naturalization 7 years after the recognition decision.

UNHCR will lobby for the adoption of the draft law and will monitor further developments.

¹⁵ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64673

Other Important Developments

Amendments to the Law on Free Legal Aid entered into force, enabling the beneficiaries to continue being represented by the lawyers of the Free Legal Aid Centers

On 28.08.2018 entered into force the law № 2475-VIII "On Amending Certain Legislative Acts of Ukraine Concerning Creation of Economic Preconditions for Strengthening the Protection of the Right of the Child to Proper Maintenance" (dated 3.07.2018)¹⁶ which i.a. amended the Law on Free Legal Aid.

As per amendments to Article 14 of the Law, free secondary legal aid to individuals will be provided no more than 6 times during one budget year and no more than upon six orders issued by the Free Legal Aid Centers (FLAC).

As per amendments to Art. 21 of the Law, in particular cases, the interests of the clients in court can be represented by the FLAC system staff (i.e. lawyers and not advocates in contractual relation with the FLAC). The FLAC may authorize its experts to assist in disputes arising, i.a., from labor relations, disputes concerning the protection of social rights, on elections and referendums, on minor disputes, on representation of minors and persons recognized as incapacitated by the court or whose capacity is limited, or for drafting procedural documents (including appeals). The power of the FLAC staff to provide free secondary legal assistance, as a representative of the subject of free secondary legal aid shall be confirmed by the Center's order and power of attorney.

The amendments to the Law also specify the procedure for the termination of the provision of free legal aid, which was not previously regulated. A list of grounds (with the appropriate procedure) is presented for the replacement of lawyers or employees of the FLAC and, among others, include the change in the jurisdiction of the proceeding or the investigation of a criminal offense, the refusal of a lawyer to execute the order on the grounds provided by law, etc. In addition, the improper performance by the attorney of its obligations under the terms of the contract is a reason for his/her replacement and exclusion from the Register of lawyers who provide free legal assistance.

Final decision of the Supreme Court on the pension-related model case

On 04 September, the Grand Chamber of the Supreme Court of Ukraine examined the appeal in the model case¹⁷ submitted by the Pension Fund department in Bakhmut requesting the Court to cancel its previous decision and adopt a new one – on the rejection to satisfy the initial claim.

The Grand Chamber dismissed the appeal and supported its previous decision. Although this decision allows for quicker consideration of pension related cases in the first instance courts, there were no subsequent steps of the executive authorities in order to address the core of the problem, in particular, the issue of suspension of pensions based on the Cabinet of Ministers Resolution #365.

Simplifying the procedure of temporary change of voting address

¹⁶ The full text available online (in Ukrainian): <http://zakon.rada.gov.ua/laws/show/2475-19#n165>

¹⁷ Details on its content are in the Legal Update for May 2018

On 05 September, the Central Election Commission adopted its Regulation #129¹⁸ on simplifying the procedure of temporary change of voting address for the individuals who have a permanent residence registration in the NGCA [TOT of Donetsk and Luhansk oblasts]¹⁹.

Similarly to the conditions developed for the individuals with residence registration in Crimea (adopted on 9 April 2014), the persons with residence registration in NGCA are not obliged to provide evidence for the need to change the voting address (e.g. IDP certificate).

This Regulation applies exclusively to the presidential and parliamentary elections and the All-Ukraine referendum. It is not applicable to the local elections and the election of MPs from the majority constituency.

The adopted initiative would facilitate the protection of election rights of all the individuals registered in NGCA (IDPs and those residing in NGCA). However, as the Presidential Order defining the list of TOT rayons, cities and villages, is not adopted, it may cause difficulties for identifying the settlements considered as being included in the TOT for the purpose of participation in the elections. From a strictly legal point of view, the current list of settlements not controlled by the Government of Ukraine (Cabinet of Ministers Decree 1085-r) does not equate the “temporarily occupied territories” as provided for in the Law #2268. Therefore, there might exist formal grounds for rejecting participation even in the nation-wide elections for individuals with residence registration in the NGCA.

In this regard, it is worth recalling the decision of the Supreme Court of Ukraine of 25 July²⁰ recognizing the IDP registration in GCA as being temporary, which creates no basis for the participation in the local elections. Only those constantly residing in GCA and being registered there enjoy the right to participate in the local elections.

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¹⁸ The full text available online (in Ukrainian): http://www.cvk.gov.ua/news/news_05092018.htm

¹⁹ The terminology “Temporarily occupied territories” is quoted from the official legal act and does not reflect UNHCR position. It is important to use it here since there is a link between the participation in elections and the definition of the TOT in Donetsk and Luhansk regions to be provided for in a Presidential Decree.

²⁰ The full text available online (in Ukrainian): <http://www.reyestr.court.gov.ua/Review/75544764>