

Legislative Update

UNHCR update on displacement-related legislation | March 2019

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Adopted legislation

Amendments to the Procedure on the custom clearance of humanitarian assistance

On 6 March, the Government adopted its Resolution #170¹, introducing amendments² to the Procedure on the custom clearance of humanitarian assistance.

According to these amendments, the Procedure applies to the situation of the Joint Forces Operation (JFO), in parallel to the Anti-Terrorist Operation (ATO). Moreover, the custom service shall conduct clearance procedures only after “measures of official control” are completed (including phytosanitary and veterinary sanitary control, as well as compliance with the legislation on import of products of animal origin) with regard to humanitarian cargo. Reflecting a “unified window” approach, the bodies responsible for phytosanitary and veterinary control would provide their assessments to the custom service. During this process, the humanitarian cargo should be temporarily stored at a location identified by the recipient under the control of the custom authorities. The recipient remains responsible for declaring the humanitarian cargo (either itself or via a customs broker) by submitting an application to the customs authorities.

These amendments may simplify the procedure of the custom clearance, allowing a supplier and a recipient to conduct all procedural actions in the same location.

It is worth noting that the custom clearance of humanitarian assistance provided by ICRC, WHO, NATO and UN does not fall under the abovementioned rules, and takes place at the border crossing points based on the information in the shipping documents.

¹ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-ih-postanov-kabinetu-ministriv-ukrayini>

² Their roots lay in provisions of the Law on introducing amendments to the Customs Code of Ukraine and other laws of Ukraine on a “unified window” mechanism and the optimization of control proceedings through customs border of Ukraine. The Law entered into force on 4 October 2018. The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/2530-viii>

Transfer of budget costs of the Ministry for TOT and IDPs (MinTOT)

On 6 March, the Government adopted its Regulation #128-p³ on transferring budgetary funds within the State budget special fund under the program #1601600: “Pilot measures on addressing development problems caused by the displacement of persons and the return of combatants”. The transferred amount constitutes 10,038.6 thousand UAH (reducing the Ministry’s administrative costs and increasing development expenditures of the MinTOT). There is no clear information on which activities would be covered by this increased financing.

Budget allocation for mine action activities

On 6 March, the Government adopted its Resolution #186⁴, specifying the Order of allocating state funds for mine action and mine risk education (MRE) activities. The Order is linked to the MinTOT budget program #1601030: “Measures on decreasing social, economic and ecological impact of unexploded ordnances (UXOs) and MRE”.

As budget holder, the MinTOT is responsible for:

- Defining an action plan for the use of the funds;
- Conducting an information campaign on MRE (including the rules of behaviour with UXOs and the provision of first aid to those wounded by UXOs);
- Preparing information materials, films and warning signs;
- Disseminating information materials through mass media and in public places;
- Coordinating technical and non-technical examination for revealing dangerous areas with further informing the population.

The allocated budget does not cover mediation services, nor any office equipment or the organization of profitable events. For each event, the MinTOT should elaborate a separate instruction indicating all necessary details for its organization.

Unified state registry on domestic and gender-based violence cases: creation, maintenance and access

On 20 March, the Government adopted its Resolution #234⁵, defining the procedures related to the Unified State Registry on domestic and gender-based violence (GBV) cases (the Registry).

The information introduced in the Registry includes:

- Information regarding an act of violence, date and place of its commission;
- Data on a person informed about the act of violence;
- Data on a survivor;
- Data on a person who committed an act of violence.

The access to the Registry is provided to its:

- Holder (the Ministry of Social Policy (MoSP));
- Administrator (a state enterprise defined by the MoSP);

³ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-pererozpodil-deyakih-vidatkiv-derzhavnogo-byudzhetu-peredbacheni-ministerstvu-z-pitan-timchasovo-okupovanih-teritorij-ta-vnutrishno-peremishchenih-osib-na-2019-rik>

⁴ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-poryadku-vikoristannya-koshtiv-peredbacheni-uderzhavnomu-byudzheti-dlya-zdijsnennya-zahodiv-spryamovanih-na-zmenschennya-socialnogo-ekonomichnogo-ta-ekologichnogo>

⁵ The full text available online (in Ukrainian): <https://www.kmu.gov.ua/ua/npas/pro-zya-ta-dostupu-do-yedinogo-derzhavnogo-reyestru-vipadkiv-domashnogo-nasilstva-ta-nasilstva-za-oznakoyu-stati>

- Registrars (staff of authorized MoSP departments; local coordinators on equal rights of men and women; authorized staff of local councils, state administrations, the National Police, services on children's affairs; centres on social services for family, children and youth);
- Information focal points (heads and authorized staff of psychosocial support centres, centres on medico-social rehabilitation, centres on social services to survivors, centres on the provision of free legal aid, educational and health facilities, probation-related bodies, prosecution bodies and courts);
- Users (Registrars and judges).

Building on the existing legislative framework⁶, the adopted Regulation specifies the information to be reflected in the Registry and access to it for representatives of central and local authorities. The functioning of the Registry would simplify access to information on GBV related issues throughout the country. It would also help in ensuring proper data flow among stakeholders involved in the GBV prevention and response work.

Draft legislation

Amendments to the Law on IDPs

On 12 March, MPs registered in Parliament the draft law #10137⁷ proposing amendments to the Law on IDPs. Similar to the draft initiative #10058⁸, the authors suggest reflecting the eligibility criteria for targeted displacement-related financial assistance in the Law instead of by-laws. MPs propose to increase the amount of financial assistance to cover housing related expenses in comparison to the one paid under the Governmental Resolution #505, linking this assistance to a percentage of the minimum subsistence allowance⁹ relevant for different categories of population.

Another set of amendments covers the procedure for the allocation of social benefits (including targeted assistance). Apart from the general approach replicated from respective Governmental Resolutions, the draft suggests that the social protection body responsible for paying such benefits would take steps on depositing financial allocations in case of the financial assistance termination. Any accumulated payments would have to be paid to IDPs in case of reinstatement. The draft contains no time limits (for how long accumulation shall take place?) and no procedural steps on reinstatement and subsequent payment.

On the positive note, the cancelling of an IDP certificate by state authorities would not serve as a basis for terminating the payment of pensions and social benefits.

The draft does not change the current situation with financial assistance to IDPs for partial coverage of rental and utility costs. However, since the access to such assistance is not limited in time and has no linkage to durable solutions, it may prevent IDPs from reaching self-reliance and sustainability in the hope for life-long minimal support from the government.

Criminal liability for non-payment of benefits to IDPs

On 12 March, MPs registered in Parliament the draft law #10138¹⁰ proposing amendments to Article 175 of the Criminal Code, which defines criminal liability for non-payment of salary, scholarship, pensions or other social benefits.

⁶ Please see more details in 2018 UNHCR Legislative Updates for April, July and September

⁷ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65654

⁸ Please see more details in 2019 UNHCR Legislative Update for February

⁹ The minimum subsistence allowance amounts to 1853 UAH, which increases quarterly

¹⁰ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65654

The authors propose to introduce criminal liability for the intentional arbitrary non-payment to IDPs of the above listed benefit(s). The sanctions include fines amounting to 1,000-1,500 uah non-taxable minimum incomes¹¹, limitation of freedom to up to 3 years or imprisonment to up to 5 years.¹²

If adopted, the initiative would create a pressure on civil servants responsible for the payment of pensions and social benefits to IDPs. At the same time, regular workers of the social protection or pension fund departments follow the written procedures established in the by-laws. Holding them liable, does not change the overall policy of the state. Therefore, the suggested amendment would not result in an effective solution of the problem of accessing pensions for IDPS.

[Court procedure for the marriage/divorce registration](#)

On 12 March, an MP registered in Parliament the draft law #10144¹³ suggesting a court procedure on establishing the facts of marriage/divorce occurred in the temporarily occupied territories (TOT)/ non-government controlled areas (NGCA). The proposal is to expand the existing one-day simplified procedure on birth registration to registration of facts of marriage/divorce in any court in the government-controlled area (GCA). This might be a positive development which may allow residents of TOT/NGCA to receive civil documents issued by the Ukrainian authorities.

[Amendments to the Law on mine action in Ukraine](#)

On 22 March, MPs registered in Parliament the draft law #10180¹⁴, introducing amendments to Article 8(2) of Law on mine action in Ukraine. The initiative proposes to allow direct donor funding to mine action operators. The ways of such funding should be agreed with the National Mine Action Authority.

If adopted, the draft would contribute to mine action activities in part of demining and clearance, permitting required financial support for their effectiveness.

Other important developments

[Pension Fund Report for 2018](#)

On 27 March, the Pension Fund published its Report on execution of the budget for 2018. The Report does not single-out IDPs and conflict-affected population as specific vulnerable categories. The Pension Fund spent 14,723.42 thousand UAH from the state budget to pay accumulated pension debts (the full sum amounted to 14,800 thousand UAH). The Report does not contain a figure on the amount paid to registered IDPs. This is in contrast with the similar report for 2017, where all this information was available.

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¹¹ For 2019, this sum would amount to 17,000 – 25,500 UAH

¹² The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/2341-14#n1147>

¹³ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65662

¹⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65719