



LEGAL ALERT

April 2017

1. Legislative Amendments Concerning Protection of Rights of Internally Displaced Persons: Draft Laws 2481, 4022a and 4550 came into force

During the reporting month three draft laws bearing substantial consequences for the conflict-affected population came into force. Two of them amend the main Law on IDPs rights and the Law on freedom of movement and free choice of residence in Ukraine. The third Draft Law modifies one of the housing programs making it available for vulnerable categories of population, including internally displaced persons.

a) Law of Ukraine No. 1972 (draft law No. 2481) regulates issue of utility tariffs for IDPs living in collective centers.

The Law was adopted by Parliament on 23 March 2017, signed by the President, and came into force on 20 April.

Background: Currently IDPs who live in IDP collective centers (that is state owned and private sanatoriums, dormitories etc. that host displaced persons) should pay for their utilities according to business tariffs that are applied for legal entities/companies. Business tariffs are reported to be several times higher than residential tariffs.

Amendment 1: The Law sets forth that IDPs who reside in IDP collective centers have the right to pay for all utilities under the tariffs set out for individuals/population.

Amendment 2: The draft law also expressly states that displaced persons, when registering as IDPs, can indicate collective centers' addresses as their actual addresses.

This amendment may simplify IDP registration process as Departments of Social Protection (authority responsible for IDP registration) supposedly would be obliged to register actual place of residence of IDPs at the collective centers' addresses (today implementation of these issues is not unified and varies at region/district level).

Additionally, the draft law sets forth that:

- (a) State should guarantee the exercise of the above right,
- (b) departments of social protections are obliged (upon request) to provide owners of IDP collective centers with certificates which include info on numbers of IDPs living in a particular IDP collective center
- (c) legal entities (owners of IDP collective centers) should inform utilities' suppliers that premises are used as IDP collective center
- (d) such legal entities (owners of IDP collective centers) should also install counters to measure exact volumes of all types of utilities used by IDPs
- (e) utilities' suppliers cannot apply business tariffs for owners of property which are used as IDP collective centers

f) owners of IDP collective centers can get reimbursement for utility costs from IDPs only if the sum was accrued under the tariffs set out for individuals/population. UNHCR reports that at least 6500 IDPs are currently living in collective centers.

DRC was one of the first humanitarian actors who voiced concerns for IDPs who live in collective centers and pay for utilities under business tariffs. Since August 2015, DRC has been conducting different advocacy activities on this matter.

Therefore in general we strongly support legislative initiatives that allow IDPs living in collective centers to pay for utilities under fair tariffs. On the other hand we would be monitoring to see any possibility of procedural complications to frustrate the new provision of the law. One particular area of concern might stem from the delay in adjustments of bylaws required to give full effect to the new legal provision.

b) Law of Ukraine No. 1973 (draft law No. 4022a) removes IDP certificate from the list of documents which confirm place of temporary residence (a place where a person lives less than 6 months in a year)

The Law was adopted by Parliament on 23 March 2017, signed by the President, and came into force on 16 April.

The old provision treated IDP certificate as a proof of "*temporary residence*", thus creating the legal obstacle in using it as a proof of "place of residence" which is deemed to be a place where a person has lived more than 6 months.

Authors also say the draft law provision will preclude any possibility of reintroduction of State Migration Service (SMS) stamp on top of an IDP certificate. Use of SMS stamp on an IDP certificate, which was applicable for some time in the past, was considered as an unnecessary and time consuming additional bureaucratic layer.

Additionally, the draft law removes contradiction with the main Law on IDPs which expressly provides that IDP certificate confirms place of residence of displaced person (that is a place where person lives 6 months or more). This has been an advocacy agenda for long to consider IDP certificate address as a confirmation of place of residence, which seems to be finally resolved.

a) Law of Ukraine No. 1954 (draft law 4550) on housing programs for IDPs and combatants

On 07 April 2017, the President signed the Law on Introducing Amendments to Article 4 of the Law of Ukraine on Prevention of the World Financial Crisis Influence on the Development of the Construction Industry and Housing Construction Regarding the Implementation of State Housing Programs. The amended added ATO combatants, disabled war veterans and their families, and IDPs as target groups for affordable housing.

The law modifies the existing affordable housing where the state contributes 30% of the price. Under the current amendment, the state will cover 50%. The participants can either pay their 50% contribution in cash or take a 30 year mortgage at 7% annual interest.

Funding for the 50/50 modality is meant to be allocated from the State Target Socioeconomic Program for Construction (Acquisition) of Affordable Housing for 2010-2017. It is important to note that while the program was used to benefit 3 621 families during 2010-2014, no funding was available for the program from state budget since 2015. Moreover, the program, itself expires this year and, thus, should be subject to prolongation. The proponents of the

draft law expect the local budgets to carry the bigger part of the financial burden under the 50/50 modality.

Apart from being registered as an IDP, the procedure and conditions for provision of affordable housing under 50/50 modality are the same as under the 30/70 one and can be found in the CMU Resolution No. 140 dated 11 February 2009. Specifically:

- IDP should register with the local authorities in the housing waiting list as the one who requires improvement of housing conditions;
- Average monthly income of the family calculated per person should not exceed 5 times the average monthly salary in the respective region;
- State financial assistance is provided for property of fixed size – 21 m² per each family member + additionally 10,5 m² per family. Extra square meters are to be paid at the IDP's own expense;
- The housing must be bought on the primary market - newly constructed houses or those under construction both qualify under the program;
- Fixed price for construction of 1 m² of housing prescribed by the procedure of allocation of money designated in the state budget for the respective year for provision of state assistance for construction of affordable housing, which is usually lower than real market price. The difference between the price fixed by the state and real market price is to be paid by an IDP.

The proposed 50/50 modality raises the following concerns:

- No fund is available so far for program implementation;
- Almost 670 000 families are currently in the waiting list under the 30/70 modality;
- A separate waiting list should be created for the 50/50 modality beneficiaries in order for the IDP to have a realistic chance of getting benefit from the program;
- Existing eligibility criteria requires the applicant to be in need of improvement of housing conditions (housing smaller than envisaged standard for the region, poor sanitary or technical conditions, etc.). This criterion may technically exclude some IDPs for participation.
- No beneficiary' prioritization criteria set as between ATO combatants and IDPs;
- No procedure set as to the geographical region where IDPs should be included in the waiting list. IDPs are often denied state services in GCA on the ground of their passport's stamp of permanent residence in NGCA.
- Even though there is no mention in the law, there are official discourses by the authorities that prescribe a condition that IDPs should not have property in GCA to qualify for 50/50 modality.

We will keep you updated on the new developments in this regard in our following Legal Alerts. Full text of the draft laws in Ukrainian may be found here: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=58935; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=54559; http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59793.

2. New version of the Draft Law on Temporarily Occupied Territories registered with the Parliament

On 12 April 2017, the Parliament committee on state building, regional policy and local government, which was designated as the main committee to consider the draft law No 3593-D "On temporarily occupied territory of Ukraine", recommended the Parliament to withdraw this draft law - a position that was firmly taken by DRC since September 2016, and expressed in a Joint statement as of 24 October and the Position Paper on Draft law 3593-D (see the links below).

<http://www.ngoforum.org.ua/wp-content/uploads/2016/06/Joint-statement-on-the-draft-law-3593d.pdf>; <http://www.ngoforum.org.ua/several-of-ukraine-ngo-forum-members-has-developed-and-endorsed-a-position-paper-on-draft-law-%E2%84%963593-d/>

On 20 April 2017 a group of 27 Members of the Parliament headed by Oksana Syroid, Yuliya Tymoshenko and Oleh Lyashko have registered a **new Draft Law No 6400 On Territories, Temporarily Occupied by Russian Federation**.

This was prompted by the advocacy efforts of the humanitarian community who has been opposing the Draft Law 3593-D since October 2016. The new Draft Law incorporates some of the comments that were voiced in working group, and no longer contains "Peacebuilding and Reconciliation" and "De-Occupation" chapters that were present in the Draft Law 3593-D.

Language and wording of the new Draft Law (6400) safely allows to assume that the new draft was built on the old Draft Law 3595-D.

The Draft 6400 contains three chapters: General Provisions and Terminology; Legal Status of the Territories Temporarily Occupied by Russian Federation, and Measures to Ensure National Security. There are also Concluding Provisions bearing technical data, and necessary amendments to other legislation. The "Transitional Provisions"(Section II) is intended to revoke the previous Laws on status of the Crimea and certain parts of Donetsk and Luhansk oblasts and amend some other laws in order to comply with the Draft law.

a) General Provisions and Terminology chapter is very similar in ideas and provisions to the first chapter of Draft Law 3593-D. The main highlights:

- "Temporary occupied territories" is used to mean both Crimea and parts of Donetsk and Luhansk regions.

b) Legal Status of Temporarily Occupied Territories (TOT) contains provision regarding the following:

- Occupation is illegal and temporary, thus any actions and/or decrees of the Occupying Administrations are illegal and create to legal consequences;
- Ukrainian citizens retain their Ukrainian citizenship if they reside in the TOT, and do not automatically gain the citizenship of the occupying power;
- Ukrainian authorities are banned from holding any elections or referenda on TOT;
- The dates for the beginning of the temporary occupation were set: for Crimea temporary occupation begins on 26 February 2014; for occupied territories in Donetsk region - 07 April 2014, and for occupied territories in Luhansk region - 27 April 2014;
- The end date of temporary occupation will be the date the last of the armed forces of Russian Federation leave territory of Ukraine, and Ukrainian Government regains control over the whole Temporarily Occupied Territory;
- Any Ukrainian state authority or local government situated in the TOT ceased operation at the date occupation started, unless such authorities/governments were evacuated and/or transferred/re-registered in government controlled areas (GCA).

- Communication and collaboration of Ukrainian authorities with the authorities of the occupying State is limited to provision of humanitarian aid, release of prisoners and regaining control over those territories by Ukrainian government;
- Russian Federation as the occupying state should allow humanitarian aid to be supplied to TOT, protect civilian population and exercise all duties of the occupying state stipulated by the Hague Convention IV;
- Ukraine's responsibility for the protection of human rights of its subjects residing in the TOT is limited to monitoring of human rights, writing official protests, informing international community and aiding IDPs to apply to European Court of Human Rights. It is also a duty of Ukraine to transmit Ukrainian radio and TV channels to the TOT;
- TOT residents will be able to receive documents (passports etc) and administrative services in GCA;
- Pensions and social payments will not be paid to residents of TOT;
- TOT residents will be able to take part in all-Ukrainian elections and referenda, however not in local government elections;
- Inheritance documents for TOT residents and real estate will be processed by GCA notaries and authorities in accordance with a special law yet to be adopted;
- Establishes a moratorium on penalties and fines for principal amount of loans and credits (covers only IDPs and legal entities from Donetsk and Luhansk oblasts that operated before the law is entered into force). This provision is only applicable for loans and credits initiated before the start of the occupation.

c) Measures to Ensure National Security include special border regime with TOT and movement of goods between TOT and GCA:

- Citizens of Ukraine will be able to cross the contact line and border with TOT only showing their passport. Stateless and foreign citizens will have to receive a special permit. Rules for obtaining it to be stipulated in a separate Cabinet of Ministers Resolution yet to be adopted;
- Undocumented residents of TOT will be able to cross the contact line on the basis of identification procedure to be conducted by the State Migration Service officials at the check points. Children born in TOT after beginning of occupation will be able to cross into GCA in order to be documented as Ukrainian citizens ;
- Judges, civil servants and prosecutors are banned from visiting TOT;
- Official transportation services in and out of the TOT are prohibited;
- Goods, water and energy supply regime to/from TOT will be stipulated by the Cabinet of Ministers;
- Private persons may only transfer their personal belongings to/from TOT;
- Ukraine holds Russian Federation responsible for all pecuniary and non-pecuniary damages that arose as a result of occupation, and will demand compensation and satisfaction in accordance with the international law.

The Draft Law was sent for consideration to the Parliamentary Committee on State Building on 26 April 2017. DRC will keep you informed on any developments.

Text of the Draft Law here: <http://zakon3.rada.gov.ua/laws/show/1989-19>.

3. New rules on transportation of personal items transportation across the contact line

In our previous Alert we have reported that on 15 March, 2017 the President has enacted the Decree of the National Security and Defense Council "On urgent additional measures to counter hybrid threats to national security of Ukraine", by which all cargo transportation along and across the contact line was prohibited, save for humanitarian aid.

On 1 April 2017 the Decree of the Ministry of Temporarily occupied territories and IDPs No. 39 came into force. It lists items that can be considered as personal belongings allowed to be taken from/to humanitarian-logistic centers and across the contact line.

The Decree provides that luggage shall not weigh more than 75 kg and exceed value of 10 000 UAH. Listed items include food, clothes, electronic devices and appliances, as well as maximum amounts of alcohol and cigarettes.

Concern. While the list is exhaustive, some positions are not clearly specified, giving broad discretions to the border guard and fiscal services at the checkpoints, which may increase corruption risk. For example, a person may carry "personal belongings having signs of wear, including furniture, kitchen appliances, books" etc.

According to our sources, the Ministry might significantly change the mentioned list in the future by introducing an exhaustive list of forbidden items thus applying "everything-is-allowed-until-prohibited" approach. We will continue to work with the Ministry and civil society actors on this issue.

The full text of the Decree in Ukrainian may be found here: <http://www.rnbo.gov.ua/documents/441.html>

4. Amendments to the Temporary order on Control of the Movement of People along the Contact Line

On 14 April 2017, the first deputy head of the Antiterrorist Center operating at State Security Service of Ukraine adopted revised Temporary order on Control of the Movement of People along the Contact Line (Temporary Order). Among significant changes are the following.

- Starting with 01 April 2017 the Temporary Order does not regulate movement of goods and personal items. These questions are regulated by the Order No. 39 of the Ministry of temporarily occupied territories (see above). This is a welcome amendment as it allows to avoid contradiction between two documents.
- Electronic permits for individuals necessary to cross the contact line shall become termless.

Concern. This is a quite welcoming initiative as previously permits were obtained for a one-year period. However, the Temporary order does not specify whether all obtained permits will become termless or only those obtained after adoption of latest amendments.

- Non-internally displaced persons whose place of residence is registered in the localities that are close to the contact line can cross the checkpoints if they move within GCA contact line areas
- Children under 16 can cross the contact line on the basis of passport (*obtained after 14*)

- If a person displaces from NGCA to GCA, her/his personal items can be moved by cargo transport or any transport other than cars (including trucks and buses)
Movement of public passenger transport is still prohibited.
- In case of emergency (evacuation, shelling), the shift supervisor of border service patrol at the checkpoint will have to power to decide whether persons can cross the contact line. Before amendments it was prescribed that such decisions shall be made at the higher level - by the head of coordination center of Anti-Terrorist center, therefore, this mechanism could not work properly.
- Donetsk and Luhansk oblast civil military administrations should maintain checkpoints and their adjacent territories
- If a person wants to obtain electronic permit s/he should fill in all lines of application
- Temporary order introduces new grounds for electronic permit cancellation, such as court or executive order on banning such person from crossing the state border or the contact line.

DRC has been advocating for improvement of conditions at the checkpoints since February 2015 when the pass system was established. DRC has also been maintaining the position that the pass system, restricting freedom of movement of the people, is a clear and distinct violation of Ukrainian citizen's fundamental right to freedom of movement. The pass system was introduced by the order of the first deputy head of Anti-Terrorist center - an instrument that does not qualify as legislative instrument. The constitutional right to freedom of movement can only be legally restricted if it is expressly prescribed by the law or through an instrument of a martial law regime.

DRC also advocates for abolishing the pass system due to the following reasons:

(a) it does not fulfill security purposes - undesired persons can enter through regular Ukrainian immigration check posts anyway

(b) same level of administrative control can be maintained through checking national passports

(c) it creates scope for corruption

(d) it creates long queues, and increases the security threat for the people

(e) it unnecessarily diverts scarce resources of the government, people, and humanitarian agencies

5. The International Court of Justice (ICJ) indicates provisional measures against Russian Federation

On 16 January 2017, Ukraine instituted proceedings at the ICJ against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). On the same day, Ukraine submitted a request for the indication of provisional measures, aimed at safeguarding the rights it claims under those two conventions pending the Court's decision on the merits.

In its Order of 19 April 2017 the ICJ:

- a) Recognized prima facie of the Court on Article 24, paragraph 1, of the ICSFT and on Article 22 of CERD: *“The Court observes that the jurisdictional clauses contained in those instruments make its jurisdiction conditional on the existence of a dispute arising out of the interpretation or application of the Convention to which they relate. It states in this regard that the evidence before the Court is sufficient at this stage to establish, prima facie, the existence of a dispute between the Parties concerning the interpretation and application of the ICSFT and of CERD”.*
- b) Did not indicate provisional measure under ICSFT: *“The Court is of the view that, at this stage of the proceedings, Ukraine has not put before it evidence which affords a sufficient basis to find it plausible that these elements are present. Therefore, it concludes that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT are not met”.*
- c) Recognized that Crimean Tatars and ethnic Ukrainians in Crimea appear to remain vulnerable, and *“With regard to the situation in Crimea, the Russian Federation must, in accordance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the Mejlis”.*

Apart from that the Court also made an emphasis on both parties to work for the full implementation of the Security Council Resolution 2202 (2015), which endorses the “Package of Measures for the Implementation of the Minsk Agreements”, adopted and signed in Minsk on 12 February 2015.

Please note that the ICJ does not need to establish breaches in order to indicate provisional measures. When indicating such measures, the ICJ only recognizes the urgency with which rights of a certain subject(s) must be protected and therefore does not prejudge on the merits of the case. We will keep you updated.

Official press-release of the ICJ here: <http://www.icj-cij.org/docket/files/166/19412.pdf>.

6. New tax regime concerning NGCA and contact line areas: Law No 1989-VIII

On 15 April 2017 the amendments into Tax Code of Ukraine came into force, stipulating changes in the tax regulations concerning legal entities, private entrepreneurs and real estate registered in NGCA. Please note that these changes do not include Crimean territory.

Changes include:

- a) All tax payers who are registered in zone of anti-terrorist operation (in certain localities listed by the CMU) at the date of the start of the anti-terrorist operation (14 April 2014):
 - are exempt from any fines or financial sanctions for untimely amortization/payment of their tax debts which occurred prior to 14 April 2014;
 - all fiscal decisions (demanding tax payments for the period of the duration of the ATO) regarding such tax payers are put on hold until the end of the ATO
- * as soon as such legal entities re-register their activity in GCA, or as soon as the anti-terrorist operation stops, these tax privileges will cease to operate*
- such tax payers are exempt from tax inspections and audit in case they cannot provide original documents due to the reason that these documents are left in NGCA and there is

no access to them. Tax authorities will accept as evidence a simple letter from the tax payer certifying that there is no access to such documents;

- b) Land plots and real estate, situated in NGCA and along the contact line (in certain localities listed by CMU) are exempt from real estate and land taxes for the duration of the anti-terrorist operation (ATO).

DRC has consistently advocated for mentioned changes and we welcome them.

Concerns:

- a) The sums of tax already paid as land/real estate tax will not be returned to the tax payer, nor can they be used for netting other tax debts. Thus the fate of these paid sums of money is unclear – whether or not the tax payer will be able to have use of it in the future;
- b) Everyone receiving services/goods from NGCA-based entrepreneurs should withhold 18% income tax when dealing with and paying income to private entrepreneurs registered in NGCA (those who did not re-register in GCA).

Text of the Law here: <http://zakon3.rada.gov.ua/laws/show/1989-19>.

Some terminologies used in this issue of the Alert are taken from the draft laws and do not necessarily reflect position of DRC.

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