

Monthly Legal Alert

Issue 4, 01-31 May 2016

1. LEGISLATIVE DEVELOPMENTS

1.1 New residence registration rules

On 02 March the Cabinet of Ministers (CMU) has adopted CMU Resolution 207 (<http://zakon2.rada.gov.ua/laws/show/207-2016-%D0%BF>), stipulating new rules of residence registration, enacted since April 2016. Though the changes were aimed at decentralization and simplification, the first two months of the new rules being in effect, have seen implications for the internally displaced persons.

We would focus on the following changes:

1.1.1 Simplification:

- The power to register place of residence was assigned to local city/district/village councils from State Migration Service (SMS)
- 30-day requirement for residence registration (10 days before changes)
- Re-registration and termination of previous residence registration at the same place
- Residence registration via proxy is allowed

1.1.2 Implications:

- Local city/district/village councils were not ready for newly acquired functions: many are still not informed of them, while the others do not have the stamps for performing the registration
- Regional departments of social protection (DoSP) generally acknowledge IDPs residence registration conducted by local councils. This allows many IDPs to receive welfare payments. However, Liaison Officers Program within the Ministry of Social Policy (MoSP) reported that numerous DoSPs all over Ukraine do not recognize such registration and demand SMS stamps in accordance with the CMU Resolution No. 509
- Regional Pension Funds - as a rule, do not recognize residence registration of IDPs conducted under new rules and refuse to reinstate pension payments to IDPs without the stamp from the SMS
- Article 9 of the Resolution No. 207 does not mention IDP certificate as one of the documents which can serve for purposes of permanent residence registration, thus many IDPs are denied in such registration

NB! Recent legislative changes (January-April 2016) provide that:

a) SMS cannot conduct residence registration of IDPs by putting stamps to IDP certificates. SMS was stripped of this power in January 2016 under the Law No. 921. Changes related to the Law No. 921 should have been reflected in the respective bylaws (Government Resolution No. 509) by mid-April. As a result, different state authorities still require SMS stamp on the IDP certificate, though legislation directly stipulates precedence of law over bylaws.

b) Law No. 921 also states that information on *permanent residence* cannot be stated in IDP certificate

c) Under the Law No. 1382 IDP certificate can only include information on *temporary residence*. *Temporary residence* means that a person resides at the specific territory less than 6 months. However, relatively clear rules are provided for permanent residence registration only, leaving temporary residence registration in legal limbo.

As a general rule, permanent residence registration is possible if

- person has title to residential premises or
- respective right was explicitly provided by lessor under the lease agreement.

Hence, a large number of IDPs are unable to register their permanent residence at the new address after displacement. Even if an IDP registers such permanent residence s/he loses one of the main legal grounds for IDP registration (the Law No. 1706). This simply may lead to cancellation of IDP registration triggering numerous adverse consequences as almost all displaced persons' social/economic rights are linked to IDP registration.

Therefore, despite certain changes were put in place, current legislation and practices on residence registration for IDPs still have a lot of loopholes. We suppose this creates formidable obstacles in access to one of the durable solutions i.e. local integration.

1.2 The High Court in Civil and Criminal Cases has issued a letter on applying the court procedure on recognition of birth and death in NGCA

On 19 May 2016 the High Court issued a letter specifying implementation of the procedure set out in the Law No. 990. This law regulates establishment of fact of birth or death at the temporarily occupied territory of Ukraine".

Among other things, the High Court has stressed the following:

- The court procedure applies for both – Crimea and NGCA (Donetsk and Luhansk areas)
- The Namibia exception applies for documents issued in NGCA with regard to births and deaths, making the documents and facts reflected in them acceptable as evidence in national courts.

NB! According to Namibia exception, when a part of country's territory is illegally occupied, every official action taken by occupying force is illegal and void except for its registration of births, marriages and deaths.

2. POLITICAL DEVELOPMENTS

2.1. Cases of welfare payments are being revised by the Central Audit Commission

- Liaison Officer Program within the Ministry of Social Policy reported that the Central Audit Commission was conducting audit in several DoSPs in Kharkiv, Zaporizhzhya and Donetsk oblasts
- Currently Commission investigates decisions on granting IDP social welfare. In one of the reported cases, the Commission has found titular right of the beneficiary to IDP social welfare to 1/17 part in a flat in Donetsk (in NGCA)
- According to legislation an IDP is not entitled to IDP social welfare if s/he has title to residential property located in GCA. Thus the investigation decision has led to
 - a) criminal case against DoSP worker who has made the decision to grant IDP welfare and
 - b) court claim against the beneficiary to return all the sums of money paid to him as IDP welfare
- Criminal cases are also reportedly being open against DoSP workers who have granted IDP welfare to IDPs, whose certificates did not bear SMS Stamps as prescribed by CMU Resolution No. 509

- As was previously mentioned, SMS stamp requirement was removed by Law No. 921 in January 2016, and CMU Resolution No. 509 should have been amended accordingly by 13 April 2016
- Criminal cases are also reportedly being open against DoSP workers who have granted welfare for IDPs whose certificates do not bear SMS Stamps

Issues and Concerns

- a) There is a risk that more DoSP workers may come under criminal prosecution on loose grounds
- b) This may further deteriorate the situation with unlawful rejections in social payments and pensions as the employees of DoSP and Pension Fund will be afraid to take any IDP-related actions

2.2. The First Priority Steps to be taken by the Government

On 27 May 2016 the Government has adopted its programme under the heading “First Priority Steps”. The document briefly outlines the strategic directions in which the CMU will work in 2016.

Among other priorities, CMU paid a lot of attention to the reintegration and development of Crimea and NGCA, as well as protection of rights of IDPs.

During programme presentation the Prime Minister has mentioned that the Ministers will publicly report on the progress during the year, and the first report is due in July.

We would recommend to monitor the following declarations:

- Writing concept notes on projects for reconstruction of damaged property in the conflict zone and building new houses for people whose property was destroyed. These concept notes are later to be submitted to international donors
- In order to simplify the financing of reconstruction projects via international donors, a Trust Fund is to be established
- The newly created Ministry “on temporarily occupied territories and IDPs” (MinIDPs) is to submit to the Parliament draft laws to ensure the IDPs’ economic welfare and access to medicine and education. No further details are provided in the document.
- MinIDPs is to elaborate and submit to the CMU for approval draft Resolution On Transportation of Goods to/from conflict zone which would simplify the procedure on crossing the checkpoints.
- MinIDPs is to submit to the Parliament a Draft Law on Missing in Action, stipulating the status of a person who was missing as a result of armed conflict and establishing rights of the family members of such persons.
- Ministry on Informational Policy is to ensure the process of growth of the territories in Crimea, NGCA and along contact line covered by Ukrainian TV and radio broadcasting.
- MoSP together with MinIDPs is to create an up-to-date unified registry on IDPs.

3. DRAFT LAW ON HUMANITARIAN AID IN CRISIS SITUATIONS

On May 16 2016 the Parliamentary Committee on “ATO veterans” and OCHA presented the draft law On Humanitarian Aid in Crisis Situations which was registered in Parliament on 31 March 2016. Please see the analysis of the draft law attached separately.

4. EVENTS

DRC Legal Assistance unit is the ad hoc host for series of monthly Round Tables on Access to Justice and related Advocacy. The May Round Table has seen discussion on the following:

- Three Draft laws (second draft) prepared, stipulating:
 - exemption from court fees for conflict-affected population in cases regarding: compensation for lost/damaged property; registration of birth/death in NGCA and in connection with violation of IDPs' rights, formulated in articles 6-9 of the IDP Law;
 - exemption from income tax for landlords for renting flats for IDPs;
 - enabling enforcement proceedings to be open and stay open for the cases where the debtor or the property in question is in NGCA/occupied territory.
- Joining advocacy forces in view of establishing safeguards for civilian properties occupied by the military in the 'grey' zones, including documentation of eviction and/or occupation of the private property;

The presentation of the aforementioned Draft Laws for the NGOs, iGOs and the general public will be held on 14 June 2016 in President Hotel jointly organized by DRC and the Council of Europe. Everyone is cordially invited to attend the event. RSVP: olga.liuta@drc-ukraine.org

We also invite other national and international organizations to participate the Access to Justice roundtable or to contribute to the agenda. The approximate date of the next Round Table is 5th July, at DRC LAU office at 33 Shevchenka blvd, 8th floor, Kyiv.

On any questions/details please contact Kate Halenko at kateryna.halenko@drc-ukraine.org

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