

Legislative Update

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- Amendments to laws on registration of birth, death and marriage occurred in the “temporarily occupied territories” (or TOT)¹
- Amendments to by-laws aimed at unifying usage of conflict-related terminology

Adopted legislation

Amendments to regulations related to individual electronic pension files and renewal of social payments

On 25 April, the Government adopted its Resolution # 335² aimed at identifying certain procedural steps related to work with electronic pension cases and amending the process of reinstatement of social payments. The document entered into force on 12 May.

Under the current legislation, all the documents necessary for assigning pensions shall be saved in paper format in an individual pension file. However, the Pension Fund of Ukraine aims at digitalizing all the individual pension files. Therefore, all the necessary documents are being stored both in hard and electronic copy locally at the department that serves the population in certain geographic area. In relation to exchange of information on electronic pension files, the procedure is set for the transfer of individual pension files between local Pension Fund departments in situations where a pensioner changes his/her place of residence. The individual pension e-file must be transferred to the requesting local pension fund department within 5 days. Previously, the analogous procedure covered only social protection bodies and the electronic files of social payments receivers. This shall ensure proper information exchange as well as smooth hand over of obligations, including the payment of pensions from one pension fund department to another.

¹ The terminology “Temporarily occupied territories” is quoted from the official legal act. More explanations on the terminology are provided in the relevant section.

² The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-8-cherwnya-2016-r-365>

If, on the one hand, the regulation of the transfer procedure of individual case files shall have a positive effect on IDP pensioners, the adopted amendments expand the list of the bodies authorized to suspend the payment of social benefits on the other hand. If previously special multi-functional commissions formed at local social protection departments had an exclusive right to suspend social payments and pensions to IDPs, the amendments entrusted this function also to “bodies paying any social benefits”. Therefore, local social protection departments themselves and local pension fund departments can issue a respective decision on suspension of payment of social benefits. This norm has already resulted in faster and widespread suspension decisions. The reinstatement process remains long and requires a home-visit and a decision of the commission. According to UNHCR’s protection monitoring, the reinstatement process takes up to two months, leaving more and more IDPs without targeted assistance, other types of social benefits and pensions.

The payment of reinstated pensions or social benefits shall start from the month when an IDP submitted a respective application. However, any sum accrued between the suspension and reinstatement dates shall be paid in accordance with a procedure that is still to be elaborated by the Cabinet of Ministers of Ukraine. The timeframe for its elaboration has not been identified. In the absence of this regulation, the pay gap occurs. This is a deterioration in comparison to the previously existing procedure, where the accumulated debt was paid in one instalment after the reinstatement decision. UNHCR and its partners will continue monitoring the situation.

Amendments relating to housing subsidies

On 27 April, the Government adopted the Resolution # 329³ allowing different categories of individuals, including IDPs to receive housing subsidies without submitting a loan agreement. In particular, if several IDPs reside in the same dwelling without a loan agreement as one household, then one IDP member of the household can apply to a special commission to be granted a housing subsidy for the dwelling. When applying for the first time or re-applying for housing subsidy, the applicant should declare all the members of the household and provide copies of own and others’ IDP certificates. Workers of local social protection departments shall verify the declared information through the subsequent home visit and mark it in an act of inspection. The latter serves as a basis for granting a subsidy.

The proposed amendments are expected to simplify access to housing subsidies for IDPs. Meanwhile, the risk of IDPs not using the suggested mechanism remains due to their fear of landlords’ disrupting non-contractual tenancy arrangements.

Draft legislation

Draft Law amending the Law on social housing stock

On 15 May, the Parliament adopted in the first reading the draft law #7304 amending the Law on (the) social housing stock.⁴ The proposed amendments are specifically designed to allow IDPs with disabilities to register in the social housing record in a settlement/ city or town district where one received an IDP certificate. The family members are also granted with such a right. To be considered for social housing, an IDP shall demonstrate that the average accumulated income of the household is lower than the sum of a minimum monthly subsistence allowance per every member of the household and the average rent price in the respective region/settlement.

³ The Resolution entered into force on 1 May 2018. The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-deyakih-postanov-kabinetu-ministriv-ukrayini-ta-viznannya-takoyu-sho-vtratile-chinnist-postanovi-kabinetu-ministriv-ukrayini-vid-28-grudnya-2016-r-1022>

⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62916

IDPs possessing a housing at the government-controlled areas (GCA) are not eligible for social housing, unless their housing has been destroyed or damaged due to the conduct of the anti-terrorist operation.

The list of documents to be submitted shall be identified by the respective local authorities and shall include documents to prove the social-economic need for the social housing, confirmation of disability status and IDP certificates of an applicant and household members.

These amendments facilitate IDPs access to social housing. However, its practical implementation raises concerns due to the little stock of social housing throughout Ukraine.

[Draft law on the legal status of the missing persons](#)

On 24 May, the Parliamentary Human Rights Committee recommended the adoption in the second reading of the draft law on legal status of missing persons #5435⁵.

The draft Law elaborates on the provisions of the international humanitarian law rule on clarification of the fate and whereabouts of missing persons and establishes a specific national mechanism consisting in the Commission on Missing Persons and the Unified Register of Missing Persons.

The main consequences of its adoption include the following:

- Clarification of the fate and whereabouts of missing individuals;
- Establishment of a referral mechanism with clear distribution of functions between authorities;
- Two-way communication with the main coordinating authority to be established;
- Collection of all available information from all stakeholders concerned.

The adoption of this draft shall greatly contribute to the protection of missing individuals, as well as of their relatives.

[Draft amendments on enhancing IDPs' protection](#)

On 02 May, the Government registered in the Parliament the draft law #8332⁶ amending the Law on court fees and the Law on ensuring the rights and freedoms of the citizens and the legal regime on the TOT (Law on TOT of Crimea, hereinafter Law 1207).

The proposed amendments exempt the applicants from the payment of court fees in cases related to violations of their rights that took place at the “temporarily occupied territories”⁷ (including cases related to identity documents, employment, pensions and social insurance, social services, education, elections, family unity, transfer of movable property, health care, etc.⁸). Notably, the provision will be applicable until Law 1207 and the Law on safeguarding sovereignty of Ukraine over some parts of the Donetsk and Luhansk oblasts (Law 2268)⁹ remain in force. Thus, the amendments relating to court fee exemption shall cover both the NGCA and Crimea.

⁵ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=60560. On 18 January 2018, Parliament adopted it in the first reading. The statement of the Parliamentary Human Rights Committee available online (in Ukrainian): http://kompravlud.rada.gov.ua/news/main_news/73894.html

⁶ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63954

⁷ In this case, according to the Ukrainian legislation, the “temporarily occupied territories?” consists of Crimea and the NGCA of the Donetsk and Luhansk oblasts.

⁸ The full list of the protected rights is reflected in Articles 6-9 of Law on IDPs available online (in Ukrainian): <http://zakon3.rada.gov.ua/laws/show/1706-18>

⁹ Reference is made to Law #2268 on peculiarities of state policy with regard to ensuring state sovereignty of Ukraine over the temporarily occupied territories in Donetsk and Luhansk oblasts.

The draft law also suggests amending Law 1207 in order to enhance exercising of property rights over objects located in Crimea. In particular, the owner of any immovable property located in Crimea shall have a possibility to sell, exchange or otherwise dispose of it in the GCA. In the draft law, a special attention is given to the protection of the property rights of minors.

An alternative draft law #8332-1¹⁰ was registered on 18 May. It contains a shorter list of exemptions, but still includes the cases related to birth and death recognition. Both initiatives would contribute to the clarification of the already existing rule on the exemption of the court fees in cases concerning applications for the recognition of facts of legal significance occurred in the non-government controlled areas of the Donetsk and Luhansk oblasts (NGCA) or in Crimea. It is recommended that similar procedures concerning exemption of court fees be implemented for residents of both Crimea and the NGCA, in order to avoid discrimination.

Amendments to the legislation on the registration of birth, death and marriage occurred in the “temporarily occupied territories”¹¹

A group of MPs registered three draft laws aimed at simplifying registration of civil acts occurred in the NGCA and Crimea: The geographical scope of application of the below draft laws #8391 and #8400 is unclear. Both texts speak of “TOT identified by the Verkhovna Rada”. This may narrow their application, since currently there are two laws that declare two geographical areas to be temporarily occupied. Law 1207 concerns Crimea and has clear identification already in the text of the law as to which territories are considered temporarily occupied. Whereas Law 2268 states that the territories to be considered temporarily occupied in the Donetsk and Luhansk NGCA shall be identified by the President. Thus, in legal terms identification of temporarily occupied territories in Crimea and the NGCA is done by different state authorities. UNHCR stands on the position that protection extended under the national legislation shall be available without discrimination for residents of NGCA in the Donetsk and Luhansk oblasts and of Crimea.

- Draft law # 8390¹² amends the paragraph two of Article 317 of the Civil Code, stating that, in order to confirm the fact of death that took place in the TOT, an applicant may apply to any court in the controlled part of the territory of Ukraine, irrespective of his/her place of residence. This formula uses the same wording as in the first paragraph of the same article for the facts of birth.

This is an important technical amendment that widens the network of courts to which individuals may apply in such cases.

- The draft law # 8391¹³ amends the law of Ukraine on “Free legal aid”, suggesting that residents of TOT (as defined by the Verkhovna Rada) have a right to free secondary legal aid in three types of cases:
 - in birth and death related cases;
 - for the protection of violated, non-recognized or disputed rights, freedoms or interests related to “the armed aggression, armed conflict, temporary occupation, natural or man-made disaster” (quote from the draft);

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64043

¹¹ In this section, according to the Ukrainian legislation, the “temporarily occupied territories” consists of Crimea and the NGCA of the Donetsk and Luhansk oblasts

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64067

¹³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64068

- for applications lodged against the Russian Federation in cases related to compensations (material or moral) for lost/damaged property or other violations “perpetrated in the course of the armed aggression, as well as due to the temporary occupation, armed conflict and related death, injury, detention or disappearance” (quote from the draft).

If enforced, this development may open avenues to access free legal aid without prior registration as IDP. It may also contribute to strengthen the links between NGCA/Crimea and the rest of Ukraine through guaranteed access to justice and protection of their violated rights.

- The draft law # 8400¹⁴ allows the residents of TOT (as defined by the Verkhovna Rada) to have their marriage registered on the day of application. This is a positive step towards simplification of issuance of Ukrainian marriage certificates and the recognition of civil documentation issued in the TOT. This is especially important in a view that more and more children are born in marriages registered at the NGCA and in Crimea by the de-facto authorities. When parents residing at NGCA/Crimea decide to obtain an Ukrainian birth certificate for their children, they face difficulty with their marriage recognition and thus with their recognition as parents. If enforced, the law shall reduce barriers for accessing civil documentation for individuals permanently residing at NGCA/Crimea.

Amendments aimed at unifying usage of conflict-related terminology in normative acts

On 03 May, the Ministry of Social Policy placed for a public discussion a draft resolution¹⁵ aimed at bringing legislative acts on the issues of social protection of IDPs¹⁶ in line with the requirements of the Law 2268 (on peculiarities of state policy with regard to ensuring state sovereignty of Ukraine over the temporarily occupied territories in Donetsk and Luhansk oblasts).

The proposed amendments mostly consist of removing the phrase “sites located on the territory where state bodies temporarily do not exercise their powers” from all Resolutions linked to social protection of IDPs and substituting those with the wordings of the Law 2268, such as “temporarily occupied territories”.

The draft suggests excluding the reference to Decree 1085-r, which contains the list of settlements situated at the NGCA and along the line of contact. This step raises concerns, since local social protection departments may be left without any guidance on the geographical scope of application of the Resolution #505 regarding targeted assistance. This would create a legal limbo where IDPs may be left without access to targeted assistance until there is a normative document identifying “the list of settlements to be considered TOT” as per the law 2268.

Other Important Developments

The decision of the Supreme Court of Ukraine in L. Melnikova v. Pension Fund department in Bakhmut case (“the model case”)

On 03 May, the Supreme Court of Ukraine issued a decision in the “model case” format¹⁷ on the payment of pension to a registered IDP in the favour of the applicant. The characteristic of the case as “model” means that all low-instance courts are obliged to examine cases based on similar lawsuits in the same manner. However, at the time of compilation of this update UNHCR learnt that the Pension Fund of Ukraine appealed the decision to the Grand Chamber of the Supreme Court.

¹⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64080

¹⁵ The full text available online (in Ukrainian): <https://www.msp.gov.ua/projects/320/>

¹⁶ In particular, Government Resolutions 600, 505, 509, 365 and 646

¹⁷ The full text available online (in Ukrainian): <http://reyestr.court.gov.ua/Review/73869341>

The Court requested that the Bakhmut Pension Fund decision on the suspension of pension (of 24 March 2017) be cancelled and that the applicant shall receive the full amount of the pension that she accumulated over this time. The Court reached the conclusion that the suspension of the pension to the registered IDP was illegal since it was made based on a by-law, the provisions of which contradict to the provisions of the Law of Ukraine “On Pension Insurance”. There were several other important points that substantially contribute to the overall discussion regarding the situation of IDPs in Ukraine and their access to social benefits. In particular, it was stated that “IDP” is not a “legal status”, but a special status based on a descriptive norm of the law. The registration as an IDP is a necessary procedure developed by the State in order to account for and address the special needs of IDPs, including access to housing, access to legal aid, access to special programmes, including targeted assistance. IDP registration, therefore, provides additional “rights”, but does not limit any other rights provided for in the Constitution to citizens of Ukraine as mentioned in this important court decision.

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