



## LEGAL ALERT

July 2016

Despite the low season in lawmaking and political life, we would like to bring to your attention the following.

### 1. Changing the process of issuing identification documents

In connection with the EU-Ukraine Visa Liberalization Process, on 14<sup>th</sup> July 2016 the Parliament has adopted the Draft Law 3224 On Introducing Changes into the Legislation Regarding Documents that Verify Citizenship of Ukraine, Identify a Person and his/her Special Status, in View of Visa Liberalization Process with European Union. Namely, the lawmakers have introduced changes into the Law on Unified Demographic Register.

It should be stressed that after these changes are enacted, IDPs and people living in NGCA and the Crimea will face severe complications in receiving and using their identification documents.

#### 1.1. Implications:

- Until this moment children are obliged to receive internal passport (called passport of the citizen of Ukraine) at the age of 16. The adopted Law changes that age from 16 to 14 years. A passport may only be received personally and it takes up to 30 days from filing application for a passport to receive the document. This will predictably create a situation of high danger when the 14-year old children, accompanied with their parents, will have to travel from the occupied territories through check-points twice: to file application for passport and to receive it.
- The passport issued at 14 years will be valid till the person turns 18. After that the passport will be valid for only 10 years. (At the moment the internal passports are valid for an indefinite period of time, save for the fact that a person needs to supply new photo cards when he/she turns 25 and 45 years).
- The information on registration of place of residence is not included into the internal passport. Although this is a welcoming step towards abolition of the post-soviet "propiska" system, it still seems to be a redecorating rather than systemic change and it is very hard to predict at the moment how this will work in practice. In light of the recent developments in policies towards IDPs - verifications, inspections at the place of residence etc, it still seems that the information on the place of residence remains vital in communication between individual and the State. Thus it is also highly probable that some kind of a special document registering place of residence will be invented (even if temporarily).
- The Law on Unified Demographic Register stipulates that the identity document, i.e. any type of passport, will only be issued to a person who is in the Register.
- One of the main issues is how the Register will be formed. It is stipulated that the Register will be formed with information gathered by local holders of information - local registry offices, State Migration Service etc. However, after the beginning of the occupation of the Crimea, and later after the beginning of the military operation in the Eastern Ukraine, the

State Migration Service has informed the Ombudsperson that all the paper files on citizens of Ukraine who were registered at the occupied territories were left there, and cannot be recovered. This practically means that the information on all the residents of the occupied territories will not be automatically included into the Register. In the long run, this might put them at risk of being *de facto* stateless, as they cannot prove their citizenship and identity in case they lose their identity documents, or request new ones.

- Automatic absence of IDPs and conflict-affected in the Register will mean that they will have to go through a procedure of inclusion of their data to the Register. This also presents several problems. Thus, prior to entering data on a person into the Register, this person has to be identified. This "identification procedure" will last up to two months, and the process itself is to be elaborated by the Cabinet of Ministers, however the lawmaker has not stipulated any deadline for that. It is also logical to suggest that in the absence of any paper files regarding this person, an identification will be almost impossible to make. In case the person will not be identified through this procedure, he/she will have to be identified through a court procedure.
- Thus it is highly probable to suggest that the majority of IDPs, people registered in the Crimea, Donetsk and Luhansk oblasts before the conflict and NGCA residents, all together amounting to over 10 million people, will have to go through a procedure of identification in court. This per se will be a great challenge for the court system, not to mention the fact the people will have to pay court fees for such procedure.

Text of Law of 14 July 2016 may be found here [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=56689](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=56689)

## **2. New Form of application for IDP registration**

Decree of Ministry of Social Policy No.708 was registered on 12<sup>th</sup> July 2016, stipulating a new template for applying for IDP registration with the regional Departments of Social Policy. This template takes into account the changes enacted by the Law 921 on 13 January 2016, namely the right to submit the application for a minor by his/her close relatives.

The new template also contains questions regarding the medical, educational and other needs of the internally displaced person and his/her family members, his/her education and qualifications.

New template may be downloaded here <http://zakon0.rada.gov.ua/laws/show/z0942-16>

## **3. Organizational setup for the Ministry of Temporarily Occupied Territories and Internally Displaced Persons has started**

July 2016 has seen two positive developments regarding the Ministry of Temporarily Occupied Territories and IDPs. Despite being created in May, it remains not fully operational due to lack of funding and structure.

On 07<sup>th</sup> July 2016 the Parliament has introduced changes into the Addendum No.3 to the State Budget of Ukraine for 2016. According to these amendments, monetary funds in sum of 10.2 million UAH costs that were initially intended for the Donbass Recovery State Agency and the State Service for Crimea were reallocated for the recently created Ministry of Temporarily Occupied Territories and IDPs. This reallocation stipulates a salary fund for the Ministry workers and utility payments. As it does not include any rent or development funds, it is

understood that the Ministry will continue to share premises with other Ministries, namely the Ministry of Social Policy.

Also, on 13<sup>th</sup> July 2016 a Decree of the Cabinet of Ministers No. 495 was adopted, stipulating that three regional departments of the Ministry of Temporarily Occupied Territories and IDPs will be founded in Donetsk, Luhansk and Kherson regions. It is to be understood that this three departments are a first step towards an all-Ukrainian regional department network.

Relevant document may be found here <http://zakon0.rada.gov.ua/laws/show/1441-19> and <http://zakon5.rada.gov.ua/laws/show/495-2016-%D1%80>

#### **4. First HLP-related decision of European Court of Human Rights rules inadmissible compensation lacks adducing lack of evidence for shelling in Eastern Ukraine**

In its decision in the case of Lisnyy and Others v. Ukraine and Russia (application nos. 5355/15, 44913/15 and 50853/15) the European Court of Human Rights has unanimously declared the applications inadmissible.

The case essentially concerned three Ukrainian nationals' complaints about the shelling of their homes during the hostilities in Eastern Ukraine from the beginning of April 2014 onwards.

The applicants complained that their lives had been put at risk as a result of the shelling of the villages where they lived and that their property had either been destroyed or damaged. The applicants also complained more generally that all the State institutions in eastern Ukraine, including the courts, had suspended their operations and been relocated to areas controlled by the Government of Ukraine. They relied on Article 1 of Protocol No. 1 (protection of property), Article 2 (right to life), Article 6 § 1 (right to a fair trial), Article 8 (right to respect for private life), Article 10 (freedom of expression) and Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The Court found in particular that the applicants, having essentially only submitted their passports as evidence, had not sufficiently substantiated their complaints. It reiterated that, generally, if an applicant did not produce any evidence in support of their cases, such as titles to property or of residence, his or her complaints were bound to fail.

Although the applicants in this case were legally represented, they had essentially only submitted copies of their passports. Mr Lisnyy had submitted photographs of a destroyed house, but with no proof of ownership of that house or any other right that he might have had in respect of that property. Nor had the applicants made any submissions as to the reasons for which they had failed to submit any relevant documents – such as land or property titles, extracts from land or tax registers, documents from the local administration, plans, photographs and maintenance receipts as well as proof of mail deliveries or witness statements – in support of their Convention claims. Indeed, they had not informed the Court of any attempts they might have made in order to obtain at least fragmentary documentary evidence to substantiate their allegations. In those circumstances, and despite the fact that the Court in certain exceptional circumstances beyond the applicants' control – such as in this case where there is a situation of ongoing conflict – did take a more lenient approach as to the evidence to be submitted to it in support of individual applications, the Court concluded

that the applicants' complaints had not been sufficiently substantiated and declared the applications manifestly ill-founded.

Text of the ruling may be found here <http://hudoc.echr.coe.int/eng-press?i=001-165566>

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