



## LEGAL ALERT

November 2016

### 1. On 15<sup>th</sup> November the Office of the Prosecutor of the International Criminal Court has made public Report on Preliminary examination Activities in 2016 with regard to Ukrainian context

The yearly reports published by the Office of the Prosecutor reflect the progress that the Office has made under its duty to determine whether a situation meets the legal criteria established by the Rome Statute to warrant investigation by the Office. For this purpose, the Office of the Prosecutor conducts a preliminary examination of all communications and situations that come to its attention based on the statutory criteria and the information available.

Even though Ukraine has not ratified the Rome Statute to become the full member of the Court so as to fall under its jurisdiction, the Government of Ukraine has lodged two declarations under article 12(3) of the Statute accepting the jurisdiction of the Court over alleged crimes committed on its territory from 21 November 2013 to 22 February 2014, and from 20 February 2014 and onwards with no end date.

Thus, the situation in Ukraine has been under preliminary examination since 25 April 2014, in respect to both: the Crimea and parts of Donetsk and Luhansk regions. The highlights of the Report are the following:

- Issues of jurisdiction regarding the situation in the Crimea:  
“The information available suggests that the situation within the territory of Crimea and Sevastopol amounts to an international armed conflict between Ukraine and the Russian Federation. This international armed conflict began at the latest on 26 February when the Russian Federation deployed members of its armed forces to gain control over parts of the Ukrainian territory without the consent of the Ukrainian Government. The law of international armed conflict would continue to apply after 18 March 2014 to the extent that the situation within the territory of Crimea and Sevastopol factually amounts to an on-going state of occupation. A determination of whether or not the initial intervention which led to the occupation is considered lawful or not is not required. For purposes of the Rome Statute an armed conflict may be international in nature if one or more States partially or totally occupies the territory of another State, whether or not the occupation meets with armed resistance”.
- Issues of jurisdiction regarding Donetsk and Luhansk regions:  
“Based on the information available it seems that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and antigovernment armed elements in eastern Ukraine reached a level that would trigger the application of the law of armed conflict.”  
“Additional information, such as reported shelling by both States of military positions of the other, and the detention of Russian military personnel by Ukraine, and vice-

versa, points to direct military engagement between Russian armed forces and Ukrainian government forces that would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict [...] For the purpose of determining whether the otherwise non-international armed conflict could be actually international in character, the Office is also examining allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine. The existence of a single international armed conflict in eastern Ukraine would entail the application of articles of the Rome Statute relevant to armed conflict of an international character for the relevant period. In conducting its analysis, the Office must assess whether the information available indicates that Russian authorities have provided support to the armed groups in the form of equipment, financing and personnel, and also whether they have generally directed or helped in planning actions of the armed groups in a manner that indicates they exercised genuine control over them. The Office is currently undertaking a detailed factual and legal analysis of the information available of relevance to this issue”.

- Issues to be looked into, as determined by the Prosecutor:
  - Harassment of Crimean Tatar population;
  - Killing and abduction;
  - Ill-treatment;
  - Detention and fair trial;
  - Compelled military service;
  - Destruction of civilian objects;
  - Detention;
  - Disappearance;
  - Torture;
  - Sexual and gender-based crimes.

The most prominent outcome of the Report is that the events in Ukraine with regard to situation in the Crimea, parts of Donetsk and Luhansk regions fall under jurisdiction of the International Criminal Court and the Office will continue its detailed factual analysis of the alleged crimes on the basis of its preliminary assessment of the existence of armed conflicts in both regions with a view to identifying potential cases within the jurisdiction of the Court. Given the open-ended nature of Ukraine’s acceptance of ICC jurisdiction the Office will also continue to record allegations of crimes committed in Ukraine to the extent that they may fall within the subject-matter jurisdiction of the Court.

The full text of 2016 Report may be found here: [https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE\\_ENG.pdf](https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf)

## **2. The Third Committee of the UN General Assembly adopted a Resolution on situation of human rights in the Crimea**

On 15 November 2016 the Third Committee of the UN General Assembly, whose primary focus is human rights, adopted a Resolution entitled "Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine)", initiated by Ukraine.

This Resolution became the first document of the UN General Assembly since the onset of the conflict situation in February 2014 which mentions "temporary occupation" of the part of the territory of Ukraine, condemning such actions of the Russian Federation.

Among other provisions, the document also urges the Russian Federation to:

- Free Ukrainian citizens from illegal detention;
- address the issue of impunity and ensure that those found to be responsible for abuses are held accountable before an independent judiciary;
- grant international human rights mechanisms, in particular the Human Rights Monitoring Mission in Ukraine, unimpeded access to Crimea in order to monitor human rights situation; and asks the United Nations High Commissioner for Human Rights to prepare a separate thematic report on the situation in the peninsula.

Texts of Resolution may be found here: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/352/55/PDF/N1635255.pdf?OpenElement>

### **3. The Parliament of Ukraine is in the process of negotiating state budget for 2017**

Each year starting with 15 September the Parliament begins the negotiation procedure for the budget for the next year. This process is usually highly scrutinized by the media and the society, as the Law on State Budget for each year sets forth a set of basic economic features to be acted upon by the State.

One of the features is the minimum wage and subsistence level, which serve as basis for taxation, social benefits and aid.

As for the moment the current version of the budget for 2017 is the Draft Law 5000 on State Budget of Ukraine for 2017 which is being considered by the Parliament and is currently awaiting the second reading.

The levels of the minimum wage set in the latest text of the draft are the following: starting with January 2017 minimum wage is 3200 UAH, compared to current minimum monthly wage of 1600 UAH.

Basic subsistence levels are: January-April: 1544 UAH; May - November: 1624 UAH; December: 1700 UAH, compared to current subsistence level of 1544 UAH.

Although calculation of most of the social payments in Ukraine are tied to either minimum wage or subsistence levels, the IDP subsistent allowance is a set sum, as the CMU Resolution 505 merely states the amounts to be paid to the different categories of IDPs, which puts them in a more vulnerable position compared to other vulnerable social groups. Thus if now an IDP of working age receives 442 UAH and it comprises about 28% of current minimum wage, by January 2017 this allowance will comprise only 14% of minimum wage.

We suggest to monitor the process inside the Parliament. Text of the Resolution and relevant documents on budget process in Ukrainian may be found here: <http://zakon5.rada.gov.ua/laws/show/738-2016-%D1%80>

#### **4. Three civilian-military administrations were created in villages near conflict line**

On 19 November 2016 President has signed the Decree 513/2016 On Creating Civilian-Military Administrations in three villages. According to this Decree, such administrations will be created in three villages near conflict line: village Zaytsevo (Bakhmut district) and villages Zolote and Katerynivka (Popasna district).

Civilian Military Administrations are created when local councils do not or cannot carry out their functions. Such Administrations primary objective is governing everyday life in villages, districts and oblasts where anti-terrorist operation is conducted, and they are in subordination of the ATO Coordination Center of State Security Service.

Text of the Decree in Ukrainian may be found here:  
<http://www.president.gov.ua/documents/5132016-20752>

#### **5. Vice-prime-minister Rozenko has informed when the pensions will be paid to citizens currently residing in non-government controlled areas**

On the beginning of November 2016 Pavlo Rozenko, ex-minister of social policy and the current vice-prime-minister during a press-conference in Lviv has stated that the pensions for NGCA residents will be paid in full, but only after the Government of Ukraine regains control over those territories.

Source: state information agency UkrInform: <http://www.ukrinform.ua/rubric-society/2114725-rozenko-rozkazav-ak-meskancam-donbasu-viplatat-pensii-pisla-okupacii.html>

#### **6. Pension Fund of Ukraine has proposed to conduct physical identification once in 3 months**

As of the date of this Alert the official website of the Pension Fund of Ukraine contains a draft amendment into Cabinet of Ministers Resolution No 637. This Draft stipulates that until an IDP pensioner receives an electronic pensioner ID card, he/she has to undergo physical identification in the Oshchadbank every three months.

We will continue to monitor whether or not the Government will adopt this Draft.

The text of the amendments in Ukrainian may be found here:  
[http://www.pfu.gov.ua/pfu/control/uk/publish/article?art\\_id=268410&cat\\_id=250309](http://www.pfu.gov.ua/pfu/control/uk/publish/article?art_id=268410&cat_id=250309)

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