

Legislative Update

UNHCR update on displacement-related legislation | April 2019

Adopted Legislation

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Adopted legislation

Law on ensuring functioning of Ukrainian as the official language

On 25 April, the Verkhovna Rada adopted the law on ensuring applicability of Ukrainian language as the official language.¹ The law sets out a mechanism to enhance the role of the Ukrainian language in all public spheres (including labour relations, education, science, culture, media, public events, health care, consumer services, documentation, etc.) while allowing persons to use any language in private communications and religious ceremonies. Implementation of the law will create opportunities for non-Ukrainian speakers to learn Ukrainian free of charge. The law contains safeguards for languages of indigenous people (in particular, Crimean Tatars) and languages of ethnic minorities residing in Ukraine. Recognized refugees who apply for naturalization may benefit from public courses of the Ukrainian language to be able to pass a language test.

Amendments to the Law on mine action in Ukraine

On 25 April, the Verkhovna Rada adopted an amendment to the Law on mine action in Ukraine², allowing direct donor funding of mine action activities. This step may facilitate donor support for humanitarian demining activities in Ukraine, with the focus on the east of Ukraine. This amendment addresses the risk identified in the original law and described in the UNHCR 2019 March Legislative Update³.

¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61994. Signing by the President is pending.

² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65719. Signing by the President is pending.

³ The full text available online (in English and Ukrainian): <https://www.humanitarianresponse.info/en/operations/ukraine/document/unhcr-ukraine-legislative-update-march-2019-%D1%96%D0%BD%D1%84%D0%BE%D1%80%D0%BC%D0%B0%D1%86%D1%96%D0%B9%D0%BD%D0%B0-%D0%B4%D0%BE%D0%B2%D1%96%D0%B4%D0%BA%D0%B0-%D1%83%D0%B2%D0%BA%D0%B1>

Ratification of the frame agreement between Ukraine and France on water supply to Mariupol

On 25 April, the Verkhovna Rada ratified the frame agreement between Ukraine and France⁴, providing a loan for an investment project regarding water supply to Mariupol. The total sum of the agreement amounts to 64 mln EUR, with 70 per cent to be loaned by France to cover goods, works and services, and 30 per cent to be allocated by Ukraine. Ukraine also will grant a sub-loan to a communal enterprise selected by the Mariupol City Council and approved by the Ministry for Temporarily Occupied Territories and IDPs (MinTOT). The ratified agreement represents a development initiative that will contribute to the satisfaction of basic needs of Mariupol's population.

Amendments to the Order on financial support to persons illegally deprived of their liberty in NGCA/TOT and their families

On 3 April, the Government adopted Resolution #275⁵ amending Resolution #328 of 18 April 2018 on "supporting persons illegally deprived of their liberty in temporarily occupied territories"⁶, as well as their families. The new Resolution gives MinTOT responsibility for implementing so-called "de-occupation measures" which are understood as data collection, analysis, information sharing and awareness raising. In particular the Resolution provides for:

- scientific and sociological research related to de-occupation;
- involvement of national and foreign academics in collecting data on human rights violations in NGCA to elaborate strategies for international litigation and international negotiations;
- conferences, forums and round tables with national and foreign experts for defining de-occupation measures;
- participation in international events for raising awareness on restoring Ukrainian territorial integrity;
- collection and/or dissemination of information related to NGCA.

The Resolution contains a provision regarding allocation of respective budget funds. The MinTOT will elaborate an action plan for the implementation of these amendments and for reallocating budget funds to cover costs related to these measures. Since no separate budget was allocated, transfer of budget funds may reduce the scope of the financial assistance⁷ available to persons illegally deprived of their liberty in NGCA and their families, which is the key purpose of Resolution #328.

Creation of the Commission on missing persons

The Government created the Commission on missing persons in accordance with Law on missing persons⁸ by adopting Decree #248-p of 10 April⁹. Creation of this Commission is an important step towards implementing the Law on missing persons. Main functions of the Commission include:

- Clarifying the fate and whereabouts of those went missing during the Anti-terrorist operation (ATO)/Joint Forces Operation (JFO), during an armed conflict, hostilities, mass gatherings, emergencies and/or other similar situations;

⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65691

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-18-kvitnya-2018-r-328->

⁶ The term "temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR's position.

⁷ Envisaged financial assistance amounts to 100000 UAH per person/family. Other types of assistance include legal aid and social rehabilitation services.

⁸ Please refer to UNHCR 2018 May Legislative Update for detailed description of Law on missing persons

⁹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-utvorennya-komisiji-z-pitan-osib-zniklih-bezvisti-za-osoblivih-obstavin>

- Coordinating activities of central and local authorities, international organizations, NGOs and searching groups involved in search of missing persons;
- Maintaining the Unified registry of missing persons;
- Elaborating legal framework on missing persons;
- Communicating with relatives of missing persons;
- Facilitating the transfer of human remains and found personal belongings of missing persons to their relatives.

The Commission shall consist¹⁰ of representatives assigned by the Parliamentary Human Rights Committee, the MinTOT, the National Police, the General Prosecution, the State Emergency Service, civil-military cooperation (CIMIC), the Anti-Terrorist Headquarters of the State Security Service, the Main Military Prosecution, the Ombudsperson's Office, the Ukrainian National Society of the Red Cross and the National War and History Museum. When operational, the Commission shall speed up the process of searching for missing persons and providing information to their relatives.

Draft legislation

Pilot exchange of housing left in NGCA

On 9 April, MPs registered in the Verkhovna Rada draft law #10208¹¹ suggesting an experiment on exchange of housing that IDPs left behind in NGCA. The draft suggests a pilot program to provide housing solutions for IDPs during the period of 2020-2022. The pilot program envisages that IDPs with housing in NGCA would exchange their homes for housing of the same or better quality in Kyrovohrad or Mykolaiv oblasts.

To participate in the program, an IDP shall apply to the oblast administration in Kropyvnytsky or Mykolaiv, specifying his/her ownership rights and the type of housing owned in NGCA. Then the respective administration shall purchase housing of the same or bigger size. To ensure that integration opportunities are attached to the housing options, the program includes linkages to employment opportunities.

Suggested financial support constitutes 250 mln UAH for housing and the same amount for employment opportunities in each oblast for the whole duration of the pilot project. It shall be covered by subventions from the state budget. If adopted, the initiative may allow testing another housing opportunity for IDPs. However, such initiatives would benefit from initial consultations with IDPs who could help identifying locations preferable to them.

Exemption of IDPs from a tourist fee

On 16 April, MPs registered in the Verkhovna Rada draft law #10234¹² proposing to exempt IDPs residing in collective centres from the tourist fee by introducing amendments to Article 268 of the Tax Code. This initiative is necessitated by the fact that per the amendments to the Tax Code of 23 November 2018 local authorities are to collect 0,5% of the minimum wage per each day of staying in hotels and other institutions of similar types¹³. Some collective centres hosting IDPs are sanatoria or hotels. Thus, residents in such centres started receiving requests to cover such charges, which for many of them is an unbearable expense. This is a timely intervention that shall result in ensuring that the overall situation of IDPs in collective centres does not deteriorate.

¹⁰ The names of the Head of the Commission as well as its members are not published yet.

¹¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65789

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65826

¹³ Since the current minimum wage is 4173 UAH per month, such "tourist fee" would constitute almost 21 UAH per day or over 600 UAH per month of stay.

Other developments

2018 Annual Report of the Ombudsperson

In April¹⁴, the Ombudsperson's Office published its 2018 Annual Report on human rights situation in Ukraine. The Report covers a variety of topics, including those pertinent to UNHCR's mandate:

- Lack of reliable displacement-related statistical data due to the following facts: (1) those residing in NGCA get registered as IDPs to ensure access to pensions and social benefits; (2) some displaced individuals never registered as IDPs; (3) individuals with repeated displacement experience (back and forth from/to NGCA) are not identified;
- Affected IDP rights:
 - Access to state benefits is restricted by different governmental policies (linkage of pension rights to registration as an IDP; systems of verifying residence through home visits and the database on crossing the 'contact line; lack of a mechanism of paying pensions to persons residing in NGCA; no procedure for paying accumulated pension debts; the issue with personal data protection when Ukraine requests the Russian Federation to send hard copies of pension files for residents of the Autonomous Republic of Crimea);
 - property rights (affected by the lack of proper housing solutions for IDPs; lack of a compensation mechanism for damaged/destroyed property and corresponding damage assessment methodology; lack of financial opportunities to purchase housing);
 - voting rights (no opportunity for IDPs to vote in local elections and for candidates for majoritarian seats during parliamentary elections);
 - freedom of movement (affected by long queues and poor infrastructure at entry-exit checkpoints (EECPs) in the east, difficulties in crossing line of contact for elderly persons, identifications in Oshchadbank, and impossibility to prove residence registration in NGCA);
 - access to education (affected by the lack of universities' staff during the enrollment season);
- Affected rights of TOT/NGCA residents:
 - liberty and personal security;
 - freedom of speech;
 - freedom of religion;
 - right to safe environment;
 - property rights;
 - right to health and social protection;
- Problems of refugees and asylum-seekers:
 - Lack of mechanism on using interpreters in criminal proceedings with refugees and migrants;
 - No possibility to sign a medical declaration with doctors to ensure proper treatment of children born from refugees or asylum-seekers;
- Problems of stateless persons:

¹⁴ The full text available online (in Ukrainian): <http://www.ombudsman.gov.ua/ua/page/secretariat/docs/presentations/&page=4>

- Lack of possibility to sign a medical declaration with doctors to ensure proper treatment of children born from stateless persons¹⁵.

More details on these issues are available in a separate note that can be shared upon request.

Supreme Court's decision on documents issued by defacto authorities

In mid-April, the Supreme Court publicised its decision issued on 22 October 2018¹⁶ stating that in exceptional cases leading to serious human rights violations and/or limitations the documents issued by de facto authorities at NGCA should be taken into account. The Supreme Court issued this decision in relation to documents proving necessary work experience and work conditions for the assignment of special pensions. Currently, in NGCA such documents may be issued by enterprises with stamps containing logos and other elements of the de facto authorities. The Supreme Court's reasoning was based in international jurisprudence¹⁷. According to the Supreme Court, the recognition of such documents does not amount to the recognition of the de facto authorities. If such an approach is replicated in the jurisprudence at all levels, it may contribute to the protection of pension-related rights of individuals who worked at the territories currently outside of the governmental control. Meanwhile, it should be noted that this development marks a concrete case, failing to change the legislation and automatically improve existing situation. Similarly, adopted decision provides no solution for administrative procedure of birth registration.

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¹⁵ NB: Ombudsperson's Office assesses stateless persons only as former USSR citizens failed to obtain Ukrainian passports

¹⁶ The full text available online (in Ukrainian):

http://www.reyestr.court.gov.ua/Review/77310529?fbclid=IwAR1aZUcFdjQaMvThmgO_q_Fa1c_INCEubKqkejFvNTZnKVkFi0XjXST-beg

¹⁷ The judges referred to Namibia exception" elaborated by International Court of Justice (ICJ) in its advisory opinion *Legal consequences for states of the continued presence of South Africa in Namibia* and European Court of Human Rights (ECtHR) approach expressed in *Loizidou v. Turkey*, *Cyprus v. Turkey* and *Mozer v. the Republic of Moldova and Russia* cases.