

Legislative Update

UNHCR update on displacement-related legislation | December 2019

Adopted Legislation

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Adopted legislation

Prolongation of the validity of the Law on the special self-government regime in certain areas of the Donetsk and Luhansk oblasts

On 18 December, the Verkhovna Rada amended Article 1 of the Law of Ukraine “On special local self-government regime in certain areas of the Donetsk and Luhansk oblasts” prolonging the validity of the law until 31 December 2020.¹ This change was adopted in order to fulfil Ukraine’s obligations under the Minsk peace process with regard to pre-conditions for integrating the non-government controlled areas (NGCA) of the Donetsk and Luhansk oblasts.

Electoral Code

On 19 December, the Verkhovna Rada adopted the Electoral Code of Ukraine taking into account Presidential proposals.² Inter alia, provisions of the Code shall ensure that IDPs can vote in local elections. The next round of local elections in Ukraine shall take place in 2020, therefore IDPs in different regions of Ukraine shall be included into local electoral registries for voting.

Adoption of the State budget for 2020

Adopted on 14 November, the State Budget for 2020 (Law # 294-IX) entered into force on 1 January 2020.³ Major expenses related to UNHCR’s areas of interest are reflected below (in thousand UAH):

Public body / budget program	2019	2020
Ministry for Veterans, Temporarily Occupied Territories and Internally Displaced Persons (MinVetTOT)	195 186,9	534 081, 7

¹ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/364-20>

² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66849

³ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/main/294-IX>

<i>Expenses under the coordination of the MinVetTOT:</i>		
Subvention from the state budget to local budgets to support conflict-affected areas in Eastern Ukraine	34 000,0	20 000,0
Mine risk education	5 000,0	5 000,0
Subventions to local budgets to finance "Housing for IDPs" project	100 000,0	485 000,0
Financial compensation for housing destroyed during military emergency	-	40 200,0
Subventions to local budgets for housing for displaced ATO/JFO participants with disabilities	25 000,0 (previously covered by MoSP)	248 445,0
<i>Ministry of Social Policy of Ukraine (MoSP)</i>	198 634 180,1	293 402 945,7
<i>Displacement related expenses under the coordination of the MoSP:</i>		
Monthly targeted assistance to IDPs	3 042 568,6	3 042 568,6
Financing measures to protect children, families, women from the most vulnerable categories of population	95 570,3	-
Financing subsidies for housing/dwelling and communal services	20 000 000,0	47 569 807,5
Financing of accommodation of Formerly Deported People (Crimean Tatars)	45 340,0	20 000,0
<i>Ministry of Education and Science of Ukraine</i>	73 043 039,7	44 603 115,7
<i>Ministry of Health of Ukraine</i>	39 350 075,6	98 183 290,5
<i>Ministry of Justice of Ukraine</i>	13 867 143,8	14 341 937,5
<i>Expenses under the coordination of the MoJ:</i>		
Free Legal Aid Coordination Center	728 287,3	821 914,1
Financing services and expenses of advocates of FLA	337 733,2	385 184, 0
<i>Ministry for Development of Communities and Territories (former Ministry of Regional Development)</i>	12 467 499,5	2 484 771,7
<i>Expenses under the coordination of the Ministry for Development of Communities and Territories</i>		
Subvention from the state budget to local budgets for the implementation of cross-border cooperation projects	10 000,0	-
Subvention from the state budget to local budgets for the formation of the infrastructure of the united territorial communities	2 100 000,0	2 100 000,0
Subvention from the state budget to local budgets for implementation of projects under the Extraordinary Financing Program of Restoring Ukraine (nationwide expenditures)	1 550 000,0	1 275 000,0
Support for affordable housing program	-	100 000,0
State Fund for Regional Development	7 670 000,0	7 500 000,0
<i>Ministry of Defence of Ukraine</i>	102 489 246,5	117 509 257,8
<i>State Emergency Service</i>	13 462 695,9	15 375 162,9
<i>State Migration Service</i>	4 376 162,0	3 987 090,5
Contribution to IOM membership fees	1 517,2	922,2
Administration of the <i>State Border Guard Service</i>	10 806 309,4	12 768 326,7
<i>State Security Service</i>	9 658 674,6	12 165 891,9
<i>Office of the Ombudsperson</i>	164 887,9	153 894,4
Financing National Prevention Mechanism (prevention of tortures and degrading treatment) by the Office of the Ombudsperson	2 595,0	2525,0
Donetsk oblast state administration	472 027,5	363 052, 9
Luhansk oblast state administration	384 234	278 956,5
Kherson oblast state administration	315 570, 5	234 551,3

Overall funding of the State Migration Service decreases by nine per cent. The Ministry of Education faces a serious decrease by 40%, while funding for the Ministry of Health is 2.5 times higher than last year.

The State Budget contains some positive developments, in particular extended financial support to housing programs. Moreover, it contains a specific housing program on compensation for lost/damaged property, addressing consequences of the ongoing conflict.

An increased support is provided to the State Emergency Service, what may serve as indicator of the intention to reconstruct destroyed housing in the east, as the State Emergency Service is among key agencies involved in reconstruction process.

Simultaneously, it should be noted that the State Budget does not allocate for separate funds for the payment of pension-related debts accumulated due to the suspension of payment of pension to registered IDPs as well as for the IDP Integration and Durable Solutions Strategy which requires a new elaboration or its prolongation. This highlights a need in further advocacy steps towards the elaboration/prolongation of the IDP Durable Solutions Strategy and its proper funding as well as of a mechanism on paying accumulated pension debts by the Government.

Verification and monitoring of state benefits

On 3 December, the Verkhovna Rada adopted the draft law #1231 on verification and monitoring of state benefits following the proposals submitted by the President.⁴

The draft law introduces amendments to the Law of Ukraine "On Compulsory State Pension Insurance" regarding the terms of payment or recalculation of pensions. The Pension Fund may extend the timeframe for considering applications for payment or recalculation of pensions for up to 30 days in order to conduct verification of the submitted data. The verification procedure shall be administered through an informational-analytical platform for collection and analysis of data received from the state authorities. To conduct such verification, the draft law authorizes accessing all public registries, including the Unified Demographic Register, the State Register of Voters and the State Register of Civil Status Acts. The draft law also allows data to be requested from the State Border Guard Service regarding recipients who have crossed the state border of Ukraine or entered/exited NGCA in Donetsk and Luhansk oblast and the TOT of the Autonomous Republic of Crimea. In case the recipient fails to undergo this verification procedure, payments shall be suspended or recalculated. There is a risk that this procedure may result in arbitrary suspension of social payments to IDPs, as the information available in databases may contain erroneous information regarding movement across the line of contact. Cases where an IDP permanently residing at GCA was considered to have returned to NGCA were identified previously. Pension payments are suspended automatically and may be reinstated through court only. Lack of an administrative mechanism to contest the decision on suspension may lead to accumulation of debts.

Amendments to the Law on temporary measures during the ATO

On 26 December, the President signed the draft law #0933,⁵ introducing amendments to the Law on temporary measures for the period of the Anti-Terrorist Operation (ATO). The amendments specify procedures related to documenting those residing or displaced from the ATO area (including the area of Joint Forces Operation (JFO)). In particular, those residing in Donetsk and Luhansk NGCA shall apply for documentation related services to the State Migration Service (SMS) territorial bodies functioning in the Donetsk and Luhansk oblasts respectively, while registered IDPs may apply to the SMS at the place of their factual residence.

⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66609

⁵ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/main/371-IX>

This law does not improve the situation for non-displaced population with residence registration⁶ at NGCA, since they would be required to apply for documents to SMS departments in Donetsk/Luhansk oblasts GCA. Alternatively, they could register as IDPs (in case they still have valid identity documents) to apply to the SMS in oblasts of their residence.

Crossing the Ukrainian-Russian border with a passport for travelling abroad

On 18 December, the Government adopted its Resolution #1056⁷ introducing amendments to the rules of crossing the Ukrainian-Russian border. As of March 1, 2020, Ukrainian citizens shall cross the border exclusively with a passport for travelling abroad. Previously, crossings to the Russian Federation were allowed with the national “internal” passport (or an ID card) or with the “international” passport for travelling abroad. Children under 14 could cross the border with a birth certificate. The Resolution also prohibits “small border movements”, a special regime which allowed simplified border crossing for residents of settlements along the border area.

Implementation of these provisions require specific monitoring, as such rules may negatively impact residents of Luhansk NGCA who use routes through the territory of the Russian Federation to access GCA Ukraine due to better security situation, proximity and possibility to travel by personal vehicle or public transport. Additionally, this may raise concerns regarding movement from NGCA in a case of emergency.

Draft legislation

Amendments to the Criminal Code on the crime of collaborationism

On 6 December, an MP registered in the Verkhovna Rada the draft law #2549⁸ proposing to criminalize collaborationism. The author suggests defining ‘collaborationism’ as a special form of a state treason in the form of military, political, economic, administrative, cultural or media cooperation of any Ukrainian citizen with the aggressor state⁹ in a manner that affects Ukrainian state sovereignty, territorial integrity, defence capacity, public, economic or information security. An individual perpetrator could be deprived of liberty for a maximum term of 5 years, while perpetrators from among public servants or organized criminal groups could be charged with the maximum 10 years of deprivation of liberty. Calls to collaborate and the distribution of respective materials could be punished by a maximum of 3 years of deprivation of liberty.

If adopted, this draft initiative may result in a significant number of indiscriminate court decisions against civilians residing in territories outside the Government control who do not take part in hostilities and are not involved in working with de-facto authorities. It would affect their right to a fair trial due to an unnecessary broad definition . It does not take into account the situations of forced involvement with de-facto authorities or clandestine resistance. In the current format it may impede efforts related to establishing and implementing the comprehensive model of transitional justice and may put barriers to the process of reintegrating NGCA and Crimea and strengthening ties with their residents.

⁶ The situation with difference in the place of factual and registered residence is created by the difficulties in the residence registration system in Ukraine, which is heavily linked to provision of administrative services and property rights. Since residence registration is not declaratory, multiple individuals reside at places different from the residence registration marked in their passports. Registration as an internally displaced person is possible based on the information in the passport regarding residence registration. That is why many individuals with residence registration in NGCA who moved to other parts of the country long before the start of the conflict may have an opportunity to register as IDPs in order to access certain public services, including documentation.

⁷ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-diyu-okremih-polozhen-mizhnarodnih-dogovoriv-ukrayini-z-rosijskoyu-federacijeyu-i181219>

⁸ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67568

⁹ The terminology is quoted from the official legal act and does not reflect UNHCR’s position

Amendments to the Law on mine action

On 18 December, MPs registered in the Verkhovna Rada draft law #2618¹⁰ suggesting a set of amendments to the Law on mine action¹¹. The authors propose to simplify a set of definitions related to “demining (humanitarian demining)” and a list of explosive ordnances. Elimination of all rules regulating democratic control on mine action is suggested (currently executed by the Verkhovna Rada, the Government and local authorities). Correspondingly, the Verkhovna Rada would not be involved in any mine action decision making, the Government would remain in charge of elaborating the Mine Action State Policy and programs, while the local authorities would disseminate information related to mine action and demining among their communities and central authorities. The draft law suggests changing a structure of specifically created mine action bodies as follows:

- National Mine Action Authority – an inter-agency body coordinated by the Ministry of Defence which would be transferred to the State Emergency Service after restoring Ukrainian control over contaminated areas (currently an inter-agency body coordinated by the Government);
- Mine Action Centre – an establishment created by the Ministry of Defence entrusted with preparing mine action-related events and submitting proposals on national mine actions standards to the National Mine Action Authority (currently a central executive body coordinated by the National Mine Action Authority);
- Humanitarian Demining Centre – an establishment created by the State Emergency Service that coordinates demining processes and certifies mine action operators (absent in the existing structure).

If adopted, the draft amendments may facilitate the implementation of mine action policy with regard to protection of civilians in contaminated areas due to simplified technical requirements. Simultaneously, this implementation would require specific monitoring by the humanitarian community due to the elimination of all state control measures over the implementation of the Mine Action Policy.

Other developments

The Supreme Court Resolution on compensation for destroyed housing

In December, the Supreme Court promulgated its Resolution¹² with regard to compensation for destroyed commercial premises caused by acts of terrorism.

On 4 November 2016, the applicant referred to a first-instance court, requesting a compensation for her commercial premises destroyed during the ATO in Mariupol. The main argumentation was based on the lack of a special order regulating payment of compensation for the ATO consequences in Donetsk and Luhansk oblasts and applicability of relevant European Court of Human Rights jurisprudence¹³. A first-instance court stated that Ukraine should compensate damages/destructions caused by an act of terrorism from the State Budget funds irrespective of Ukraine’s culpability. Simultaneously, the state preserves the right of recourse claim on reimbursing compensation from those liable for acts of terrorism. The Court of Appeals supported this decision. The Supreme Court stated that under Protocol 1 to the European Human Rights Convention an

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67674

¹¹ Please see more details in 2018 UNHCR Legislative Update for December

¹² The full text available online (in Ukrainian):

<http://www.reyestr.court.gov.ua/Review/86310215?fbclid=IwAR1vu2VddvAS8hu5OppYBIXpcMFMleOdxcgCWI7rASieyXEeZHUKB3SEYHs>

¹³ In particular, *Ayder and others v. Turkey*; *Catan and others v. Moldova and Russia*

applicant has a right to claim compensation for her damaged or destroyed property irrespective of the fact that the national legal framework on compensatory mechanism is non-existent. It underlined that there is a need to clarify which obligations of the state were violated. Non-fulfilment of positive obligations (introducing a legal framework to ensure that property right violated in the course of the conflict may be effectively protected) or negative obligations (which requires non-interference with the peaceful ownership) will result in the different level of compensation. Since the decisions of lower instance courts did not clarify which particular obligations of the state (positive or negative) were violated, the Supreme Court re-submitted this case to a first-instance court for re-examination.

Subvention to local budgets

On 11 December, the Government adopted its Decree #1234-p¹⁴ dividing the subvention from the State budget between the local budgets to support conflict-affected territories. The MinVetTOT shall seek consent on the distribution from the Parliamentary Budgetary Committee.

This is the fifth¹⁵ subvention to conflict-affected territories covering several settlements of Donetsk, Lviv, Luhansk, Zhytomyr and Kharkiv oblast. The total allocated sum is 12 668,302 thousand UAH. As may be observed, the geography covered by this type of co-funding is being constantly extended in comparison with an initial coverage of Donetsk and Luhansk oblasts. Such tendency reflects increase in submitting relevant applications to MinVetTOT, what may serve as indicator of the MinVetTOT intentions to support durable solutions in oblasts different from Donetsk and Luhansk GCA.

The subventions are used for the overall development of the settlements and localities belonging to these oblasts, thus introducing additional opportunities for host and displaced population to access several state services, including housing.

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¹⁴ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-rozpo19-roci-subvenciyi-z-derzha-a1234r>

¹⁵ Please see more details in UNHCR 2018 July, November and December Legislative Updates and UNHCR 2019 July Legislative Updates