

Legislative Update

UNHCR update on displacement-related legislation | August 2019

Adopted Legislation

- Order on crossing the line of contact in the east
- Amendment to the procedure of granting subventions to local budgets
- Amendments to procedure of paying pensions to IDPs, including those who revoked their IDP certificates
- Resolutions regarding implementation of the Law on missing persons

Other developments

- Electoral Code
- Presidential Commission on legal reform

Adopted legislation

Order on crossing LoC

In August, the Cabinet of Ministers published the text of its Resolution #815¹ defining the procedure of crossing the line of contact (LoC) in the east of Ukraine. The Resolution contains no major changes in comparison to previously existing procedure under the Temporary Order of the State Security Service (SBU). Nevertheless, the new procedure contains several important amendments as described below.

Main pros and cons of the adopted Resolution

Positive	Further elaboration needed	Raises concerns
Children under the age of 16 who did not have an opportunity to obtain a Ukrainian birth certificate due to permanent residence in the non-governmental controlled areas (NGCA) may cross entry-exit checkpoints (EECPs) if accompanied by an adult who possesses a national identification document (including national passport or a passport for travelling abroad). The accompanying adult shall provide any documents	Elaboration of the list of items prohibited for transfer across the line of contact and the list of items classified as personal belongings is expected by the Ministry of Temporarily Occupied Territories and IDPs (the function is expected to be transferred to the Ministry of Veterans, Temporarily Occupied Territories and IDPs).	<p>A permit system remains in force. Individuals may apply for permits online (at the SBU web-site) or off-line.</p> <p>A definition of “persons involved in the armed aggression of the Russian Federation”² includes a wide range of individuals. Since many residents of NGCA work at institutions considered to be “de-facto authorities” (such as social protection bodies, all types of communal enterprises and</p>

¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmini-do-punktu-4-p-793>

² The notions of “aggression” and “occupying administration” here are provided in the meaning of the Law 2268 (Law on particular aspects of public policy aimed at safeguarding state sovereignty of Ukraine over the temporarily occupied territory of Donetsk and Luhansk oblasts).

confirming the fact of birth in NGCA at the time of crossing.		educational institutions), they may face risk of apprehension at the time of crossing.
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The adoption of this Resolution is a positive step in ensuring proper regulation of the movement across the LoC for the conflict-affected population. UNHCR and its partners will continue monitoring its implementation at the check points.

[Amendment to the procedure of granting subventions to local budgets](#)

On 21 August, the Cabinet of Ministers adopted its Resolution #793³ introducing amendment to the procedure⁴ on supporting local budgets of territories affected by the armed conflict. This amendment changes the correlation between financial contribution from state and local budgets, replacing previously existing proportion 50/50 by 70/30. Therefore, a local budget of a conflict-affected territory would cover 30% of the subvention, while the state budget would be responsible for covering 70%. Such subventions may cover expenditures on building/restoring premises serving as temporary housing solutions for IDPs and software for ID passports/passports for travelling abroad for centres providing administrative services located near contact line.

This change in ratio may motivate local authorities to apply for subventions more actively. If provided, subventions would contribute to the overall development of conflict-affected settlements and localities, thus improving the quality of life and access to different services for host and displaced populations.

[Amendments to the procedure of paying pensions to IDPs, including those who revoked their IDP certificate](#)

On 21 August, the Cabinet of Ministers adopted its Resolution #788⁵, introducing amendments to its Resolutions #637 of 5 November 2014⁶ and #365 of 8 June 2016⁷ on payment of social benefits to IDPs. Following the introduction of those amendments, Resolution #365 that concern verification and control measures will not be applicable to cases of pension payment. Resolution #637 (on payment of pensions and social benefits to IDPs) contains a reference rule, authorizing territorial bodies of the Pension Fund of Ukraine (PFU) to assign pensions to IDPs (including those who revoked their IDP certificate) based on data available in the Unified IDP registry. When an IDP (holding an IDP certificate or having revoked it) applies to a PFU department with his/her ID document for assigning, renewal or prolongation of pension, the respective department shall compare the data available in the Pension Fund and in the IDP Registry. The Ministry for Social Policy and the PFU are expected to elaborate a joint order on interconnection of the two databases for such cross-verification and data validation.

In case the PFU or its bodies receive information⁸ that a person returned to the non-governmental controlled area (NGCA) of Donetsk or Luhansk oblasts for permanent residence or provided false data during the application process, the payment of the pension shall then be suspended. To renew the payment, a person

³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmini-do-punktu-4-p-793>

⁴ This procedure is defined by the Cabinet of Ministers Resolution #769 of 4 October 2017. The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/en/769-2017-%D0%BF>

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-deyakih-postanov-kabinetu-ministriv-ukrayini-s210819>

⁶ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/637-2014-%D0%BF>

⁷ The full text available online (in Ukrainian): <https://zakon3.rada.gov.ua/laws/show/365-2016-%D0%BF>

⁸ Such information may be obtained from State Border Guard Service, Ministry of Interior, SBU, National Police, State Migration Service, Ministry of Finance, other executive bodies and local authorities

should submit an application and undergo an identification procedure through “Oshchadbank”. Any accumulated pension arrears should be paid in accordance with a special order (to be elaborated by the Cabinet of Ministers).

Distinguishing pensions from other social benefits to be paid to IDPs is a positive development, as well as the elimination of IDP certificates as a pre-condition for paying pensions to persons with residence registration in NGCA. However, this new mechanism may still result in arbitrary suspension of the payment of pensions based on provisions of a by-law, instead of a law. This very same approach has been previously successfully contested in courts throughout the country. Additionally, the payment of pension arrears is still conditioned with the elaboration of special orders by several central state authorities, while timeframes for their development are not clearly set. These circumstances may yet again result in ill-grounded delays in paying accumulated pension arrears to pensioners from among IDPs.

Resolutions on implementing the Law on missing persons

In August, the Cabinet of Ministers adopted two resolutions necessary for the implementation of the Law on missing persons, adopted in 2018.⁹

The Cabinet of Ministers Resolution #726 on the Unified Registry on missing persons (“the Registry”) was adopted¹⁰ on 14 August. The Registry is administered by the Commission on missing persons (the Commission). The Registry contains (1) data on missing persons and (2) data on unidentified human remains and personal belongings of the missing. Designated persons¹¹ should insert data into the Registry within 24 hours after obtaining it.

Based on a respective application, the Commission may decide on sharing information from the Registry regarding a person considered missing with his/her family members and/or state bodies involved in search of missing persons.

Another Resolution, # 802 on the establishment¹² and the functioning of search groups, was adopted¹³ on 21 August. The main functions of search groups include searching for missing persons, searching and transferring the human remains and personal belongings of the missing in the area of the Anti-Terrorist Operation (ATO), the Joint Forces Operation (JFO) and at the NGCA. The Search Groups should share the collected data with designated officials who can access the Registry on missing persons.

The Commission may allow search groups to communicate with persons and institutions in NGCA, as well as involve NGO representatives into the search process. This process takes place through data collection, population surveys, exploring localities, consideration of requests for search for missing persons, exploring burial places and aggregation of all obtained information for further analysis.

⁹ Please see more details in 2018 05 Legislative Update

¹⁰ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vedennya-yedinogo-reyestru-osib-zniklih-bezvisti-za-t140819>

¹¹ The access to the Register is granted to the Commission and designated staff of the National Police, the State Security Service (SBU), the Ministry of Defence, the State Emergency Service, the National Guard, the Ministry of Health, the Ministry of Regional Development, courts and local authorities.

¹² The Commission should take this decision upon agreement with the National Police, SBU and Armed Forces General Staff

¹³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-utvorennya-ta-diyalnosti-poshukovih-t210819>

Other developments

Electoral Code

On 28 August, the Speaker of the Verkhovna Rada signed the draft law #3112-1¹⁴, introducing the new Electoral Code. Subsequently, the President of Ukraine imposed veto on this draft law¹⁵, referring to lack of proper mechanism allowing several categories of population (including IDPs) to fully exercise their electoral rights. According to the available information, current draft law contains no permanent mechanisms for electoral rights of IDPs (except for possibility of temporary change of voting address during national elections). Now there is a chance that Verkhovna Rada will amend the draft Electoral Code accordingly, to ensure access of IDPs to all electoral rights.

Presidential Commission on legal reform

On 7 August, the President adopted his Order #584/2019¹⁶, establishing the Commission on legal reform – an advisory body to the President responsible for the elaboration of proposals for the development of the legal system of Ukraine. Its members include some officials from the central executive bodies, as well as representative of human rights NGOs and academic circles involved on a voluntary basis in the following working groups:

- on amendments to the Constitution of Ukraine;
- on judicial power and justice;
- on developing criminal law;
- on the criminal justice reform;
- on developing legal education;
- on the reintegration of temporarily occupied territories¹⁷ (TOT) and their residents.

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¹⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56671. To the moment, it awaits for a signature of the President

¹⁵ The full text of the Proposals of the President to the draft law is available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=66849

¹⁶ The full text available online (in Ukrainian): <https://www.president.gov.ua/documents/5842019-28949>

¹⁷ The terminology "Temporarily occupied territories" is quoted from the official legal act and does not reflect UNHCR position