

Legislative Update

UNHCR update on displacement-related legislation | November 2018

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Adopted legislation

Martial law in ten regions of Ukraine

On 26 November, addressing the consequences of the incidents that occurred in the Azov Sea on 25 November¹, guided by the respective decision of the National Security and Defence Council, the President of Ukraine announced a martial law² which was supported by the Verkhovna Rada.

The martial law is introduced in ten³ regions for a period of a month, from 26 November until 26 December 2018. In order to ensure national security, it allows armed forces and law enforcement bodies to address any hostilities immediately. It foresees the possibility to restrict some human rights (including the rights to housing, to privacy of the correspondence, to private life, to freedom of movement, to freedom of thought, to freedom of association, to private property and the right to labour). In case of human rights restrictions that would affect the Ukraine's obligations under international treaties, the Ministry of Foreign Affairs (MFA) should notify the relevant international institutions⁴ about the reasons and the scope of the derogations.

To date, no limitations were introduced but the situation requires constant monitoring as the rights of conflict-affected populations and other persons of concern of UNHCR could be threatened, including the possibility to seek and enjoy asylum in Ukraine.

¹ Twenty-four Ukrainian servicemen who were on three Ukrainian military ships that came into collision with Russian ships were arrested and transferred to Crimea. According to some sources, they would currently be in Moscow.

² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65008, <https://www.president.gov.ua/documents/3932018-25594>

³ These regions are Vinnytsia, Luhansk, Mykolaiv, Odesa, Sumy, Kharkiv, Chernihiv, Donetsk, Zaporizhzhia, Kherson, as well as internal waters of the Azov-Kerch basin

⁴ UN Secretary General under International Covenant on Civil and Political Rights and the Secretary General of the Council of Europe under European Convention on Human Rights

Order on compulsory evacuation from prisons located near the hostilities' sites

On 7 November, the Government adopted its Resolution #934⁵ defining the order of compulsory evacuation in case of martial law of individuals apprehended in a pre-trial stage and individuals sentenced to prison on criminal charges, as well as servicemen in detention from institutions located close to areas of hostilities to similar institutions at the safe areas.

The Ministry of Justice, the Service of Justice of the Armed Forces of Ukraine, the National Police and the State Security Service (SBU) will be responsible for the evacuation.

The Order lays out detailed instructions on the organization and implementation of evacuations as well as defines responsibilities of the abovementioned actors.

The Order may prevent the situations similar to those that happened in 2014-2015 when arrested individuals remained in institutions and facilities at territories over which the government lost control. Released from detention after completion of their sentences, such individuals face a risk of repeated apprehension after return to the controlled territory until a judicial assessment of the legality of the release. In case of compulsory evacuation, the government would remain in control over such individuals and execution of their punishments, as well as their protection from the effect of hostilities would be ensured.

Subvention to the local budgets in the East

On 14 November, the Government adopted its Regulation #857-p⁶ dividing subvention from the State budget between the local budgets in the east of Ukraine to support territories affected by the armed conflict. The Ministry for Temporarily Occupied Territories and Internally Displaced Persons (the MinTOT) is responsible for consenting the mentioned division with the Parliamentary Budgetary Committee.

This is the second⁷ subvention to conflict-affected territories covering several settlements of Popasniansky rayon (Luhansk oblast). The total sum amounts to 2897,178 thousand UAH.

The granting of the subvention will contribute to the overall development of the territories affected by the armed conflict by solving displacement-related problems (e.g., as it was already the case in 2017, for housing issues and administrative services). Such financial contributions to the local budgets may lift any possible social tensions and facilitate the integration of internally displaced persons (IDP) into the host communities.

Action plan to the IDP integration and durable solutions strategy

On 21 November, the Government adopted the Action plan to the IDP Integration and Durable Solutions Strategy⁸.

The Plan envisages the following:

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-mih-kategorij-naselennya-v-razi-vvedennya-pravovogo-rezhimu-voyennogo-stanu>

⁶ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-rozpodil-u-2018-roci-sbvenciyi-z-derzhavnogo-byudzhetu-miscevim-byudzheta-na-zdijsnennya-zahodiv-shchodo-pidtrimki-teritorij-shcho-zaznali-negativnogo-vplivu-741>

⁷ Please see more details in UNHCR July Legislative Update

⁸ The full text is available online in Ukrainian: https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-planu-zahodiv-z-realizaciyi-strategiyi-integraciyi-vnutrishno-peremishchenih-osib-ta-vprovadzhennya-dovgostrokovih-rishen-shchodo-vnutrishnogo?fbclid=IwAR2Vc3fuTS0MKMKX85E8h3HPUX5_QkXhDzap2Vjx4f1J1IP3wGJP1IANc-I

- Elaboration of local integration plans is one of the first elements of the Action Plan. However, due to decentralization, implementation of this provision would require joint efforts from the side of non-governmental sector;
- A housing needs assessment is expected to be conducted every three months, based on the information submitted by local authorities;
- The elaboration of mechanisms to access social, temporary and affordable housing is expected. Some new financial instruments are envisaged, such as leasing;
- A compensation for damaged housing exclusively to IDPs (no other categories mentioned) but only “after re-gaining control over the temporarily occupied territories”. This framework provision could become a barrier in elaboration of the comprehensive compensations-related legal framework that shall cover wider range of individuals and larger geographic areas;
- Legislative amendments to ensure full access to pension for persons who renounced their IDP certificate and registered their residence in GCA ;
- Other amendments to ensure equal access to pensions and social benefits for all categories of IDPs are expected, but were not spelled out ;
- A review of the amount of the targeted monthly allowance to IDPs to take into account the increase in the minimum monthly living allowance;
- The Ministry of TOT shall work on the elaboration of integration criteria. However, the Action Plan contains no hints to assess which elements the Ministry will take into account. Monitoring of the process of integration to be conducted regularly and presented quarterly;
- Amendments to the legislation with regards to IDP voting rights, notably to ensure their inclusion into the lists of local territorial communities.

The implementation of Action Plan will require specific monitoring by UNHCR and its partners depending on their area of expertise.

Amendments to the MinTOT Regulation⁹

On 28 November, the Government adopted its Resolution #1008 introducing amendments to the MinTOT Regulation allowing the latter to collect, analyze and publish/share the data reflecting the views of physical and legal persons, international organizations, NGOs (including international) on the temporarily occupied territories (TOT)¹⁰ and their residents.

The purpose and impact of the provision and its practical meaning remains obscure and requires clarifications.

Draft legislation

Amendments to the electoral legislation

In November, two draft laws related to electoral process were registered in Parliament:

- 1) On 6 November, a group of MPs registered the draft law #9266¹¹ introducing amendments to certain legal acts on voting rights.

⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/provo-z-pitan-timchasovo-okupovanih-teritorij-ta-vnutrishno-peremishchenih-osib-ukrayini>

¹⁰ The terminology “Temporarily occupied territories” is quoted from the official legal act and does not reflect UNHCR position

¹¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64897

The draft initiative proposes the introduction of criminal liability for the failure of a Ukrainian citizen to notify the State Migration Service about the voluntary acquisition of another citizenship. It is further suggested to prohibit voting in Presidential and Parliamentary elections for individuals with dual citizenship. The respective data on dual or multiple citizenship shall be added to the State Register of Voters.

The draft initiative may result in the violation of civil and political rights as spelled out in international treaties and the Constitution of Ukraine. In the particular situation of residents of Crimea, there might be specific problems in proving voluntary or non-voluntary character of the acquisition of another citizenship.

- 2) On 19 November, a group of MPs registered the draft law #9301¹² introducing amendments to the Law on Presidential elections to ensure the participation of several categories of the population, including the individuals who have their residence registered in the “Autonomous Republic of Crimea or temporarily occupied territories of Donetsk and Luhansk oblasts”.

The draft initiative allows for the registration of a different voting place without change of the voting address in the State Registry of Voters. A motivated application shall be submitted no later than 5 days before the elections alongside with a document confirming the factual place of residence that can be one of the following:

- Rental agreement with the address of the factual place of residence;
- Document confirming entrepreneurial services in the factual place of residence issued by state/local self-government body;
- Document confirming property rights on the factual place of residence;
- IDP certificate;
- Document confirming the provision of nursing services to a person registered in the factual place of residence;
- Document confirming the marriage/family links with the person registered in factual place of residence.

If adopted, the draft law would invalidate the September decision of the Central Electoral Commission which exempted individuals with their residence registration in the non-government controlled areas (NGCA) from the obligation to provide evidence for the need to change the voting address (e.g. an IDP certificate or any other document proving factual place of residence at the controlled part of the territory)¹³. So, their participation in elections currently requires only application to any local electoral commission with the passport at least five days prior to elections with request to vote there (change the voting address). Therefore, in case of draft law#9301 entering into force, residents of NGCA/Crimea could be limited in their right to participate in the Presidential elections.

Amendments to Article 10 of IDP Law

On 16 November, a group of MPs registered the draft law #9298¹⁴ introducing amendment to Article 10 of the Law on ensuring the rights and freedoms of IDPs.

The draft initiative suggests the following technical amendment: replacing the “return of persons to their habitual place of residence and their reintegration” by “creating the conditions for voluntary return to their habitual place of residence or their integration in the new place of residence in Ukraine”.

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64954

¹³ Details were provided for in the September Legislative Update.

¹⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64949

In addition to the technical amendment specified above, an alternative draft law #9298-1¹⁵ suggests tasking the Government to undertake all necessary actions to ensure that “the aggressor-state compensates for all the damaged or destroyed housing in the course of the hostilities”. This draft initiative practically eliminates the possibility to receive compensation for damaged or destroyed housing as the government of Ukraine will not bear responsibility for the inaction of another state.

[Amendments to Law on the TOT of Crimea regarding the jurisdiction over crimes occurred there](#)

On 23 November, a group of MPs registered the draft law #9331¹⁶ introducing amendments to the Law on ensuring the rights and freedoms of the citizens and the legal regime of the “temporarily occupied territory of Crimea”.

The draft initiative introduces technical amendments to the names of the courts already exercising their jurisdiction over crimes committed in Crimea, with a re-definition of the jurisdiction in accordance with the Code of Criminal Procedure. If adopted, the draft law may simplify criminal proceedings in relation to facts occurring in Crimea. Similar legislative initiative #8577 was registered in July 2018: It aims at allowing the Prosecution Service for the Autonomous Republic of Crimea and the Main Division of the SBU for the Autonomous Republic of Crimea to deal with the criminal cases occurred in the peninsula immediately after receiving information thereon without a referral from the General Prosecutor’s Office.

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¹⁵ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65033

¹⁶ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64997

