

Legislative Update

UNHCR update on displacement-related legislation | June 2018

Adopted Legislation

- Amendments to the Tax and Customs Codes introducing tax exemptions during the Joint Forces Operation
- Participation in the Joint Forces Operation provides a basis for issuing social benefits
- Procedure for establishing that the ATO caused a person's disability

Draft Legislation

- Clarification of an IDP's place of residence on a "factual" basis
- New entry-exit procedure to and from NGCA

Adopted legislation

[Amendments to the Tax and Customs Codes introducing tax exemptions during the Joint Forces Operation](#)

On 19 June, the Parliament adopted two draft laws - #8349¹ and #8350² – introducing amendments to the Tax and Customs Codes. On 27 June, the President signed both of them and they entered into force.

The law amending the Tax Code (draft #8349) extends the tax exemptions for military and law enforcement bodies' personnel involved in the conduct of the Anti-Terrorist Operation (the ATO) to those currently participating in Joint Forces Operation (the JFO). The same approach is applied to military, dual-use and medical goods previously used during the ATO.

The law amending the Customs Code (draft #8350) extends the import duty exemptions for military and medical goods used in the ATO to the JFO.

In the situation of legal uncertainty with the end of the ATO³, the adopted amendments to the Codes suggest that the authorities are planning to extend the validity of certain temporary measures that existed during the ATO. These measures will continue to be valid during the JFO.

[Participation in the JFO is a ground for issuing social benefits](#)

On 19 June, the Parliament adopted draft law #8293⁴ bringing several laws of Ukraine into compliance with the *Law on particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk oblasts* (Law #2268).

The amendments insert the formulation from this law—namely “measures to ensure national security and defence, cutting off and containing armed aggression of the Russian Federation in the Donetsk and Luhansk oblasts--”into

¹ The full text available online (in Ukrainian): <http://zakon5.rada.gov.ua/laws/show/2463-19>

² The full text available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/2464-viii>

³ Although the President announced the ending of the ATO and start of the JFO, the respective Presidential Order was confidential and its text is unavailable. The name of the Order is “On the large scale ATO” and in itself has no indication of the end of the ATO. The law on temporary measures for the ATO period remains in force six months after the ATO is over.

⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63894 . At the time of the preparation of this Update, the Law was pending the signature of the President.

numerous laws of Ukraine⁵. This results in extending certain rules and procedures from the ATO following the introduction of the JFO. For example, the law extends to JFO participants all the existing social benefits available to ATO participants.

Procedure for establishing that the ATO caused a person's disability

On 25 April, the Cabinet of Ministers through its Resolution #306⁶ adopted the *Order on establishing the causal link between the disability and wounds or other health damage caused by hostilities, explosives (including from remnants of war), shelling mines or other war-related incidents*.

Resolution #306 serves as an implementing mechanism for the amendments to the *Law on status of the veterans of war and guarantees of their social protection (the Law on veterans)*⁷ adopted in November 2017. It extended the list of persons with disabilities caused by war to individuals whose disability was caused during:

- the ATO conduct (till 01 December 2014);
- the ATO conduct in NGCA and along the contact line (since 01 December 2014);
- participation in demining activities (no time limits envisaged).

Since the applicable legal provision (point 4 of Article 7 of the Law on veterans) refers to “persons” without specifying their serving in military or law-enforcement formations, civilians can benefit from the procedure and obtain respective social protection.

Resolution #306 elaborated the procedure for obtaining the social status of a person with disability caused by war-related circumstances as summarized below:

- The State service on War Veterans and ATO Participants (the Service) shall create a special Inter-agency commission (the Commission)⁸ tasked with establishing the fact of the harm to health in the territory of the ATO conduct. The Commission's rules of procedure are to be elaborated and endorsed by the Ministry of Social Policy;
- For establishing the fact of the harm to health caused by ammunition in the territory of the ATO conduct, a person shall apply to the Service annexing the necessary supporting documents such as medical documents confirming the fact of wounding or other harm to health and the copy of the conclusion on disability group and reason for disability issued by the medico-social expert commission or other documents that could prove that harm was caused by ammunition, explosives or by other incidents related to hostilities (the non-exhaustive list of other documents is provided in the Resolution);
- The Commission makes a decision within one month after receiving the documents and informs the applicant within three working days after its approval.

The Resolution defines an exhaustive list of grounds for refusing to establish the fact of health damages caused by ammunition in the territory of the ATO conduct. Resolution #306 is a positive development for individuals (including civilians) who received a disability in the course of the ATO. However, those who would suffer the same damage in the

⁵ The amended laws include: on humanitarian assistance, on pensions of persons dismissed from the military service, on general state pension ensuring, on general secondary education, on National Police and other.

⁶ The full text available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/en/306-2018-%D0%BF/paran13#n13>

⁷ The full text available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/en/3551-12/paran82#n82>

⁸ The full name of the Commission is “the Inter-agency commission on the establishment of fact of wounds or other health damages the person obtained from UXOs, ammunitions and military equipment in the territory of the ATO conduct”. The Commission shall consist of representatives of the State Service on War Veterans, the Ministry of Social Policy, the Ministry of Health, the Ministry of Defense, the Ministry of Interior, the National Police, National Guard, the State Border Guard Service, and upon consent the Office of the Prosecutor General and the State Security Service.

course of the JFO are not covered and further amendments to the same law and the same resolutions are required. At the same time, the procedure is complicated and could be difficult for individuals to navigate to obtain the social status.

Draft legislation

Clarification of an IDP's place of residence on a "factual" basis

On 05 June, a group of MPs registered draft law #8432⁹ amending several laws of Ukraine on registration of the place of residence of Ukrainian citizens residing in the temporarily occupied territories (the TOT)¹⁰ of Donetsk and Luhansk oblasts and Crimea.

The draft law proposes to substitute the term "place of residence of IDPs" with "factual place of residence of IDPs," thus underlining the difference between the factual place of residence and the permanent registration listed in a person's internal passport. The factual place of residence shall be noted in the IDP Unified Database and the registry of the community of an IDP's residence. The factual place of residence *per se* shall not create any property rights for housing or collective centre where an IDP resides, while allowing the factual place of residence to be registered for any type of housing, including collective centres, hotels and sanatoriums and other places of IDPs' choice.

This legislative initiative contributes to IDP integration by including their needs in local planning and budgeting, such as through budget subventions, which are calculated based on the number of registered local residents. It creates an opportunity to participate in the public affairs of the host communities, such as local initiatives (to be further considered in local councils) and public hearings. To ensure participation in local elections, further amendments to the Law on Local Elections would be necessary. It should be noted that for host communities, the concrete data on the number of IDPs residing in their territories may serve as a basis for receiving subventions from the state budget.

Meanwhile, registration of the factual place of residence with the hosting community shall not impact the registration in the previous place of residence (Crimea/Donetsk and Luhansk oblasts). Many IDPs consider it important to maintain their permanent residence registration in their original homes in order to maintain property rights and family ties.

Additionally, the proposed amendments define which state authority is responsible for registration of the place of residence in the TOT: the local state administration of Kherson oblast, and the Donetsk and Luhansk military-civil administrations. They would create, fulfil and administer the database of persons registered in the TOT.

New entry-exit procedure to and from the NGCA¹¹

On 08 June 2018, the Ministry of Defense published for the public discussion the draft order on entry-exit procedures to the NGCA, to be applicable to all physical and legal persons, including the personnel of international organizations and NGOs involved in human rights protection within the armed conflict in the East.¹²

All the authorized movement to/from the NGCA shall be conducted through entry-exit checkpoints (the EECF) based on the permits for physical persons and with the application of special control measures at the EECFs to ensure safety and security of the movement of persons and goods. Main provisions of the order are reflected below, while the separate analysis of the draft is available upon request.

⁹ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64152

¹⁰ The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position

¹¹ The draft order refers to the "temporarily occupied territories of Donetsk and Luhansk regions" as per the current legislation of Ukraine.

¹² Please see the announcement (in Ukrainian): <http://www.mil.gov.ua/ministry/normativno-pravova-baza/regulyatorna-diyalnist/proekti-regulyatornih-aktiv-dlya-obgovorenniya/2018/06/08/proekt-postanovi-kmu-pro-zatverdzhennya-poryadku-vizdu-osib-peremishhennya-tovariv-na-timchasovo-okupovani-teritorii/>

Pros and cons of the draft¹³

Positive	Require clarifications	Raises concerns
<p>1) Maintenance of EECPs:</p> <p><i>Luhansk and Donetsk oblast administrations</i> (or respective civil-military administrations) are declared responsible for the EECPs maintenance and servicing with a respective subvention from the central budget;</p> <p>2) Crossing of the contact line:</p> <ul style="list-style-type: none"> - Parents may travel from the NGCA to GCA with their <i>children born after the start of the ATO</i> with documents confirming the fact of birth issued in the NGCA. This will simplify further access to Ukrainian documents on birth registration; - The possibility to cross the EECP without special control measures in <i>case of emergency</i> (non-exhaustive list of emergency cases includes natural disasters and escalation of hostilities); - The possibility to cross the EECP <i>without identification documents</i> for persons leaving the NGCA with a purpose to escape the negative consequences of armed conflict. Special verification procedures by the National Police shall follow. The same applies to individuals released from detention facilities (penitentiary institutions) located at the NGCA; - <i>Persons with disabilities, elderly, pregnant women or women with minor children, as well as those with urgent humanitarian needs</i> (e.g. the transfer of 	<p>1) Definitions:</p> <p>Goods are defined as any material assets including those recognized as humanitarian assistance transferred to and from the NGCA. It is not clear whether this includes cash;</p> <p>2) Crossing the contact line:</p> <p>Children over 14 can travel only with a passport (a national ID card or a passport for travelling abroad). There is a need to ensure that they are allowed to enter NGCA with a birth certificate and a certificate from the State Migration Service confirming s/he has applied for a national ID card.</p> <p>There is no legal clarity with regard to the rules of who a can accompany a travelling child and which documents are required. For example, currently travelling with one of the parents requires a power of attorney from another parent: the requirements under the draft order are not clear in this regard.</p> <p>3) Receiving permits:</p> <p>Two types of permits are envisaged: for one-time crossing and for multiple crossings. The grounds for issuance of either one are not specified which may result in unnecessary prolongations or the need for repeated applications for permits. It would be advisable to cancel the permit system, since other controls at the EECP provide security. If the permit system is maintained, it is</p>	<p>1) Definitions:</p> <p>The definition of the “persons involved in the armed aggression of the Russian Federation” includes the personnel of “the occupying administration of the Russian Federation.”¹⁴ This broad definition could be interpreted as encompassing all levels of <i>de facto</i> authorities in NGCA, including persons conducting vital public tasks at local levels (e.g., teachers, nurses). Verification procedures announced in draft rules may result in arbitrary detentions and difficulties at crossing of the line of contact.</p>

¹³ UNHCR has submitted its recommendations to the Ministry of Defense through the Protection Cluster.

¹⁴ The notions of “aggression” and “occupying administration” here are provided in the meaning of Law 2268 (Law on particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk oblasts).

<p>dead bodies) may cross the EECF through a priority line;</p> <p>3) Transfer of goods:</p> <p>All goods that are not prohibited shall be allowed for the transfer in hand baggage or in vehicles. The Ministry for Temporarily Occupied Territories and Internally Displaced Persons (the MinTOT) is tasked with the development of the list of goods restricted or forbidden for transfer;</p> <p>No limits in weight or price are envisaged, but could be further clarified in an order to be elaborated by the MinTOT.</p>	<p>recommended that all permits are issued for multiple-entry and with the unlimited duration;</p> <p>4) Special control measures:</p> <p>By virtue of his decision, the Head of the JFO may impose additional verification measures without any envisaged grounds (not even an illustrative list is provided in the draft).</p> <p>5) Transfer of goods:</p> <p>Transfer of all personal belongings including vehicles of all types from the NGCA is allowed. There is nothing on the similar movement to NGCA, which requires elaboration.</p>	
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