



DRC / DDG LEGAL ALERT: Issue 37 February 2019

1. Draft Law on Humanitarian Aid in Ukraine Developed by the Cabinet is Registered at the Parliament

The January Legal Alert reported¹ Cabinet's initiative to amend regulation on humanitarian aid. On 12 February 2019 that draft has been registered with the Parliament as draft law [No. 10038](#). The draft provides 1) simplified mechanism for providing humanitarian aid; 2) extension of regional state administration's power to recognise cargo as humanitarian aid; 3) institutional arrangements including the Commission on Humanitarian Aid replacing Ministry of Social policy in granting recognition of humanitarian cargo.

The draft law also provides the following:

- Representative offices of international non-governmental organisations and international governmental organisations operating in Ukraine now can be registered as 'recipients of humanitarian aid' – a legal status under the Ukrainian law obtainable through registration only for certain groups of legal entities. The status makes them eligible for a number of benefits and simplified regulatory processes including use of foreign currency, and exemption from taxation of humanitarian items;
- Organisations registered as recipients of humanitarian aid cannot transfer humanitarian aid to other organisations registered as recipients of humanitarian aid. This prohibition is valid even if there is an approval of the transfer from the donor. This provision can create obstacles in implementing humanitarian programmes through partners;
- Previously, organisations registered as recipients of humanitarian aid had to report to the state on availability and distribution of humanitarian aid once a month. Now, the reporting is proposed to be done on a quarterly basis.

2. Draft Law On Verification and Monitoring of State Payments Is Registered at the Parliament

On 30 January 2019 draft law [No. 9511](#) 'On Verification and Monitoring of State Payments', developed by the Cabinet, was registered at the Parliament. State payments, within the meaning of the draft law, includes pensions, assistances, benefits, subsidies, scholarships, and other payments provided from the state and local budgets, pension fund, and funds of obligatory state pension insurance. Verification sources will include information from banks, voters register, civil status register, employment-related registers, demographic register, register of property rights, register of legal entities and individual entrepreneurs.

- The draft law provides three kinds of verifications:
 - **Preventive:** designed to verify information submitted by persons applied for pension/social payments prior to deciding on the application. This verification will not start until 1 January 2020;
 - **Current:** designed to monitor social and financial state of recipients of pensions and social payments which may affect their eligibility for the payments;
 - **Retrospective:** designed to verify information submitted by persons whose pension/social payments have been cancelled within 3 years before the verification date.

¹ Please see DRC-DDG Legal Alert Issue 36: January 2019, Section 1 - <https://www.humanitarianresponse.info/en/operations/ukraine/document/drc-legal-alert-january-2019-drc-правовий-бюлетень-січень-2019-drc>

In the event of discrepancy between the information allocated through the verification process and information submitted by the recipient within her/his application, the recipients will be required to return unlawfully or excessively received payments. The payment, in turn, will also be suspended.

Concern – Discrimination on applicant’s place of residence: Similar mechanism of suspension of payments on the basis of information discrepancy is already applied to IDPs whose pensions and social benefits are repeatedly suspended their whereabouts and declared place of residence do not match. Such practice continues despite courts declaring the processes unlawful². The draft law can be seen as broadening the scope of the existing practice considered by courts as unlawful. In addition to IDPs and NGCA residents, the draft law will affect Ukrainian citizens living abroad.

Position of international law in the matter: Suspension of citizen’s pension on the ground of her/his whereabouts or place of residence violates state’s international law obligation. In *Pichkur v. Ukraine* (ECtHR, 2013) the European Court for Human Rights declared suspension of pension of Ukrainian pensioner residing outside Ukraine as violation of Article 14 of the Convention (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (right to property), and granted the applicant damages with interest.

Position of constitutional law of Ukraine: In case No. 1-32/2009, the Constitutional court quashed a number of related legislative provisions which restricted access to pension due to a territorial criteria. The court, inter alia, stated that ‘*the State is obliged to guarantee right to pension regardless of where the pensioner resides – within the States or abroad*’ to respect constitutional principle of non-discrimination under Article 24 of the Constitution.

3. First Automatic Annual Recalculation of the Size of Pensions Starts From March 2019

Background: Current pension system determines pension payment based on economic indicators prevalent at the time of pension application. Thus, persons with relatively same level of pension insurance contribution and experience end up getting different pension payments depending on the year they have applied for pension. This discrepancy is exacerbated by large fluctuations in economic indicators caused by the 2007 recession and the outbreak of the conflict in Ukraine in 2014.

Pension reform, commencing with the adoption of the 2017 Law of Ukraine No. 2148, called for automatic annual recalculation of pension amount. The first automatic annual recalculation is scheduled for 1 March 2019.

Scope of the recalculation: Annual recalculations will be based on yearly inflation rate and yearly average salary growth rate. It will, however, cover only the ‘basis part’ of the pension not including premium for veterans, caretakers, and other premiums.

4. The Parliament Amends the Constitution To Enshrine Ukraine’s Dedication Towards Joining the European Union and NATO

On 7 February 2019 the Parliament considered the Presidential draft law on amendments to the Constitution and adopted it as Law of Ukraine No. 2680 with 344 votes for and 35 against (at least 300 votes are required). The Constitutional amendment was signed by the President on 19 February 2019.

² Please see DRC-DDG Legal Alert Issue 28: July, Volume 1 - 2018, Section 2 - https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/legal_alert_issue_28_-_july_2018_volume_1_0.pdf

Scope of the Amendment:

- The amendments enshrine ‘the state’s strategic course towards joining the European Union and NATO as a full member’ (the Course) within the Constitution’s preamble and connects with the authority of the President, the Parliament, and the Cabinet:
 - the President acts as a guarantor of the execution of the Course;
 - the Parliament defines the grounds for fulfilling the Course;
 - the Cabinet ensures realisation of the Course.
- Since 1996, Ukrainian Constitution has included a general prohibition of the foreign military base deployment in Ukraine. However, the Constitution also included another provision which allowed functioning of a Russian military base in Crimea. Now, the Amendment excludes this provision and the general prohibition of the foreign military base deployment in Ukraine is in force with no exceptions.

5. **Cabinet has Approved Action Plan on Execution of Poverty Reduction Strategy for 2019**

The Plan adopted on 20 February 2019 by Cabinet Resolution [No. 86-p](#) lists direct activities, duration, execution indicators, state bodies responsible for the execution. With regards to IDPs, the Plan prescribes:

- development of suggestions on establishment of social businesses with employment opportunities for IDPs;
- enhancement of procedure for providing IDP housing assistance;
- development of mechanisms for stimulating self-reliance of IDPs.

The Plan also prescribes development of state programme for physical, medical, psychological rehabilitation and social and professional adaptation of veterans of ‘ATO’/‘JFO’³ up till 2022.

6. **The Cabinet Enhances Regulation On Monetary Housing Compensation For IDP Veterans of ‘ATO’/‘JFO’**

As we have previously reported,⁴ the state provides monetary compensation to IDP veterans of ‘ATO’ who earlier failed to obtain social housing through the first queue right to social housing. On 20 February 2019 the Cabinet has issued a Resolution⁵ to clear up a number of related concerns. The Resolution extends such compensation to IDP veterans who have operated under the ‘JFO’.

Some terminology used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC-DDG.

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³ Joint Forces Operation, ‘JFO’ – legal regime for governmental military operation in the East of Ukraine starting from April 2018 and succeeding the legal regime of ‘Anti-Terrorist Operation’, ‘ATO’. For more information on the JFO please see DRC-DDG Legal Alert DRC-DDG Legal Alert Issue 25 for April 2018, Section 2 – <https://www.humanitarianresponse.info/en/operations/ukraine/document/drc-legal-alert-april-2018-юридичний-інформаційний-бюлетень-юридический>

⁴ For more information on the monetary housing compensation scheme for IDP military personnel please see DRC-DDG Legal Alert Issue 25 for April 2018, Section 4 – <https://www.humanitarianresponse.info/en/operations/ukraine/document/drc-legal-alert-april-2018-юридичний-інформаційний-бюлетень-юридический>

⁵ As of 18 March 2019, the Resolution is not published on the official resources, no official resolution number available.