



## LEGAL ALERT

February 2017

### 1. Draft Law 3593-D On Temporary Occupied Territories is ready to be considered by the Parliamentary Committee

During January-February 2017 the Parliamentary Committee on State Building and Regional Policy has hosted a meeting during which it was decided to create a working group to finalize the text of the Draft Law. Since 08<sup>th</sup> February, the working group, chaired by MP Zubach, has come up with the text of the Draft Law, which does not incorporate most of the propositions from national and international non-governmental organizations. DRC has reviewed the latest revision and despite significant positive changes, continue to hold the position that the Draft Law, if adopted, might further contribute towards isolation of the occupied territories, deny protection of human rights and freedoms to the people, and hinder the prospects of reconciliation and post-conflict settlement, which are yet to be stipulated by a special law.

Thus, the positive changes to the Draft Law include:

- a) The chapters on de-occupation and reconciliation are removed;
- b) Title deeds re real property located in TOT should be done in accordance with special procedure prescribed by the Cabinet of Ministers (not adopted yet);
- c) Registration of place of residence of TOT residents may be done using the State Registry of Voters;
- d) Russian Federation remains responsible for any and all damages, however until the compensations for damage are received, a special procedure on compensation should be prescribed in a special law (not adopted yet);
- e) The Application of state border regime to TOT frontier is removed. Citizens of Ukraine can cross the TOT frontier on the basis of a national passport/identity document;
- f) Supply of fuel and energy resources, as well as centralized water supply to TOT is conducted in accordance with the procedure prescribed by the Cabinet of Ministers.

Please find our full analysis of the Draft Law in its previous wording in our October Legal Alert.

### 2. Cabinet of Ministers has broadened the list of students eligible for social stipends

As reported previously in our December Alert, only two types of student stipends would remain operational starting from 01 January 2017: social stipend paid to orphans or those who have lost parents during the time of their study, and academic stipends for honors students.

Since that time the Cabinet of Ministers (CMU) through its Resolution 1045/2016 has also made the following categories of students eligible for social stipends:

- Students - internally displaced persons;
- Students, whose parents are miny workers for over 15 years or became handicapped through working in mining;
- Students who either were combatants (took part in anti-terrorist operation), or whose parent was a combatant;
- Students, whose parent went missing in the ATO zone;

- Students, whose parent died in the Maidan events of 2014.

Thus the IDP children are now entitled to a social stipend, and are eligible to receive it starting with 01 January 2017. According to the Minister of Social Policy, minimal social stipend will be 750 UAH, with the maximum of up to 2000 UAH.

The full text of the Resolution in Ukrainian may be found here: <http://www.kmu.gov.ua/control/uk/cardnpd?docid=249637727>

### **3. The Ministry of Education has annulled licenses for all universities left in non-government controlled areas (NGCA)**

In February 2017 Ministry of Education has informed that it has withdrawn licenses for colleges and universities left functioning in NGCA. This decision was motivated by the fact that a number of colleges, institutes and universities have moved into government controlled areas since 2014, and are fully functioning. Also for Crimean students who have been studying in the Crimea since 2014 there is a special re-attestation procedure which allows such students to continue their studies in universities in GCA.

The full list of such institutions and Ministry' press release may be found here: <http://mon.gov.ua/usi-novivni/povidomlennya/2017/02/07/anulovano-licenziyi-vnz,-shho-zalishilisya-na-nepidkontrolnix-ukrayini-teritoriyax/>

### **4. Updated Application Form for IDP registration**

The Ministry of Social Policy with its Decree No 1610, has updated the Application Form to be filled out by persons asking to be registered as an internally displaced person. The updates concern harmonization of the Application Form to the changes to CMU Resolution 509 adopted previously in 2016.

The new form may be found here: <http://zakon2.rada.gov.ua/laws/show/z0089-17>

### **5. Courts do not have the authority to issue a multiple travel permission for a child without full details of each travel**

The Supreme Court of Ukraine in its ruling of 10 February 2017 has upheld the decision of the Kyiv Court of Appeals, citing one of the parents can file a claim to allow child to be taken out of the country multiple times only in case full details of such travels are provided. The court has no authority to issue travel permission for a child citing only the time period and general destination "outside Ukraine". Thus the parent applying for such permission should state the dates, country of destination for each travel, or apply for permission for each travel separately.

Full text of the decision here: <http://reyestr.court.gov.ua/Review/55836117>

### **6. Best court practices regarding social benefits and pension issues**

Since last meeting of the Protection cluster on 06 February 2017 we have paid special attention to the social benefit and pension related cases.

For most of such cases courts serve as first and last instance, thus DRC partner lawyers help beneficiaries with drafting court claims. DRC recorded two best practices from its partner network with regards to two issues: pension paid through Oshchad Bank and maternity benefits appointed more than 12 months since the birth date of the child.

- a) According to CMU Resolutions 365/2016 and 637/2014 all pensions should be paid through state-owned Oshchad bank. However, these regulations do not stand in court, as it is considered to be discriminatory towards pensioners who have pension accounts in other banks. Please find a court decision in one of such cases ordering pension to an IDP

pensioner to be paid through his old account in another Ukrainian bank:  
<http://reyestr.court.gov.ua/Review/63371902>.

- b) The general rule for receiving maternity benefits states that such benefit should be allocated not later than 12 months since the date the child was born. However, since the conflict is becoming steadily more protracted, our lawyers have begun to notice an increase in situations where the mother cannot comply with the 12 months window and are forced to apply to court as last resort. Fortunately, the courts in majority of cases consider anti-terrorist operation, temporary occupation and the demand to establish legal fact of birth in GCA to be a strong and justifiable reason to miss this 12-months requirement. Please find a link to one of such court decisions here:  
<http://www.reyestr.court.gov.ua/Review/64511640>.

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