

Legislative Update

UNHCR update on displacement-related legislation | January 2020

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Adopted Legislation

Crossing of the administrative border with Crimea

In January 2020, the Government promulgated its Resolution #1157¹ that introduced amendments to the Order on crossing of the administrative border with Crimea.² It entered into force on 10 February 2020.

Under the existing regulations, children travelling with one parent or with another responsible adult can return to Crimea only based on a power of attorney from the other parent or both parents. Since Ukrainian notaries are not available in Crimea, this caused difficulties for travelling. As of mid-February, children residing in Crimea may return with the same adult with whom they arrived.

Children aged 14-16 who are enrolled in an educational institution in the government-controlled areas (GCA) may now cross the administrative border with Crimea in any direction without an accompanying adult based on an ID card or a passport for travelling abroad and a document confirming enrolment (student ID).

The procedures have also been simplified for residents of Crimea coming to mainland Ukraine with the purpose of obtaining an ID card. They are allowed to cross the administrative border based on a State Migration Service (SMS) certificate confirming the submission of documents for the issuance of an ID card.

Draft legislation

Amendments to IDP-related legislation

In mid-December 2019,³ the Ministry of Social Policy placed on its webpage for public discussion the draft of a law aiming to improve protection of rights and freedoms of IDPs and war veterans.

The draft law contains a provision recognizing children born to IDP parents as IDPs. UNHCR is concerned that this provision would create a new generation of Ukrainian citizens who would be labelled as internally displaced. Since IDPs are Ukrainian citizens, they are entitled to protection and assistance on that basis alone. In line with the Guiding Principles on Internal Displacement, States should not create a system whereby IDPs can enjoy

¹ The full text available online (in Ukrainian): https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-punktu-3-poryadku-vyizdu-na-timchasovo-okupovanu-teritoriyu-ukrayini-ta-vyizdu-z-neyi-i1157-241219?fbclid=IwAR2Cg7dYgZGR_7931P4QKXoOIQhIMWdGKd4JbJWWJOKNkPXDVH6YcvHBjmU

² The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/367-2015-%D0%BF>

³ The full text available online (in Ukrainian): <https://www.msp.gov.ua/projects/498/?fbclid=IwAR0GV1ZHbj-khrsM8CjcPZLLp1eqyWlrQo5BGELyTd1-paknL8brgx6bO4>

their rights only after having been granted a legal status that could also be refused or revoked. Instead, registration procedures for IDPs should be tied to specific and concrete goals. Since internal displacement in Ukraine has lasted for more than five years, it is time to work toward durable solutions and ending displacement. To that end, it is recommended to link support for IDPs to solutions and based on their needs, not based on the registration as an IDP.

The draft law provides for an inter-agency exchange of data on persons crossing the international border of Ukraine, the administrative border with Crimea and the LoC in the east. In the current legal context, this exchange of information would lead to de-registration of these individuals as IDPs and consequently would deprive them of access to their pensions. State authorities do not exchange similar information about other Ukrainian citizens to determine their location and eligibility to continue receiving their pensions. In order not to be discriminatory, any provision needs to be proportionate to reaching its legitimate goal. The draft law does not correspond to these criteria and therefore may have a negative impact on conflict-affected people.

Amendments to the Law on temporary measures during the ATO period

In January 2020, MPs registered in the Verkhovna Rada three draft laws proposing amendments to the Law on temporary measures during the Anti-Terrorist Operation (ATO) period (the Law).

The draft law #2764⁴ of 16 January 2020 suggests returning economic activities impacting the environment under control measures conducted by central and local executive bodies. Currently, the Law exempts all types of economic activity from such control measures. The only exception applies to sporadic control measures of enterprises with high risk profiles (e.g. chemicals production). However, as environment in the ATO area is already affected by ongoing hostilities, activities of some enterprises may contribute to environmental pollution. Moreover, according to the authors of the draft, these enterprises refrain from paying environmental taxes. Therefore, they propose to regulate the situation and suggest that the economic activities impacting the environment be controlled.

Another draft initiative, #2781,⁵ of 17 January 2020 provides that banks, other financial institutions and creditors should cancel interest rates under credit and loan agreements during the ATO period. After restoring Ukrainian control over Donetsk and Luhansk NGCA, these institutions would have to restructure debts under such agreements without accrual interest.

Last, the draft initiative #2783⁶ of 17 January 2020 proposes to extend temporary measures applicable during the ATO period to the Joint Forces Operation (JFO) period. It suggests cancelling interest rates and postponing the duties of the surety under credit and loan agreements from 14 April 2014⁷ until the end of the Law's validity. The draft also specifies the procedure of issuing certificates confirming *force majeure* circumstances.

If adopted, the drafts 2781 and 2783 may strengthen the protection of parties to credit and loan agreements (both individuals and legal persons), the activity of which was interrupted due to the hostilities in the east.

⁴ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67927

⁵ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67948

⁶ The full text available online (in Ukrainian): http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67950

⁷ Starting date of ATO launch

Other developments

Supreme Court decision on exemption from court fees for the registration of the fact of death occurring in NGCA

On 26 December 2019, the Supreme Court issued a decision in a case concerning the registration of the fact of death having occurred in Donetsk NGCA. The application was submitted along with the claim for the accumulated pension debt of a deceased husband.⁸ There was no decision regarding the accumulated pension debt, since the first step concerned registration of the fact of death that occurred in the NGCA and exemption from the court fee. In its decision the Supreme Court interprets a complex legal rule⁹ which regulates the exemption from court fees in cases establishing legal facts (birth, death, marriage etc.) “that were submitted to the court in connection with armed aggression, armed conflict, temporary occupation and resulted in internal displacement, wounds, captivity or violated property rights”¹⁰. The Court insisted that such exemption should be granted only if an application is submitted in relation to an armed conflict (e.g. death due to shelling or wounds), while in the present case recognition of the fact of death is related to the issue of pension. In addition to this, the Court stated that in cases related to the registration of the fact of death of those who went missing or dead during the ATO/JFO but on reasons not directly related to hostilities, the applicants are obliged to pay court fees, but may request their reimbursement.

This decision may have a negative impact on practice of exempting conflict-affected people from court fees in cases related to the registration of legal facts (both death and birth) that have occurred in NGCA and in Crimea. According to the Court, there is a need to establish direct connection of the fact of death to hostilities/armed conflict. The Court’s narrow interpretation of the relevant rule may result in a reduced number of applications caused by financial burden imposed on applicants. UNHCR and its partners have been advocating for clear exemption from court fees in cases related to the registration of legal facts (including birth and death). Additionally, UNHCR considers that there is a high need to introduce administrative procedure for registering such facts. The present decision may put additional barriers to receiving documents confirming birth and death registration for residents of NGCA and Crimea.

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⁸ The summary available online (in Ukrainian): <https://adm.ki.court.gov.ua/press/general/857264/>

⁹ Article 5 (21) of Law on court fees. The full text available online (in Ukrainian): <https://zakon.rada.gov.ua/laws/show/3674-17>

¹⁰ Art. 5 point 21 of the Law of Ukraine on Court Fees. Available in Ukrainian <https://zakon.rada.gov.ua/laws/show/2268-19#n174>