

Legislative Update

UNHCR update on legislative changes affecting displaced persons | Jan-Feb 2018

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Olena, 79, meets humanitarian workers. She lives alone in the village of Kurdiuvivka, Donetsk region. In February 2017, her home was heavily damaged by fighting in the area. She continued to live in the house, despite there being almost no roof. UNHCR assisted Olena with house repairs, which she would otherwise not have afforded. One of the negative impacts of the ongoing conflict in eastern Ukraine is the increasing number of households relying on pensions and social benefits, including IDP payments. Photo: UNHCR Ukraine/Artem Hetman

Adopted legislation

Restoration of sovereignty over non-government controlled areas of Donetsk and Luhansk regions

On 18 January 2018, the Parliament adopted the law “*On particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territories of the Donetsk and Luhansk regions*”.¹ The primary aims of the law are: to declare that the non-government controlled areas of Donetsk and Luhansk regions are “temporarily occupied territories”; to identify the legal framework for security and defence activities in the east of the country; and to lay down basic principles of human rights protection for the conflict-affected population. The law identifies the Russian Federation as the “aggressor state” and as the occupying power referring to the relevant norms of international law, including international humanitarian law. The law attributes all responsibility for the actions of de facto authorities and the military formations in “occupied” areas of the Donetsk and Luhansk regions to the Russian Federation. The law defines frameworks for conducting the so-called “measures for ensuring national security and defence and for the cutting off and containing the armed aggression of the Russian Federation” (hereafter “security and defence measures”). It states that the “Anti-Terrorist Operation” (“ATO”) may be conducted “consequently and in parallel with” any self-defence measures and martial law. This may be interpreted as a safeguard for implementation of already existing legislation developed against that framework specifically referring to the “ATO” which would otherwise become irrelevant and would need to be amended. This interpretation also concerns the human rights protection provisions for the duration of the “ATO”. Other provisions of the law indicate that all temporary measures related to the “ATO” may continue to apply. These include special provisions of the “ATO” law on the functioning of transferred educational facilities, as well as civil-military administrations subordinated to the “Anti-Terrorist Centre” of the State Security Service, and other administrations established under the Commander of the Joint Forces.²

The law identifies several new geographic areas with different legal regimes:

- **Temporarily occupied territories**, their boundaries, as well as the list of districts, cities, towns, villages and settlements within the territories are to be established by the President of Ukraine based on a submission from the Headquarters of the Armed Forces of Ukraine (Article 1);
- **Security zones** are adjacent to the areas of hostilities. Their boundaries are to be identified by the Head of the General Staff of the Armed Forces of Ukraine based on a submission from the Commander of the Joint Forces;
- **Areas where the security and defence measures take place**, the establishment and cessation of such measures are to be announced by a separate decision of the President of Ukraine as the Supreme Commander. However, the geographic scope of such measures remains unclear.

¹ The President signed the law on 21 February 2018. It was published on 23 February and entered into force on 24 February 2018. The text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/2268-viii>

² The Commander of the Joint Forces is to be appointed by the President of Ukraine upon the submission of the Minister of Defence.

Compared to previous drafts of the law, the final text contains some improvements reflecting recommendations put forward by international organizations and civil society, including:

- Birth and death related documents issued by the “occupying” administration are exempt from the general non-recognition rule relating to documents issued by de facto authorities. According to the law, such documents may be attached to applications for birth or death registration in Ukraine. Currently, the judicial procedure for obtaining Ukrainian birth or death certificates remains in place, as the administrative procedure for their issuance based of documents issued by de facto authorities still needs to be developed.
- The final provisions of the law amend the law on court fees residents exempting residents of the “temporarily occupied territories” from such fees in cases related to the establishment of facts with legal impact, including birth and death registration. The exemption also covers applications from residents of the “temporarily occupied territories” on the establishment of facts related to the *breach of rights to movable and immovable property*. For example, these may include facts that need to be firmly established in order to apply for a pension (including the number of years of work experience, facts of performing work in harsh conditions, etc.). Since this provision amends the general law, it applies to residents of Crimea as well.
- The currently existing *jurisdiction distribution* for cases originating from the non-government-controlled areas of Donetsk and Luhansk regions was preserved as per the law on the administration of justice and criminal procedures. This is an improvement since previous drafts required all cases to be heard in Kyiv.
- The Cabinet of Ministers shall establish procedures for crossing checkpoints. In a previous draft, the Commander of Joint Forces had sole, unfettered discretion to determine the procedures for crossing the checkpoints. This would have undermined legal certainty.
- The law widens the areas of functional involvement for the Ministry of Temporary Occupied Territories and IDPs by entrusting it with the elaboration of measures to ensure satisfaction of social, economic, environmental and cultural needs of civilians in the non-government controlled areas of Donetsk and Luhansk regions.

Paragraph four of Article 12 is potentially problematic provision that has been adopted and could have serious implications for humanitarian access. It states that the stay of individuals “not involved in conducting” security and defence measures may be temporarily restricted “for the duration of implementation of such measures” by the Commander of Joint Forces. There are two main concerns:

- The duration and the geographic scope of the restriction is not clear. There are no criteria ensuring that limitations to access the territory are not arbitrary.
- It is not clear whom this provision will affect. For example, civilians may have to leave their homes for an unknown duration. The access of international humanitarian actors and Ukrainian civil society actors to conflict-affected areas could also be limited, which would delay or prevent access to persons of concern and the distribution of humanitarian assistance.

State Targeted Programme on the eastern regions of Ukraine

On 13 December 2017, the Cabinet of Ministers passed Resolution no. 1071 enforcing the State Targeted Programme for the Recovery and Peacebuilding of eastern regions of Ukraine³.

The programme is designed for 2017-2020, covering the same period as the IDP Integration and Durable Solutions Strategy adopted in November 2017. Through the programme, the Government expects to “increase the tempo of social and economic development of the territorial communities in the east”. The implementation of the programme is expected to be assessed at the communities’ level, which presumes their broader involvement and increased ownership over the results. This approach may lead to positive outcomes in the case of freedom of choice for local initiatives under a general framework identified and partially funded by the central government. It is expected that through economic development, the wellbeing of individuals will improve. The three strategic directions of the programme include:

1: Restoration of critical infrastructure and social services

- Rebuilding of roads, railroads and water supply networks
- Procurement of public transportation items
- Refurbishment of educational, medical, sport and housing facilities

2: Economic recovery

- Educational and professional orientation (including re-qualification) activities
- Professional orientation sessions and capacity building through employment centers
- Support to local business, including erection of new enterprises and development of the agricultural sector

3: Increase of social cohesion and peacebuilding

- Mine awareness campaigns and trainings
- Provision of psychological support through training and teaching a cohort of psychologists
- Preparation of conflict mediators

The annexes to the programme provide a detailed outline of the expected activities and budget allocations. The budget of the programme is UAH 4.7 billion (USD 182 million), of which approximately half will be funded from the state budget, a quarter from local budgets, and the rest from “other sources” which may include donor funding. The biggest share of funds is prescribed for 2018 (close to 60 per cent of the total expected allocation). According to the distribution of allocations between Donetsk and Luhansk regions, the latter has a larger number of projects expected to be implemented and financed under the programme. More activities could still be expected within the framework of already existing relevant local programmes. Although there is no separate budget line for the programme itself, some allocations may be provided by other central authorities, as well as through the subvention part of the state budget. An analysis of the state budget and available programmes raises positive expectations regarding funding of the planned activities.

³ The programme was published on the Governmental portal on 5 January. The full text is available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-derzhavnoi-cilov>

Coordination of the different activities lies with different central and local authorities: the Ministry of Regional Development (infrastructure and renovation of different buildings), the Ministry of Economic Development (restoration of enterprises), the Ministry of Education (information campaigns), the Ministry of Health (restoration and equipping of healthcare facilities), the Ministry of Agricultural Policy (agricultural issues and veterinary safety), the Ministry of TOT and IDPs (general coordination and soft components relating to skills development, information sharing, and peacebuilding activities), as well as local authorities (setting priorities according to local needs).

Increased targeted assistance to IDPs

On 17 January 2018, the Cabinet of Ministers adopted Resolution no. 15⁴ (amending Resolution no. 505) in order to increase monthly assistance to IDPs. The amount was increased for IDP children and IDP pensioners from UAH 884 to UAH 1,000 (USD 34 to USD 38). Where previously a family, irrespective of circumstances, could receive a maximum amount of UAH 2,400 (USD 92), the ceiling increased to UAH 3,000 (USD 115) for any regular family; UAH 3,400 (USD 130) for a family with a member living with a disability; and UAH 5,000 (USD 192) for families with three and more children.

Access to temporary housing solutions

On 17 January 2018, the Cabinet of Ministers adopted Resolution no. 20⁵ entitling IDPs to temporary housing solutions, as per Resolution no. 422 of 31 March 2004.⁶ Resolution no. 422 provides that a person is entitled to a minimum living area of 6m² that cannot be privatized, traded, or be used in any other way. The temporary solution is available only once, and for one year with the possibility of a prolongation. Eligible IDPs will have to meet the following criteria:

- Proof of no access to any other habitable place (existing housing in Crimea and the NGCA, as well as along the line of contact is not taken into account);
- Low cumulative monthly income of the applicant's family (the threshold is the rental rates in the locality where an IDP applies for temporary housing);
- Belonging to a priority group (such as families with minors, pregnant women; elderly etc.).

The Resolution no. 20 of 2018 lists all the necessary documents to be presented when applying for temporary housing. The major problem with implementation of this resolution lies in the restricted funding which originates from local budgets and private donations.

Amendments to the list of settlements situated along the line of contact and in the NGCA

On 2 February 2018, the Cabinet of Ministers passed Decree no. 79-r⁷ amending the list of settlements situated near the line of contact and in non-government controlled areas originally listed in Decree no. 1085-r of 7 November 2014.⁸ 41 settlements were added through the amendments enabling persons from those settlements to register as IDPs.

However, the new list is still problematic, as the settlements of Travneve, Gladusove and Novooleksandrivka have been added to the list of non-government controlled settlements, whereas Ukraine extended its control over those settlements in November 2017. Among other

⁴ The full text is available online (in Ukrainian): <http://zakon5.rada.gov.ua/laws/show/15-2018-%D0%BF>

⁵ The full text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/20-2018-%D0%BF>

⁶ The full text is available online (in Ukrainian): <http://zakon0.rada.gov.ua/laws/show/422-2004-%D0%BF>

⁷ The full text available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/79-2018-%D1%80>

⁸ The full text available online (in Ukrainian): <http://zakon2.rada.gov.ua/laws/show/1085-2014-%D1%80>

issues, this results in the impossibility to reinstate the payment of pensions to residents of these settlements. The relevant local authorities and the Ministry of TOT and IDPs are taking corrective measures to introduce amendments through the Cabinet of Ministers resolution.

Draft legislation

Draft law on national security

On 28 February, the President of Ukraine registered the draft law on national security of Ukraine⁹ at Parliament. The draft law aims to define mechanisms administrating the sphere of national security and defence, as well as managing and coordinating the activities of different state bodies in order to implement an integrated approach to national security and defence planning. It also contains safeguards for effective civil control in this area. The project envisages the abolition of three laws and the absorbing their provisions.¹⁰

The draft law contains five sections, including the definition of terms and legal principles shaping the field of national security and defence; principles and mechanisms of civil control; composition of the sectors, functions distribution and coordination mechanisms among various state bodies; and short- and long-term planning in the field of national security and defence. Compared to the actual law “On the Fundamentals of National Security of Ukraine”, the draft law focuses on areas such as sovereignty and territorial integrity, European and Euro-Atlantic integration, and economic and civil society development. The draft does not contain immediate risks to human rights.

Registration of legal facts occurring in the NGCA and in Crimea

Draft law no. 7463 on the simplification of registration procedures of legal facts, in particular for births and deaths occurring in the NGCA or in Crimea, was registered at Parliament.¹¹ The draft suggests a “re-registration” procedure that would require a single application to registration authorities accompanied by documents issued in Crimea or in the NGCA of Donetsk and Luhansk regions. The draft states that the Ministry of Justice would be responsible for the elaboration of detailed procedures for the re-registration of documents confirming births and deaths in Crimea or the NGCA.

Draft laws on increase of budgetary support to the “affordable housing” programme

Four draft laws were registered in the Parliament suggesting amendments to the State Budget of Ukraine for 2018 in order to increase the funding of the “affordable housing” programme. Each of the drafts (no. 8041 and three alternatives to it¹²) suggest increasing the budgetary allocations by sparing funds from administrative costs of different central state authorities. The suggested increases are 8 to 10 times larger than the existing allocation, constituting UAH 100 million (USD 3,838,000). Due to their heavy financial component, the drafts have little chance for timely and effective consideration.

⁹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63531

¹⁰ The laws to be abolished include “On the Fundamentals of National Security of Ukraine”, “On Democratic Civilian Control over the Military Organization and State Law Enforcement Bodies” and “On the Organization of Defence Planning”.

¹¹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63280

¹² Links to all four drafts available online (in Ukrainian):

http://w1.c1.rada.gov.ua/pls/zweb2/webproc2_5_1_J?ses=10009&num_s=2&num=8041&date1=&date2=&name_zp=&out_type=&id=

Other Important Developments

PACE Resolution on humanitarian consequences of war in Ukraine

On 23 January 2018, the Parliamentary Assembly of the Council of Europe adopted Resolution no. 2198 (2018) on “*Humanitarian consequences of the war in Ukraine*”.¹³ Apart from bringing attention to the dire humanitarian situation in Ukraine, the resolution contains a number of recommendations to the Russian Federation and Ukraine. With regard to the situation of IDPs and conflict-affected population, the resolution recommends the following:¹⁴

- Adoption of legislation on humanitarian de-mining actions;
- Revision of the legislation on humanitarian assistance in order to ensure unimpeded and timely delivery of the aid;
- Ensuring that programmes related to IDP protection and assistance to conflict-affected population have the necessary funding;
- Introduction of administrative procedures for Ukrainian citizens living in the “temporarily occupied territories” for the regularization of their civil documentation;
- For durable solutions: elaboration of procedures to access adequate housing; simplification of access to social and pension payments, and the de-linking of access from IDP registration; and the establishment of a mechanism for the full exercise of voting rights for IDPs, including in local elections.

The Resolution and its recommendations may be used as a tool for future advocacy activities.

ECtHR judgement in the case *Tsezar and others v. Ukraine*

On 13 February, the European Court of Human Rights issued a judgement on the case of *Tsezar and others v. Ukraine*.¹⁵ The judgement encompassed complaints of seven residents of the NGCA who claimed a breach of their rights under the European Convention for Human Rights due to the impossibility to “challenge the suspension of their social benefits before the courts, since the latter had been removed from the areas of hostilities” (paragraph 40). The ECtHR did not find a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) that concerns access to justice, since the Ukrainian authorities ensured a mechanism under which cases from hostilities-affected areas are heard by courts located in safe areas in controlled parts of the territory. When considering a breach of Article 1 of Protocol No. 1 to the Convention (ensuring property rights, including a right to pension), the Court did not consider whether the currently existing system for payment of pensions is practical and effective due to applicants’ failure to exhaust the judicial remedies available in regions adjacent to the NGCA.

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¹³ The text available online: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24432&lang=en>

¹⁴ The list includes only those recommendations pertinent to UNHCR’s scope of work in Ukraine.

¹⁵ The text available online:

[https://hudoc.echr.coe.int/eng#{"documentcollectionid2":\["GRANDCHAMBER","CHAMBER"\],"itemid":\["001-180845"\]}](https://hudoc.echr.coe.int/eng#{)

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