

Legislative Update

UNHCR update on displacement-related legislation | November 2020

Adopted Legislation

- Legal response to the COVID-19 outbreak in Ukraine
- Humanitarian grounds for crossing of Entry-Exit Checkpoints (EECPs)

Draft Legislation

- Draft IDP Durable Solutions Strategy
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- Introducing e-passports (national and for traveling abroad)

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- Subventions to local budgets
- Ratification of the agreement on financing housing solutions for IDPs
- Strengthening protection of missing persons and their family members
- The decision of the European Court of Human Rights on the issue of pensions to NGCA residents

Adopted Legislation

Legal response to the COVID-19 outbreak in Ukraine

In November 2020, the Government tightened the restrictive measures related to the COVID-19 response. [Resolution #1100](#)¹ of 11 November abolished the adaptive quarantine measures² linked to colour zones (“green”, “yellow”, “orange” and “red”). The whole country is now under restrictions earlier applicable in “orange” zones. The list of updated country-wide prohibitions includes:

- holding of public events with more than 20 participants (except some sport events³);
- attending cinemas and theatres with occupancy over 50%;
- functioning of discos and night clubs;
- cafes and restaurants with more than four people per table;
- museums and gyms with more than one person per 20 square meters
- benefitting from hosting services (except hotels and rehabilitation centres).
- Functioning of cafes and restaurants is prohibited from 10:00 p.m. till 7:00 a.m. except takeaway and delivery options.
- In public transport, drivers should ensure that the number of passengers equals the total number of seats. Passengers shall wear facial masks.
- Colleges and universities work remotely. Kindergartens, secondary schools, sport and art educational facilities may work offline.
- Planned hospitalizations are prohibited (except for baby deliver, oncology, palliative care and urgent operations). Visits to facilities providing palliative care and social protection to vulnerable individuals (apart for emergency workers, including health and fire workers) also fall under those prohibitions. Visits

¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-22-lipnya-2020-r-641-1100111120>

² Please see more details in UNHCR July, August, September and October Legislative Updates available online: <https://www.unhcr.org/ua/en/resources>

³ This is applicable to official sport events and matches of professional sportsmen without visitors and upon observing prevention measures

to temporary accommodation centres (TACs) for refugees and migrant custody centres (MCC) for irregular migrants are allowed for legal aid workers only.

Apart from this, the Government introduced a so-called “weekend lockdown” from 14 until 30 November. This means that from 12:00 a.m. on Saturday until 12:00 a.m. on Monday functioning of shopping malls, leisure centres, other leisure and entertainment facilities, cultural facilities, gyms, fitness centers and swimming pools is prohibited. Supermarkets, food shops, fuel shops, fuel stations, pharmacies, veterinary pharmacies, financial institutions, delivery options of non-food items, takeaway and delivery options in cafes and restaurants continue working. Moreover, the Government introduced a priority line for elderly and persons with disabilities to access public services from 10:00 a.m. until 12:00 p.m.

On 17 November, the Parliament adopted [Resolution #1004-IX](#)⁴ obliging the Government to inform on its planned restrictive quarantine measures related to freedom of movement and/or functioning of cafes, restaurants, leisure centres, cultural facilities 7 days before the introduction of such measures.

[Introducing humanitarian grounds for urgent crossing of EECs](#)

On 25 November, the Government adopted its [Resolution #1161](#)⁵, introducing amendments to Resolutions #815 on crossing of the line of contact (LoC) in the east and #367 on crossing the administrative border with Crimea. These amendments specify humanitarian grounds for crossing of EECs when their functionality is limited or crossing is closed due emergencies. These grounds include family reunification; serious illness or death of a family member; need to access medications not available in non-government controlled areas (NGCA) of the Donetsk and Luhansk oblasts/Crimea; inheritance related issues; confirmed permanent residence in another country; need to apply for documents (including for minors who apply for IDs for the first time); return to a permanent place of residence (however, this would be allowed only one way until the restrictions are lifted). Other grounds, if identified, will be decided by the Joint Forces Operations (JFO) commander. UNHCR welcomes this positive development where grounds for crossing are transparent and publicly available.

Draft legislation

[Draft IDP Durable Solutions Strategy](#)

On 30 October 2020, the MinReintegration placed on its webpage for public discussion the [draft IDP Integration and Durable Solutions Strategy for 2021-2023](#)⁶. This document is expected to replace the existing Strategy⁷ which expires on 31 December 2020. The draft is focused on facilitating local integration of IDPs in host communities. Some measures include de-linking access to state services and benefits from IDP registration, implementing housing and employment solutions, accessing documentation, education and health care services. Moreover, it calls for the inclusion of IDPs into host communities' local planning and budgeting. It contains certain indicators that may help measuring its implementation. Specific activities are expected to be

⁴ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/1004-IX#Text>

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-deyakih-postanov-kabinetu-ministriv-ukrayini-i251120-1161>

⁶ The full text available online (in Ukrainian): https://mtot.gov.ua/ua/30102020-minreintegracii-povidomlajae-pro-provedennja-elektronnih-konsultacij?fbclid=IwAR2Esl8gsVXwxYNZrffvlpNI-oqoBsm6hrqgRoBM4qzzyVziKebWR9Uq6_c

⁷ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/909-2017-%D1%80#Text>

set out in the Action Plan. UNHCR supports this initiative and, jointly with partners, advocates for the adoption of both documents.

Treatment of interned persons

On 10 November 2020, MPs registered in Parliament [draft law #4327](#)⁸ that concerns treatment of prisoners of war (PoW)⁹ and interned civilians nationals of a state threatening the national security of Ukraine¹⁰ during a special period.¹¹ The draft suggests entrusting central and local authorities with identification of such persons and their internment. The State Security Service is to identify foreigners threatening the national security. The General Staff of the Armed Forces decides on internment and defines internment procedures. The MinReintegration monitors internment standards as per the international humanitarian law (IHL). The Ministry for Foreign Affairs (MFA) cooperates with other states and international organizations on treatment of interned persons and negotiates their return to the country of origin. Local authorities and city administrations provide facilities for internment and ensure treatment of interned persons in line with IHL standards.

The decision on internment may be appealed, but the draft law does not provide a concrete mechanism for this. In any case, a decision on internment shall be revoked immediately after the end of hostilities and adoption of a Presidential order on the end of a special period.

If adopted, this initiative may pose certain risks for civilians. The process of identification of possible internees is not clearly specified and no appeal procedure is in place. There are no concrete time limits for internment. This may result in arbitrary deprivation of liberty in contradiction with international human rights standards.

Introducing e-passports (national and for travelling abroad)

On 10 November 2020, MPs registered in Parliament [draft law #4355](#)¹² with amendments to the Law on the Unified state demographic register and documents confirming Ukrainian citizenship, identity of a person or his/her special status. The authors introduce definitions of e-passports as full-fledged confirmation of a person's identity. They mirror regular hard copies of passports (national ID card and passport for travelling abroad). E-passports will be available in the "Diya"¹³ mobile application. This draft law is in line with the overall public strategy towards digitalization of services in Ukraine.

Other developments

Subventions to local budgets

On 16 November 2020, the Government adopted [Regulation #1435-p](#)¹⁴ distributing the fourth subvention¹⁵ to conflict-affected territories in 2020. It covers Pokrovsk (Donetsk oblast), Konotop amalgamated territorial community (Poltava oblast) and Pervomayskiy (Kharkiv oblast). The total allocated sum is 3,430 mln UAH. The

⁸ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70352

⁹ The term "prisoners of war" is used in the meaning of the III Geneva Convention. the full text available online: https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.32_GC-III-EN.pdf

¹⁰ The terminology is quoted from the official legal act and does not reflect UNHCR position

¹¹ The special period is declared by the Presidential Order on announcing mobilization or introducing the martial law. This is defined by the Law on Defense of Ukraine. The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/1932-12#Text>

¹² The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70393

¹³ Please see more details in UNHCR September Legislative Update available online: <https://www.unhcr.org/ua/wp-content/uploads/sites/38/2020/11/2020-09-Legislative-Update.pdf>

¹⁴ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-rozpodil-u-2020-roci-subvenciji-z-derzhavnogo-byudzhetu-miscevim-byudzhetam-na-zdijsnennya-zahodiv-shchodo-pidtrimki-teritorij-1435161120>

¹⁵ Please see more details in UNHCR August and October Legislative Updates available online: <https://www.unhcr.org/ua/en/resources>

subventions may be used for the overall development of the mentioned settlements and localities in order to improve the quality of life and access to different services for host and displaced populations.

[Ratification of the agreement on financial cooperation aimed at finding housing solutions for IDPs](#)

On 16 November 2020, the Government adopted its [Regulation #1437-p](#)¹⁶ necessary for the ratification of the agreement between the Cabinet of Ministers of Ukraine and the Government of Germany on financial cooperation aimed at finding housing solutions for IDPs¹⁷. The Regulation approved the draft Grant and Project Agreement between the MinReintegration on behalf of the Government (“the project beneficiary”), the State Youth Fund (“the project implementer”) and the German bank *Kreditanstalt für Wiederaufbau (KfW)* on allocating 25,5 mln Euro for housing for IDPs. The start of project’s implementation is expected in early 2021.

[Strengthening protection of missing persons and their family members](#)

On 11 November 2020, the President signed its [Order #495/2020](#)¹⁸ on additional measures for protection of missing persons, victims of enforced disappearances and their family members. The Government jointly with human rights NGOs shall elaborate and adopt a comprehensive plan on ensuring rights and interests of missing persons and their families. It shall include measures on interagency coordination in the process of tracing the missing persons, as well as functioning of the Commission on missing persons and the Unified registry of missing persons. The Kyiv city and oblast state administrations jointly with local self-government bodies shall implement the respective protection measures. The central and local authorities shall conduct activities to commemorate the International Day of the Victims of Enforced Disappearances on 30 August.

[The decision of the European Court of Human Rights on the issue of pensions to NGCA residents](#)

On 20 November 2020, the European Court of Human Rights (ECtHR) promulgated its [decision](#)¹⁹ in the *Kandyba and Others against Ukraine* case regarding payment of pensions to residents of NGCA of the Donetsk and Luhansk oblasts. In their application to national courts, several pensioners requested cancelation of some provisions of Governmental Resolution #595²⁰ of 7 November 2014. This Resolution suspended the payment of pensions in the non-controlled territory. The applicants’ request was satisfied in 2016. Pensioners considered that with cancelation of the contradictory provisions in the governmental resolution, their pensions will be reinstated automatically. However, this did not take place and applicants decided to apply to the ECtHR.

The Court dismissed the claim stating that applicants should have applied to a different respondent (the Pension Fund of Ukraine) and specifically asked to reinstate the suspended pensions. The ECtHR mentioned that there are upcoming judgements in cases where they will consider whether or not there is an obligation of the state to pay pensions to people living in NGCA.

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¹⁶ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/npas/pro-pidpisannya-grantovoyi-ta-proektnoyi-ugodi-mizh-kabinetom-ministriv-ukrayini-v-osobi-ministerstva-z-pitan-reintegraciyi-timchasovo-okupovanih-teritorij-ukrayini-1437161120>

¹⁷ Please see more details in UNHCR April and September Legislative Updates available online: <https://www.unhcr.org/ua/en/resources>

¹⁸ The full text available online (in Ukrainian): <https://www.president.gov.ua/documents/4952020-35549>

¹⁹ The full text available online: [https://hudoc.echr.coe.int/eng#{"itemid":\["001-206329"\]}](https://hudoc.echr.coe.int/eng#{)

²⁰ The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/595-2014-%D0%BF#Text>