

Legislative Update

UNHCR update on displacement-related legislation | January 2021

Adopted Legislation

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Adopted Legislation

Legal response to the COVID-19 outbreak in Ukraine

On 5 January 2021, the Government of Ukraine adopted the Resolution #9¹ introducing amendments to the Resolution #1236² of 9 December 2020 on quarantine and restrictive measures³ for preventing further spread of the COVID-19 in Ukraine. The Government allowed residents of the non-government-controlled areas (NGCA) of the Donetsk and Luhansk oblasts and Crimea to complete self-isolation or observation⁴ in government-controlled area (GCA) in case of a positive test result for COVID antibodies. These express tests shall be available at the Entry-Exit Checkpoints (EECPs) in the line of contact (LoC) and the administrative boundary with Crimea. Testing shall be free of charge.

This decision may have a positive impact on the freedom of movement across the LoC and the administrative boundary with Crimea. Free of charge testing may result in larger number of vulnerable persons entering GCA with a short-term purpose such as accessing state services and benefits. However, testing shall be done in specially equipped and protected locations. They should be established by the Donetsk, Luhansk and Kherson oblast administrations jointly with the state enterprise “Reintegration and restoring” which is in charge of EECPs’ maintenance. This may result in implementation delays⁵. Moreover, the quantity of express tests on antibodies at EECPs⁶ is not sufficient to cover all those who cross. These tests are accessible only to those who have

¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-9-grudnya-2020-r-t50120>

² The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-vstanovlennya-karantynu-ta-zaprovadzhennya-obmezhuvalnih-protiepidemichnih-zahodiv-1236-091220>

³ Please see more details in UNHCR 2020 December Legislative Update available online: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2021/01/2020-12-Legislative-Update_ENG.pdf

⁴ Please see more details in UNHCR 2020 March-September Legislative Updates available online: <https://www.unhcr.org/ua/en/resources>

⁵ This is the case with EECP Chaplynka. Crossers are referred to service point at EECP Kalanchak. This was observed by UNHCR partner The Tenth of April. The full text of Facebook post available online (in Ukrainian): https://www.facebook.com/permalink.php?story_fbid=1456232144551781&id=100004950272603

⁶ This is the case with EECP Novotroitske. The full text of the news available online (in Ukrainian): <https://freeradio.com.ua/na-kpiv-novotroitske-u-p-iatnytsiu-ekspres-testy-na-covid-19-zroblyi-ne-vsiv-okhochym/> and <https://r2p.org.ua/ekspres-testy-kovid-vystachylo-ne-vsiv/>

installed⁷ the “Diy vdoma” mobile application, where the test results⁸ are posted. If the test is **negative**, self-isolation shall be canceled during 1-2 days after the data are shared to the application through the processing center⁹. UNHCR notes that this does not always function smoothly¹⁰. Children below 12 are exempted¹¹ from testing. Downloading the Diy vdoma mobile application remains a precondition for entering GCA. UNHCR previously expressed concerns¹² for the most vulnerable whose movement is restricted due to this requirement. At the same time, the increased number of people who intend to cross may result in longer queues when the full functioning of EECPs will be restored.

Draft legislation

Social protection of hostages and persons affected by acts of terrorism

On 11 January 2021, MPs registered the [draft law #4579](#)¹³ amending Laws on combatting terrorism¹⁴ and on the legal regime of the temporarily occupied territory of Crimea¹⁵. The authors suggest enhancing possibilities for compensations to persons affected by acts of terrorism¹⁶ (“affected persons”). It would be applicable to Ukrainian citizens, foreigners and stateless persons possessing certificates for a permanent residence in Ukraine. Persons deprived of their liberty in NGCA of the Donetsk and Luhansk oblasts, in Crimea or the Russian Federation are considered among potential beneficiaries. If an affected person died, his/her family members are also entitled to compensation. If private property was damaged or destroyed by an act of terrorism, it may also be compensated.

The primary compensation modality is a one-time financial assistance, which may be granted to an affected person or his/her family members in case of death of the affected person. The Cabinet of Ministers is to define the amount of the compensation, but it should not be less than 100,000 UAH to an affected person¹⁷ and 50,000 UAH to his/her family members. Other types of assistance include social rehabilitation¹⁸ and medical assistance. Affected persons are also entitled to temporary housing for one year on the precondition of paying utility bills. For families with multiple children, elderly and persons with disabilities, stay in the temporary housing may be prolonged. The normative framework on temporary housing for affected persons requires elaboration.

⁷ Every person is providing his/her phone number to which Diy Vdoma is installed as well as passport data. This was observed by UNHCR at EECP Novotroitske. This was also observed by UNHCR partner CF “Right to protection”. The full text of the news available online (in Ukrainian): <https://r2p.org.ua/eksprestesty-na-kovid-zyavylsya-na-kpvv-novotroyiczke-ta-chy-pracyzuyut-vony/> This was also observed by UNHCR partner The Tenth of April. The full text of Facebook post available online (in Ukrainian):

https://www.facebook.com/permalink.php?story_fbid=1456232144551781&id=100004950272603

⁸ This is noted by Donetsk oblast state administration. The full text of the news available online (in Ukrainian): <https://dn.gov.ua/ua/galleries/chvert-sotni-lyudej-zrobili-testi-na-covid-19-na-kpvv-novotroyicke>

⁹ These are UNHCR observations at EECP Novotroitske as for 29 January 2021. This was also observed by UNHCR partner The Tenth of April. The full text of Facebook post available online (in Ukrainian): https://www.facebook.com/permalink.php?story_fbid=1456232144551781&id=100004950272603

¹⁰ On 29 January 2021 UNHCR observed that **people could not undergo authorization of their identity in the application for two hours**. The authorization code was not accepted by the system.

¹¹ This was observed by UNHCR partner The Tenth of April. The full text of Facebook post available online (in Ukrainian): https://www.facebook.com/permalink.php?story_fbid=1456232144551781&id=100004950272603

¹² Please see more details in UNHCR 2020 May-June Legislative Update available online: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2020/07/2020-05-06-Legislative-Update_fin.pdf

¹³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70807

¹⁴ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/638-15#Text>

¹⁵ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/1207-18#Text>

¹⁶ Article 1 of the Law on combatting terrorism defines “act of terrorism” as crime in the form of weapons, committing an explosion, arson or other actions for which under Article 258 of the Criminal Code of Ukraine. If the terrorist activities are accompanied by committing crimes stipulated in Articles 112, 147, 258-260, 443, 444 and other articles of the Criminal Code of Ukraine (2341-14), responsible for their commission comes under the Criminal Code of Ukraine

¹⁷ It may be increased if act of terrorism resulted in disability or caused serious harm to health

¹⁸ Social rehabilitation would be funded from the State Budget. The Government should elaborate an order of its provision.

To receive financial assistance, affected persons shall apply to social protection bodies for compensation¹⁹ within two years after an act of terrorism was committed or in the end of anti-terrorist operation. Family members of a deceased affected persons shall apply one year after the affected person died²⁰.

The draft lists conditions when financial assistance will not be granted:

- the affected person receives social insurance and/or insurance benefits equivalent to the sum of financial assistance;
- the damages have been compensated by a perpetrator or his/her close relatives;
- the applicant provided false evidence;
- the applicant was affected due to his/her participation in the act of terrorism;
- the applicant was involved into prolongation of temporary occupation²¹ of the part of Ukrainian territory; supported de facto authorities; violated human rights and/or international humanitarian law;
- if an affected person committed a suicide (unless the court proves (s)he was forced to do so).

If adopted, the draft may enhance provision of assistance to persons affected by an act of terrorism. The State Budget will need to be amended accordingly. Since temporary housing stocks are very limited throughout Ukraine, it might be difficult to ensure access.

Foreign citizenship in Ukrainian legal framework

On 25 January 2021, MPs registered the [draft law #4640](#)²² introducing amendments to some laws on preserving foreign citizenship. While the draft initiative mainly suggests prohibiting Ukrainian citizens who possess foreign nationality to become civil servants, it also suggests amending the Law on citizenship of Ukraine. The authors exclude all provisions on refugees and asylum-seekers applying for Ukrainian citizenship. Instead, they suggest unifying approaches for all foreigners and stateless persons introducing a single procedure of applying for Ukrainian citizenship. In case of adoption, this may put refugees and asylum-seekers at risk, as specific provisions linked to their status will be abolished. For example, currently they are not obliged to return a foreign passport to a respective state after obtaining Ukrainian citizenship. Abolishment of this rule will result in threats for personal security of refugees and asylum-seekers, as they were forced to flee their homes because of conflict and persecution.

Other developments

The MinReintegration Annual Report for 2020

On 18 January 2021, the MinReintegration published²³ its [Annual Report for 2020](#)²⁴ summarizing the main results of its activities, including the following:

- With support of international organizations, the Ministry opened service hubs in the EECs of Shchastya and Novotroitske, where persons who cross the LoC may obtain 88 administrative and social services.

¹⁹ This includes extract from Unified register of pre-trial investigation or document confirming the fact of detention¹⁹; other procedural documents confirming that the applicant is affected by the act of terrorism; extract from the medical documents confirming that the applicant's health is affected by the act of terrorism.

²⁰ The dates of commission of the act of terrorism and end of ATO are not applicable to such applications

²¹ This terminology is quoted from the official legal act and does not reflect UNHCR position.

²² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70895

²³ The full text of news available online (in Ukrainian): <https://mtot.gov.ua/ua/opublikovano-zvit-dijalnosti-minreintegracii-u-2020-roci?fbclid=IwAR1q7ldzAHFG3-ZxllCwkJK-BmpTsjoe8nurnrNDRcC0bFo3dZk344dXOqPM>

²⁴ The full text available online (in Ukrainian): <https://mtot.gov.ua/files/uploads/0d421660-5976-11eb-896b-d186b68f9734.pdf>

- It introduced humanitarian grounds²⁵ for crossing the LoC and the administrative boundary with Crimea when the functionality of EECs is limited or crossing is closed due to emergencies.
- The Ministry launched a procedure of compensation²⁶ for housing destroyed during hostilities in the east.
- It also facilitated the process of ratification of the agreement²⁷ between the Cabinet of Ministers of Ukraine and the Government of Germany on financial cooperation aimed at finding housing solutions for IDPs.

[The decision of the European Court of Human Rights on admissibility of Ukraine-Russian Federation inter-state application](#)

On 14 January 2021, the European Court of Human Rights (ECtHR) adopted its [decision](#)²⁸ in the *Ukraine v. Russia (re Crimea)* case regarding admissibility of inter-state application. The case concerns Ukraine's allegations of a pattern ("administrative practice") of violations of the European Convention on Human Rights by the Russian Federation in Crimea. The Court declared the alleged pattern of human-rights violations by Russia in Crimea during the relevant period, namely between 27 February 2014 and 26 August 2015, admissible. The ECtHR will continue examination of the case and proceed to the merits stage.

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Facebook: www.facebook.com/UNHCRKyiv - Flickr: www.flickr.com/photos/unhcr_ukraine

²⁵ Please see more details in UNHCR 2020 November Legislative Update available online: https://www.unhcr.org/ua/wp-content/uploads/sites/38/2020/12/2020-11-Legislative-Update_ENG.pdf

²⁶ Please see more details in UNHCR 2020 September Legislative Update available online: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2020/11/2020-09-Legislative-Update.pdf>

²⁷ Please see more details in UNHCR 2020 April, September, November and December Legislative Updates available online: <https://www.unhcr.org/ua/en/resources>

²⁸ The full text available online: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-207622"\]}](https://hudoc.echr.coe.int/eng#{)