

Legislative Update

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Draft legislation

Recalculation of taxes paid in Donetsk and Luhansk oblasts

On 16 October, the draft law #2273¹ was registered in Parliament, suggesting amendments to the transitional provisions of the Budget Code on recalculation of taxes paid in the Donetsk and Luhansk oblasts. The draft law aims at strengthening support to local budgets of the governmental controlled areas (GCA) of the two conflict-affected oblasts:

- 70% of the personal income tax collected locally shall be directed to the general budgets of the oblast centers, the rayon budgets and the budgets of amalgamated communities in the Donetsk and Luhansk oblasts (depending on where the income has been generated); and 30% shall be directed to the Donetsk and Luhansk oblast budgets;
- 20% of the environmental tax collected locally shall be directed to the general fund of the State Budget of Ukraine, while 80% shall go to the special fund of the Donetsk and Luhansk oblasts' local budgets.

This may result in increased revenues for local budgets at different levels in the Donetsk and Luhansk oblasts which could contribute to strengthening the capacity of local authorities to respond to different issues that arise at the local level. In particular, this could contribute to the improvement of infrastructure, access to public services or other activities related to overcoming the consequences of the conflict.

Compensation for destroyed or damaged housing (draft law and draft regulations)

The section below describes recent legal initiatives on introducing a framework on compensation for damaged or destroyed housing. While the Ministry for Veterans, Temporarily Occupied Territories and IDPs (the

¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67100

MinVetTOT) is focusing on further elaboration of by-laws developing existing Governmental instrument on financial assistance/compensation², MPs suggest an overall algorithm for compensatory mechanism through draft law. If adopted, a thematic law would require unification of all available compensation tools in line with its provisions on criteria and amount of compensation awarded.

Draft law 2286

On 18 October, MPs registered in the Verkhovna Rada the draft law #2286³, suggesting introduction of the compensatory mechanism for damaged or destroyed housing that occurred during the Anti-Terrorist Operation (ATO) / Joint Forces Operation (JFO).

The proposed modes of compensation include compensation for fully destroyed housing, as well as repair works to be covered from local budgets and a special funds allocated by the Ministry on Development of Communities and Territories (former Ministry for Regional Development). The Ministry of Finance should elaborate a special order on pulling funding from other sources, including from the donor community.

The draft defines three categories of damage:

- Fully destroyed (the first category, prioritized for compensation);
- Damaged housing in need of large scale structural repairs (the second category);
- Damaged housing requiring small-scale repairs (the third category, to be compensated in the last turn).

Special locally established commissions would identify the category of damage. They would assess the situation at each site and make a decision on the amount to be compensated.

The assessment process starts with the application to a respective commission (owner/inheritor(s)) and the submission of the relevant documents confirming the property rights. The commission is to assess the situation within one month after the application and take its decision. The final decision on the compensation is to be endorsed by the Ministry on Development of Communities and Territories, while the Ministry of Finance will transfer the respective amount to the local budget.

The Ministry on Development of Communities and Territories is also responsible for maintaining a register of damaged/destroyed housing.

This positive development may be a first step towards regulating compensation for destroyed or damaged property in the conflict zone in a timely and fair manner.

Draft Regulations on financial assistance/compensation for damaged/destroyed housing

On 22 October, the MinVetTOT announced e-consultations with the civil society regarding draft provisions related to compensations for destroyed and damaged housing in the east of the country (see Government Resolution #947 of 18 December 2013⁴ amended by Resolution #623⁵ of 10 July 2019)⁶.

Those draft amendments under discussion suggest four categories of destroyed and damaged housing:

² Please see more details in 2019 July UNHCR Legislative Update

³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67129

⁴ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/947-2013-%D0%BF>

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-t100719?fbclid=IwAR0j36D8OSdPoBh0ChgQaRMQGIH3hj2wLkfSP17JG001okRNaGgUc30xDGw>

⁶ Detailed description of Resolution 947 is available in 2019 Legislative Update for July (in Ukrainian): https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/08/2019-07-Legislative-Update_UKR.pdf and (in English): https://reliefweb.int/sites/reliefweb.int/files/resources/2019-07-Legislative-Update_eng.pdf

- First category – fully destroyed housing (to be compensated for based on a decision by a special commission to be established by each oblast state administration⁷. The key precondition for receiving a compensation is the voluntary transfer⁸ of ownership rights to the destroyed housing to local authorities/military-civil administrations as per the Code of Civil Protection);
- Second category – partially destroyed housing requiring structural repairs (to be provided with financial assistance assigned by the local executive bodies);
- Third category – damaged housing requiring running repairs (to be provided with financial assistance assigned by the local executive bodies);
- Fourth category – partially damaged housing requiring replacement of doors and windows (to be provided with financial assistance assigned by the local executive bodies);

Housing sold, purchased, exchanged or transferred by gift after 14 April 2014 cannot be considered for financial assistance/compensation.

The proposed amendments suggest that the priority in compensation is to be given to those individuals who remained residing in the same settlements where their destroyed property is located. Those IDPs who moved elsewhere in the country will be considered as a second priority line.

The draft contains multiple technical provisions concerning a set of documents to be submitted along with the application for the financial assistance/compensation and the distribution of responsibilities between the central and local state authorities.

This positive development may contribute to the enhanced protection of some IDPs and certain categories of the conflict-affected population. UNHCR and its partners provided comments and expert support in elaboration and improvement of this important document.

Amendments to the IDP Law

On 22 and 29 October, MPs registered in the Verkhovna Rada two draft laws suggesting amendments to the Law on IDPs, registered under #2297⁹ and #2329¹⁰:

- The draft initiative #2297 is a mirror of the draft law #10058 registered by the Verkhovna Rada with previous composition. It suggests embedding in the law the criteria of eligibility for targeted assistance to IDPs. The major concern regarding this draft is that it establishes a life-long possibility to access targeted assistance which might prevent IDPs from reaching self-reliance and sustainability (a detailed description is available in the 2019 Legislative Update for February¹¹).
- The draft initiative #2329 proposes adding a specific article on exempting IDPs from liability for failure to meet certain financial obligations, in particular debts grown under loan agreements. The draft suggests a ceiling in the possible accumulated debt. No sanctions (fines, penalties, inflation index) would be applicable under such loan agreements. The suggested provisions would apply only to those debts which appeared after the launch of the anti-terrorist operation (14 April 2014) and under loan agreements which were concluded before this date.

Draft law on statelessness determination procedure

⁷ The amalgamated Ministry is in charge of elaborating a typical "terms of reference" of their functioning

⁸ The Government is in charge of elaborating the order of such transfer

⁹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67162

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67208

¹¹ The full text available online: <https://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=5cc1a74b7&skip=0&query=legislative%20update>

On 29 October, MPs registered in the Verkhovna Rada the draft law #2335¹² suggesting the introduction of a statelessness determination procedure (SDP) in Ukraine. The registered initiative mirrors the draft initiative #9123 registered during the previous Parliamentary session (a detailed description of its content is available in the 2018 Legislative Update for September¹³).

The key provisions are:

- After positive completion of the procedure, an applicant will be documented with an ID issued by the State Migration Service (SMS). The ID containing biometric data is confirming the legality of residence in Ukraine;
- According to the procedure, an interview will be conducted between an applicant and the SMS. The applicant may appeal the negative decision in court;
- The draft guarantees free of charge interpretation services and secondary free legal aid;
- It ensures a simplified access to employment opportunities without a working permit.

UNHCR advocates for the adoption of this draft law, since it will contribute to the greater protection of rights of stateless individuals in Ukraine.

List of goods prohibited for transfer across the line of contact

On 28 October, the MinVetTOT announced e-consultations with the civil society regarding the list of goods/items prohibited for transfer across the line of contact¹⁴ (LoC) following the adoption of the Government Resolution #815 in July 2019¹⁵.

The adoption of the list of items/goods prohibited for transfer is a positive step, since it eliminates the previously existing incomplete lists of “allowed items”. According to the draft provisions, the transfer of goods that are not prohibited from GCA to NGCA has no limitation, while from NGCA to GCA the amount is limited to 75 kg or the equivalent of 10 000 UAH. At the same time, in case of moving for permanent residence from NGCA to GCA, no weight or financial restrictions will be applicable.

Another positive development is the fact that draft provisions aim at regulating the transfer of cash, setting the limit to 10 000 UAH or an equivalent amount in foreign currency. In previous regulations, the issue of cash was not regulated at all which resulted in multiple abuses.

However, the suggested draft Order contains a list of “personal items”, which might result in situations where individuals crossing the line of contact would be limited in their possibility to take items outside of the very limited scope of the “personal items”. The list of personal items is a mirror of the respective provisions of the Customs Code of Ukraine, designed for implementation at the international borders. During consultations with responsible state authorities, UNHCR and its partners were assured that this indicative list shall not cause problems since all items outside the scope of the “personal items list” would be considered goods. After entry into force of these provisions, UNHCR and partners will monitor their implementation on the ground in order to identify any gaps or risks.

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67217

¹³ The full text available online (in Ukrainian): https://www.unhcr.org/ua/wp-content/uploads/sites/38/2018/10/2018-09-Legislative-Update_-_final_UA.pdf

¹⁴ The full text available online (in Ukrainian): https://mtot.gov.ua/ua/28102019-mtot-povidomljae-pro-provedennja-elektronnih-konsultaci_2164752135655261395

¹⁵ Detailed description of its content is available in 2019 Legislative Updates for July and August. The full text available online in Ukrainian: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2019/09/2019-08-Legislative-Update_Ukr.pdf and in English: https://reliefweb.int/sites/reliefweb.int/files/resources/2019_08_legislative_update_eng.pdf

Other developments

Functionality of the Ministry for Veterans, Temporarily Occupied Territories and IDPs

On 16 October¹⁶, the Government adopted its Resolution # 887¹⁷, introducing Regulations on the Ministry for Veterans, Temporarily Occupied Territories and IDPs, which is the result of merging the two respective ministries. Its mandate on conflict-related issues focuses on: (i) protection of TOT¹⁸/NGCA residents and their reintegration; (ii) protection of IDPs and facilitating durable solutions; (iii) peacebuilding and application of international humanitarian law.

The Ministry still elaborates its priorities and strategic directions. UNHCR welcomes the opportunity to cooperate with the Ministry and support it in enhancing protection of displaced and conflict-affected population.

Temporary entry-exit checkpoints with TOT of Crimea for vehicles

On 28 October, the Government adopted its Resolution #890¹⁹, facilitating the ongoing process of building temporary entry-exit checkpoints (EECPs) in areas of already existing EECPs “Kalanchak” and “Chongar” at the administrative border with Crimea. Service zones will be established and equipped at EECPs. The Government introduces obligations on supporting construction works through provision of land and technical resources on central and local levels. The implementation of the project will contribute to the improvement of conditions for crossing the administrative border with Crimea. It is also expected to simplify access to administrative services for residents of Crimea, since multiple administrative services will become available immediately at the crossing points or in their nearest proximity.

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¹⁶ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/deyaki-pitannya-budivnictva-timchasovih-konm890trolnih-punktiv-vyizdu-na-timchasovo-okupovanu-teritoriyu-ukrayiniviyzdu-z-neyi-dlya-avtomobilnogo-spoluchennya>

¹⁷ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-deyakih-aktiv-kabinetu-ministriv-t161019>

¹⁸ The terminology “Temporarily occupied territories” is quoted from the official legal act and does not reflect UNHCR position

¹⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/deyaki-pitannya-budivnictva-timchasovih-konm890trolnih-punktiv-vyizdu-na-timchasovo-okupovanu-teritoriyu-ukrayiniviyzdu-z-neyi-dlya-avtomobilnogo-spoluchennya>