

# Legislative Update

UNHCR update on displacement-related legislation | February 2019

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## Adopted legislation

### Tax reduction for IDPs

As per the recent amendments to Article 166 of the Tax Code,<sup>1</sup> from 1 January, internally displaced persons (IDPs) may apply for a tax reduction<sup>2</sup> on rental payments if they meet the following criteria:

- an official rental agreement has been concluded;
- the applicant does not possess housing real estate outside the temporarily occupied territory<sup>3</sup> (TOT) of Crimea and the non-government controlled areas (NGCA) of the Donetsk and Luhansk oblasts;
- the applicant does not receive any state financial aid to cover housing/utilities related expenses (as per the Resolution # 505 of 2014 on targeted assistance for IDPs).

To receive a tax reduction, an IDP shall apply to a division of the State Fiscal Service at the place of his/her (IDP) registration with the following documents:

- a declaration on the property and income<sup>4</sup>;
- a copy of the IDP certificate;
- a copy of the rental agreement;
- proof of rent payment;

<sup>1</sup> These amendments have been introduced by the Law introducing amendments to the Customs Code of Ukraine and other laws of Ukraine on the "unified window" mechanism and optimization of control proceedings through customs borders of Ukraine. The Law entered into force on 4 October 2018. The full text is available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/2530-viii>

<sup>2</sup> The level of this reduction cannot exceed 30 minimum salary wages (for 2019, this figure amounts to 125,190 UAH). For 2018, the tax reduction would be applicable to payments performed after 1 October 2018.

<sup>3</sup> The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position

<sup>4</sup> The sample declaration form is available online (in Ukrainian): <http://km.sfs.gov.ua/deklaruvannya-dohodiv-gromadyan-2019/informatsiyi-/366283.html>

- the application form, where the individual certifies that his/her statements are true and that he/she meets the requirements for being granted the tax reduction (i.e., the absence of any housing real estate in TOT or NGCA and the fact that he/she is not a beneficiary of the state targeted assistance for IDPs).

IDPs who are officially employed or are conducting entrepreneurial activities may also benefit from this tax reduction.

### Extending the ATO-related benefits to the JFO

In February, the Government adopted four by-laws extending benefits linked to the Anti-Terrorist Operation (ATO) to the situation of the Joint Forces Operation (JFO). These benefits include access to free psychosocial rehabilitation, health resort treatment, and social and professional adaptation services to JFO participants in the same manner and volume as to ATO participants.<sup>5</sup>

The Government also applied this approach to medical supplies imported to Ukraine for the needs of JFO participants and their medical treatment, exempting them from the VAT at the time of the transfer at the territory of Ukraine for the period of the JFO as per its Regulation #98-p<sup>6</sup> of 27 February.

These developments are next in the series of earlier adopted amendments which equal the situation of the ATO and JFO for different categories of legal relations (including extending privileges for IDPs and residents of territories along the line of contact).

### Reallocation of the Ministry of Social Policy budget costs

On 20 February, the Government adopted its Regulation #84-p<sup>7</sup> on transfer of budgetary funds from “management-related expenditures” to “execution of individual court decisions”. The reallocated sum amounts to 50 thousands UAH, which is extremely low to positively impact the situation with, for example, reinstatement of social benefits to conflict-affected population, including IDPs. However, the decision does not specify the groups of population that may benefit from it, thus reducing even more the potential benefits for the conflict-affected population.

## Draft legislation

### Amendments to Resolutions regulating the payment of social benefits and pensions to IDPs

On 29 January, the Pension Fund published a draft Government Resolution<sup>8</sup> introducing amendments to the Government Resolutions #637, #365 and #649 which regulate the payment of social benefits and pensions to IDPs.

The draft suggests excluding pensions from the scope of application of the Government Resolution #365 (concerning the complicated verification process regarding payment of social benefits and pensions to IDPs). On the positive side, the draft extends the notion of “internally displaced person” to those who renounced their IDP certificate after registering their place of residence on the controlled territory of Ukraine. Since IDP

<sup>5</sup> Regulations # 171, # 172, and 173. The full text available online (in Ukrainian), respectively on : <https://www.kmu.gov.ua/ua/npas/pro-v-postanov-kabinetu-ministriv-ukrayini>; <https://www.kmu.gov.ua/ua/npas/pro-vtanovi-kabinetu-ministriv-ukrayini-vid-31-bereznya-2015-r-200> ; and <https://www.kmu.gov.ua/ua/npas/prov-kabinetu-ministriv-ukrayini-vid-31-bereznya-2015-r-179-i-vid-21-cherhnya-2017-r-432>.

<sup>6</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-ryadzhennya-kabinetu-ministriv-ukrayini-vid-27-travnja-2015-r-544>

<sup>7</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-pererozpodil-deyakih-vidatkiv-derzhavnogo-byudzhetu-peredbachenih-ministerstvu-socialnoyi-politiki-na-2019-rik>

<sup>8</sup> The full text available online (in Ukrainian): [https://www.pfu.gov.ua/414379-414379/?fbclid=IwAR33yNL\\_FwK9GIDwZ3qY21w1M8-kjJ2pfa4I8vdjzLUzeSdGHtcNcXZIHxg%20](https://www.pfu.gov.ua/414379-414379/?fbclid=IwAR33yNL_FwK9GIDwZ3qY21w1M8-kjJ2pfa4I8vdjzLUzeSdGHtcNcXZIHxg%20):

pensioners whose pensions were assigned before 2014 benefit from a simplified approach for the payment of their pensions due to the usage of an e-pension file, the suggested amendments mean that the same approach will be preserved for those who renounces an IDP certificate after having changed residency registration. However, the draft contains certain protection risks potentially affecting IDPs. In the suggested provisions, IDP-pensioners would need to be photographed and their picture to be included in their individual file in the Pension Fund departments, which clearly introduces a discrimination in the treatment of cases of IDP-pensioners in comparison to other citizens of Ukraine. Additionally, it duplicates the existing procedure of physical verification (which also includes photographing) conducted in the Oshchadbank. The latter issues an electronic pension card with a picture, which also serves as a payment card. If adopted, the provision would impose additional staff and technical equipment costs on the Pension Fund divisions. Longer time spent per each elderly client means longer queues, which is already a problem in Donetsk and Luhansk oblasts.

Also, the draft does not contain any provision relating to the information process for pensioners whose pension payments have been suspended. This is another drawback of the draft. This may result in further increase of the debts in the payment of pensions to conflict-affected population, since the reinstatement process takes time and in many cases goes through a judicial review.

UNHCR and its partners are engaged in a dialogue with the Pension Fund and the Ministry of Social Policy to ensure that the draft would not backlash on elderly individuals who largely depend on their pensions.

#### Amendments to the Law on humanitarian assistance

On 12 February, the Government registered in Parliament the draft law #10038<sup>9</sup>, suggesting amendments to the Law on humanitarian assistance.

The draft extends the list of humanitarian assistance recipients, adding there state-supported institutions, foreign and international NGOs. According to the suggested amendments, luxury items, cultural property and some goods, works and services to be further defined by the Government, will not be recognized as humanitarian aid.

The draft rules impose a total prohibition on further distribution of humanitarian aid among legal persons in case its primary beneficiary is also a legal person. This provision means that if an entity, not an individual, received humanitarian aid in kind (e.g. winter jackets), then it would be required to distribute it directly to beneficiaries, not among its partners who would distribute it further. This provision is aimed at preventing multiple chains.

It proposes to transfer the coordinating role in the area of humanitarian assistance from the Ministry of Social Policy (MoSP)<sup>10</sup> to a Commission on humanitarian assistance<sup>11</sup> to be established and coordinated by the Government. This Commission would put together a list of governmental stakeholders involved in the assessment of humanitarian assistance and get them under one umbrella. Additionally, the Commission would be responsible for recognizing goods exceeding 10 tons as a humanitarian cargo as well as monitoring its delivery, distribution, targeted use, collection of necessary statistical data and recording of received and delivered humanitarian assistance.

In case of adoption, the initiative may cause interruptions of the humanitarian cargo delivery due to administrative procedures to set up the commission and transfer the functions from the MoSP to this new state organ. Likewise,

<sup>9</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65479](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65479)

<sup>10</sup> For the moment, the Ministry of Social Policy exerts a coordinating role in the provision of humanitarian assistance

<sup>11</sup> The Commission would include representatives of the Ministry of Health, the Ministry of Economic Development, the Ministry of Finance, the Ministry of Defence, the Ministry of Social Policy, the Ministry for temporarily occupied territories and IDPs, the State Emergency Service, the State Migration Service, the National Police, the Ministry of Veterans, the National Bank of Ukraine, and the State Security Service (SBU)

the extended number of state authorities involved in defining prohibited goods for humanitarian delivery items and the lack of clear criteria for such prohibition may result in arbitrary decisions.

#### Amendments to Article 7 of the Law on IDPs

On 14 February, MPs registered in Parliament the draft law #10058<sup>12</sup> proposing amendments to Article 7 of the Law on IDPs. The authors suggest using the same eligibility criteria for targeted assistance from Government Resolution #505 in the Law on IDPs and to link those criteria to the cost of living relevant for different categories of population (working age persons, incapacitated persons, children, children with disabilities, persons belonging to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> group of disability).

The law would not change the current situation with financial assistance to IDPs which has been extended to partially cover rental and utility related costs. However, since the financial assistance is not limited in time and has no linkage to durable solutions, it may prevent IDPs from reaching self-reliance and sustainability in the hope for life-long minimal support from the government.

#### Verification and monitoring of state benefits

On 18 February, MPs registered in Parliament the draft law #9511-1<sup>13</sup> as an alternative to the Government-registered draft<sup>14</sup> on the procedure of verification and monitoring of the payment of state benefits<sup>15</sup>.

In comparison with the government draft, the alternative version proposes to limit the Ministry of Finance's access to personal data of all recipients of social benefits. It also suggests that the courts would decide on termination of state benefits and/or their recalculations instead of the administrative bodies responsible for paying such state benefits.

In comparison with the original draft, the alternative version mitigates the Ministry of Finance's powers on personal data processing, which is a positive development. However, the core principles of the alternative version remain the same, which continues to raise concerns such as the lack of a complaint mechanism for beneficiaries of different types of state financial aid.

#### Amendments to Article 4 of Law on voluntary amalgamation of territorial communities

On 20 February, the draft law #10073<sup>16</sup> amending Article 4 of the Law on voluntary amalgamation of territorial communities was registered in Parliament. 'Amalgamation of territorial communities' means that smaller centres can voluntarily join into a larger territory to share services and public funds. Doing so, they achieve some economies of scale while keeping focus on the local community.

The draft includes a provision on quality and accessibility of social and administrative services in amalgamated communities. It is required that each amalgamated territorial community has health care (emergency, first and specialized medical aid) institutions, schools (primary and middle level), National Police and State Emergency Service units, centers for the provision of administrative services, state bank institutions and postal offices. The quality of services provided in the amalgamated community shall not be lower than prior to the amalgamation. It is expected that the law would prevent situations where amalgamated territorial communities end up with lack of service providers and lack funds to establish such for their population.

<sup>12</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65514](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65514)

<sup>13</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65526](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65526)

<sup>14</sup> Please refer to UNHCR January Legislative Update for the description of initial draft procedure

<sup>15</sup> For purpose of this draft law state benefits include pensions, assistances, benefits, subsidies, scholarships etc. covered by state funds

<sup>16</sup> The full text available online (in Ukrainian): [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=65537](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65537)

## Other important developments

### Government Report for 2018

By its Regulation 58-p<sup>17</sup> of 13 February, the Government approved the Report on implementation of the 2018 Programme of Government's activities. The Report covers a variety of topics, including EU integration, economic development, effective self-government, rule of law, combatting corruption, security and defence.

The chapter on conflict-related issues mainly concentrates on statistical and financial figures, reflecting Government's achievements on the following topics:

- Legal developments (adoption of the Action plan to the IDP Durable Solutions strategy, registration of draft law#8332<sup>18</sup> on exempting from court fees those who suffered from human rights violations in the Temporary Occupied Territories/NGCA<sup>19</sup>);
- Subvention to the local budgets on conflict-affected territories for temporary housing solutions for IDPs<sup>20</sup>;
- Ten pilot sub-projects for IDPs and ATO participants in Kharkiv, Dnipropetrovsk, Zaporizhzhia and Mykolaiv oblasts supported by the World Bank. The sub-projects cover adaptation services, psychosocial support, restoring of social infrastructure and rehabilitation services. Their main purpose is facilitation of employment opportunities, psychosocial support and innovative treatment services;
- Mine action (non-military component): released territory in Hirske, Popasnyansky rayon, Luhansk oblast, amounting to 1295,78 hectares), several mine risk education activities, elaboration of 24 manuals "Mines and unexploded ordnances (UXOs)" disseminated at schools near the contact line;
- Implementation of the State target program on peacebuilding (restoring infrastructure<sup>21</sup>, maintenance and improvement of conditions at entry-exit checkpoints (EECP), Multi Partner Trust Fund (MPTF) allocated<sup>22</sup> and attracted<sup>23</sup> funds).

## CONTACTS

**E-MAIL: [UKRKI@UNHCR.ORG](mailto:UKRKI@UNHCR.ORG), TEL: +38 044 288-9710**

## LINKS

UNHCR Ukraine:[www.unhcr.org/ua/en](http://www.unhcr.org/ua/en) - Twitter:[www.twitter.com/UNHCRUkraine](https://www.twitter.com/UNHCRUkraine)

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<sup>17</sup> The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-zvitu-pro-hid-i-rezultati-vikonannya-programi-diyalnosti-kabinetu-ministriv-ukrayini-u-2018-roci>

<sup>18</sup> Please see more details in 2018 UNHCR May Legislative Update

<sup>19</sup> See above, note 3.

<sup>20</sup> 116 flats have been purchased in Mariupol, Rodynske, Zolote, Novotoshivske, Velyka Novosilka, Pokrovsk, Lyman, Kryvyi Rih

<sup>21</sup> In particular, reconstruction of 15 schools (primary and middle level) for 57,704 mln. UAH; 6 health facilities for 33,648 mln. UAH; 4 physical education facilities for 4,483 mln. UAH; major repair of 5800 metres of auto routes for 16,397 mln. UAH; current repair of 12,185 thousand square meters of auto routes for 12,53 mln. UAH; development of transport models for 3,947 mln. UAH; major repair of water supply systems for 6,102 mln. UAH; major repair of railway for 16,682 mln. UAH

<sup>22</sup> 2 mln USD from Governments of Canada and Sweden have been allocated on 13 March 2018

<sup>23</sup> 57 mln. USD from USAID; 10 mln. Euro from German Government, 25000 Swiss Franks from Swiss Agency for Development and Cooperation