



In cooperation with



## LEGAL ALERT

Issue 31 – September, 2018

### 1. The Parliament Entitles IDPs to Social Housing

On 18 September 2018 the Parliament has adopted Draft Law No. 7304<sup>1</sup> amending Law of Ukraine 'On Social Housing Stock'. The amendment entitles IDPs to social housing as a separate social group. Social housing is to be provided by local councils for use only and can be neither privatised nor bought out. Following are the application requirements:

<b>Application Requirements</b>	i)	Lack of any other housing within the government-controlled area of Ukraine ('GCA') apart from housing destroyed or became uninhabitable as a result of the Conflict
	ii)	Cumulative monthly income of the applicant's family must be lower than the sum of the cumulative family living wage and official rental rate within the local community <sup>2</sup>

The amendment introduces an exception regarding the income requirement for individuals aged 50 years or older. These individuals are eligible for social housing regardless of their income. Because of the law's wording it is not clear whether the exception is applicable to all 50+ years persons or only those of them who are IDPs. The latter is more probable as the amendment aims to protect IDPs' right to housing.

**age 50+  
exception**

<b>Regulations required for implementation</b>	i)	the law directs the Cabinet to finalise development of Order for social housing provision to IDPs in 3 months
	ii)	IDPs owning damaged/destroyed housing in GCA will have to prove that they meet the 'lack of habitable housing' requirement. Currently there is no procedure for inspecting habitability of housing damaged/destroyed by the conflict. The procedure is proposed by Draft Law No. 6472 <sup>3</sup> which is pending in the Parliament since 22 June 2017

Despite the large number of IDPs seeking housing and the acute shortage of social housing stocks within local communities, the amendment claims that realisation of its provisions does not require any additional funding from the State budget.

**Funding**

### 2. Draft Law on Mine Action Has Been Registered in the Parliament

On 19 September 2018 Draft Law No. 9080 'On Mine Action'<sup>4</sup> was registered in the Parliament and now awaits its first hearing. The Draft Law provides regulation for the:

- Creation of a National Mine Action Agency under the Cabinet of Ministers
  - Development of an Action Plan on National Mine Action Programme
  - Public control on mine action activities
  - Funding of state bodies involved in mine action activities
  - Functioning of humanitarian mine action actors including international actors
  - Procurement of mine action equipment and services
  - Social protection of mine action personnel and civilian victims of landmines and explosive remnants
- Mechanisms for State control on humanitarian demining activities including setting requirements for mine action organisation's accreditation, qualification of personnel, certification of equipment, and reporting and supervision of demining activities

<sup>1</sup> Draft Law No. 7304 registered 17.11.2017 - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=62916](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62916)

<sup>2</sup> On more on this please see DRC Legal Alert January Issue, Section 4 -

<https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-legal-alert-drc-january-2018-юрдичний-інформаційний-бюлетень>

<sup>3</sup> Draft Law No. 6472 registered 18.05.2017 - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?id=6pf3511=61825](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?id=6pf3511=61825)

<sup>4</sup> Draft Law No. 9080 registered 13.09.2018 - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64593](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64593)

**Urgency:** A mine action law is long overdue, and has been anticipated by humanitarian actors since the start of the Conflict in 2014. Establishment of a National Mine Action Agency was one of the commitments Ukraine made during the Brussels EU-Ukraine Summit 2018<sup>5</sup>.

**Alternative Drafts:** Within three weeks of the registration of the Draft Law, three alternative drafts have been registered in the Parliament. DRC-DDG will issue a separate briefing note outlining comparative provisions of the draft laws if the Parliament continues to proceed with all four draft laws.

### 3. The Parliament Adopts Agenda for the 9<sup>th</sup> Parliamentary Session: Humanitarian Aspects

August 2018 Legal Alert<sup>6</sup> provided a list of IDP related laws featured in the current Parliamentary session draft agenda. On 18 September 2018 the agenda was finalised<sup>7</sup>. While all of the reported draft laws still remain in the agenda, a number of other Conflict-related initiatives added to the agenda for their first hearings include:

<b>Draft initiatives, recommended by profile parliamentary committee for adoption by the Parliament</b>	<b>Waiting for parliamentary hearing<sup>8</sup>:</b>
<a href="#">6692</a> – on NGCA residents’ right to pension	348 days
<a href="#">3503</a> – on IDPs’ and veterans’ access to cultural heritage	978 days
<a href="#">2373</a> – entitlement of IDPs to free legal aid	1227 days
<a href="#">2163</a> – on execution of PACE Resolution No. 2028 (2015) ‘The Humanitarian Situation of Ukraine, refugees, and displaced persons’ <sup>9</sup>	1272 days
<b>Draft initiatives, not reviewed by profile parliamentary committee yet, but still included to the session agenda</b>	<b>Days passed since initiative’s registration:</b>
<a href="#">6461</a> – On moratorium on payment of utility fees by IDPs for real estate property located in the NGCA	499 days
<a href="#">8041</a> – On amending State Budget for 2018 for implementing state housing program for young families and IDPs	228 days
<a href="#">2528a</a> – On administrative sanctions for state officers violating IDPs’ rights	1131 days
<a href="#">6147</a> – On criminal responsibility for illegal transfer of goods through the contact line	579 days
<a href="#">3015</a> – On exemption from taxation of enterprises employing IDPs	1124 days
<a href="#">3844</a> – On tax allowance for landlords providing rental housing to IDPs and IDPs who rents housing	975 days
<a href="#">7522</a> – On non-taxation of income earned for providing rental housing to IDPs	250 days
<a href="#">8332</a> – except from court fees for IDPs in cases related to obtaining of documentation, social protection, voting rights, and housing	151 days

The Draft Law No. [6240](#) on IDPs’ right to participate in local elections is still not in the agenda list.

Inclusion of a draft law to Parliamentary session agenda does not necessarily lead to its adoption, as only approximately 12% of initiatives registered at the 8<sup>th</sup> National Parliament are adopted<sup>10</sup>.

<sup>5</sup> For more information on the Humanitarian Aspects of the EU-Ukraine Summit in Brussels please see DRC Legal Alert July Issue, Volume 2, Section 5 – <https://www.humanitarianresponse.info/en/operations/ukraine/document/ukraine-legal-alert-ddg-drc-july-2018-volume-2-0>

<sup>6</sup> DRC Legal Alert August 2018 Issue, Section 1 – <https://www.humanitarianresponse.info/en/operations/ukraine/document/drc-legal-alert-august-2018-drc-правовий-бюлетень-серпень-2018-drc>

<sup>7</sup> Parliamentary Resolution No. 2543 dated 18.09.2018 – <http://zakon.rada.gov.ua/laws/show/2543-viii>

<sup>8</sup> Days passed since the profile committee’s recommendation on draft’s adoption as of 30 September 2018

<sup>9</sup> PACE Resolution 2028 (2015) dated 27.01.2015 – <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=21480&lang=en>

<sup>10</sup> Article ‘3 years for the Parliament: Legislative Results’ proposed by ‘Opора’ public organization – <http://longread.oporaua.org/3-roky-vr-rezultatyvna-zakonotvorchist>

#### 4. President Signs an Order on Intention to Terminate 'Friendship, Cooperation, and Partnership' International Treaty Between Ukraine and Russia

On 17 September 2018 the President has signed Order No. 284/2018<sup>11</sup> validating National Security and Defence Council's Decision with regards to the 'Friendship, Cooperation, and Partnership' international treaty between Ukraine and Russia ('Friendship Treaty'), active since 1998.

**What the Order does not do:** The Presidential Order *does not* terminate the treaty. The Friendship Treaty was ratified through Law of Ukraine No. 13/98-BP<sup>12</sup>. It is exclusively within Parliament's authority to terminate any international treaty ratified by the Parliament in the name of Ukraine

**What the Order does:** The Friendship Treaty came into force in 1999 for 10 years with an automatic extension clause provided that no recall was made. The Treaty has already been extended in 2009 and was scheduled to be automatically extended in April, 2019 again if no recall was announced before October, 2018. The President's Order on Intention has initiated the recall process, which need to be adopted by the Parliament to complete

Under the Friendship Treaty, the States:

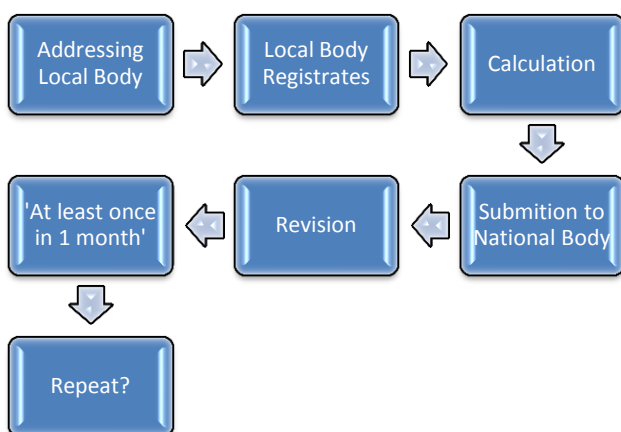
- recognise their territorial integrity and reaffirm integrity of shared borders
- appeal to each other in case of State security risks emergency, and to face them jointly
- do not participate in political or economic actions aimed against each other
- cooperate in the UN and other international organisations on political, economic, and other issues
- guarantee each other's citizens' rights to the same extent as for their own citizens
- encourage development of their respective national minorities and abstain from their forced assimilation
- facilitate creation of a joint economic environment
- ensure freedom of movement of persons, goods, funds, and labour
- fight any violence propaganda based on national, ethnic, or religious aspects

**What is next?** The Ministry of Foreign Affairs will develop a Draft Law on termination of the Friendship Treaty to be submitted by the President for the Parliament's consideration.

#### 5. Another Bureaucratic Block on Access to Pensions: CMU Adopts Processes for Execution of Court Decisions in Pension Cases

On 22 August the Cabinet has adopted Resolution No. 649<sup>13</sup> providing mechanism for execution of court orders in pension cases. It pertains to court orders for cases where payments were miscalculated or individuals were initially denied access to pension, and thereafter got their rights restored through judicial processes.

The Resolution provides the following procedure:



Step 1: Individuals (or the enforcement agency) address local pension fund body (Local Body) with a court decision

Step 2: Local Body registers the decision and proceeds it in the queue order depending on entry date

Step 3: Local Body prepares accompanying documentation including calculation of the payment

Step 4: Local Body submits the documentation to National Pension Fund institution ('National Fund')

Step 5: At the National Fund the calculation to be revised by a specially established Commission comprised of at least seven officers

Step 6: The Commission proceeds hearing 'on ad hoc basis but at least once in 1 month'

Step 7: In case the Commission does not approve the calculation, it should return the case to the Local Body to repeat the circle

<sup>11</sup> Presidential Decree No. 284/2018 dated 6 September 2018 - <https://www.president.gov.ua/documents/2842018-24966>

<sup>12</sup> Law of Ukraine No. 13/98-BP dated 14.01.1998 - <http://zakon.rada.gov.ua/laws/show/13/98-bp>

<sup>13</sup> CMU Resolution No. 649 dated 22.08.2018 - <http://zakon.rada.gov.ua/laws/show/649-2018-n>

**Timeframe:** Considering the timeframe of the process one should bear in mind that prior to addressing to the local pension fund body with a court's decision, an individual has to go through the judicial process, often involving multiple appeals from the pension fund. Even before this process, an individual has to obtain an official decision of the pension fund on pension suspension.

**Compliance with the European Court on Human Rights practice:** The adopted mechanism is likely to contravene the right to a fair trial, guaranteed by Art. 6 of the European Convention on Human Rights (ECHR) and reinforced by respective practices of the European Court of Human Rights. Enforcement of a court decision is considered as an integral part of a 'trial', and therefore, all guarantees envisaged in Article. 6 of ECHR are applicable for the enforcement stage as well. Among such guarantees is the obligation of a State to set forth a reasonable period for trial, including a reasonable period for enforcement of a court decision.

## 6. Central Election Commission Simplifies Process for Change of Polling Station for NGCA IDPs

On 5 September 2018 the Central Election Commission adopted Resolution No. 129<sup>14</sup> simplifying processes for changing of polling station for persons previously registered within the NGCA for the upcoming presidential and parliamentary elections. Currently changing polling stations is the only way<sup>15</sup> for IDPs to exercise their right to vote.

**Previously,** persons who have moved from the NGCA had to submit 'documents testifying necessity of changing polling station' in addition to providing copy of their passports. Persons who have moved from Crimea could apply for it just by providing their passport with Crimean residence registration stamp on it.

**Now,** similar to the persons who have moved from Crimea, persons previously registered within the NGCA can also apply for the polling station change just by providing passport with NGCA residence registration stamp on it.

## 7. Cabinet of Ministers Acts on UN Directives on Women Empowerment

On 5 September 2018 the Cabinet has adopted<sup>16</sup> an Action Plan on execution of the UN Committee's recommendations on elimination of discrimination against women. The Action Plan implementation will be reported by all the responsible state bodies on annual basis.

The Action Plan features:

- 57 recommendations of the Committee and 78 pages of related action points
- Implementation terms and execution indicators for each action point
- State bodies responsible for execution

### IDP- Related Recommendations:

- Ensure IDP women's access to healthcare, education, food, housing, and stable occupation
- Ensure Access to justice including free legal aid and waiver of fees for vulnerable women

In addition, on the same day the Cabinet has also updated<sup>17</sup> the National Plan on Execution of UN Security Council Resolution No. 1325 on Women, Peace, and Security. The Plan was initially introduced in 2016 and designed to run till 2020.

<sup>14</sup> Central Election Commission Resolution No. 129 dated 05.09.2018 - <http://www.cvk.gov.ua/pls/acts/ShowCard?id=43898&what=0>

<sup>15</sup> For more on that please see DRC Legal Alert August 2018 Issue, Section 6 - <https://www.humanitarianresponse.info/en/operations/ukraine/document/drc-legal-alert-august-2018-drc-правовий-булетень-серпень-2018-drc>

<sup>16</sup> Cabinet Resolution No. 634-p dated 05.09.2018 - <https://www.kmu.gov.ua/ua/npas/pro-go-planu-dij-z-vikonannya-rekomo-zhinok-do-vosmoyi-periodichnoyi-dopovidi-ukrayini-pro-vikonannya-konvenciyi-pro-likvidaciyu-vsih-form-diskriminaciyi-shchodo-zhinok-na-period-do-2021-roku>

<sup>17</sup> Cabinet Resolution No. 637-p dated 05.09.2018 - <https://www.kmu.gov.ua/ua/npas/provyadzhennya-kabinetu-ministriv-ukrayini-vid-24-lyutogo-2016-r-113>

## 8. The Parliament Ensures Housing for Military Personnel Moved from Non-Government Controlled Areas and Crimea

On 18 September 2018 the Parliament has adopted Draft Law No. 8394<sup>18</sup> (initial number) aimed at protection of military personnel's right to housing.

**Problem:** Under existing law, military personnel who have used state sponsored housing assistance once cannot use the right again even though the property in question is located in NGCA or Crimea.

**Provided Solution:** Such military personnel are now allowed to participate in State programmes for acquiring of temporary/permanent housing or receiving a targeted housing assistance on condition that they will legally pass title or interest to previously acquired state sponsored housing in the NGCA/Crimea back to the State.

## 9. State Budget-2019: Development Proceeds

Under Ukrainian law State budget has to pass through three hearings to be adopted by the Parliament. The law provides defined timeline for each of the hearings: first hearing by 20 October, second hearing by 20 November, and the third and final one before 1 December.

As of 10 October the Parliament has not proceeded through the first hearing. However, the Draft State budget<sup>19</sup> already includes a number of features related to the humanitarian situation in Ukraine:

- Minimum living wage and minimum salary to be increased up to 1 853 UAH and 4 173 UAH respectively starting from 1 January 2019
- Increase of minimum living wage will entail proportional growth of minimum pension and some of social benefits including social assistance to low-income families/single parents, allowance for guardianship and other social benefits<sup>20</sup>
- the only resource for 'Housing for IDPs' state programme funding is stated to be international assistance (amount not specified)
- Salaries of military personnel and police to be increased at least by 30%; minimum salaries to be increased for police (9 000 UAH) and military personnel (10 000 UAH)<sup>21</sup>

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.

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*This document has been funded by UK aid from the UK government; however the views expressed do not necessarily reflect the UK government's official policies.*

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<sup>18</sup> Draft Law No. 8394 registered 25.05.2018 - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64072](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64072)

<sup>19</sup> Draft Law N° 9000 dated 15.09.2018 - [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=64598](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64598)

<sup>20</sup> For more information on changes in living wages, pension, and social benefits please check out DRC Legal Alert December 2018 Issue when available

<sup>21</sup> Decree No. 283/2018 dated 06.09.2018 - <https://www.president.gov.ua/documents/2832018-24962>