



DRC-DDG LEGAL ALERT: Issue 55

August 2020

1. COVID-19 Legislative Measures: A Shift from Easing Quarantine Measures to Reinforcing Them¹

In August 2020, the Ukrainian government switched from easing the quarantine measures to once again reinforcing them. In relation to the humanitarian context, the main updates include:

- *Adaptive² quarantine is prolonged* until 31 October 2020. Range of the restrictive measures depends on the regional quarantine regime (green, yellow, orange or red) which is decided on the basis of certain indicators by the regional Commissions on Technogenic and Environmental Safety and Emergency Situations. Latest information on the quarantine regime in particular regions is available on the [governmental website](#);
- *Self-isolation/Observation after crossing EECPs or the state border*: On 27 August 2020, the Cabinet issued Resolution [No. 757](#) renewing the requirement for self-isolation (if not possible – observation) for individuals crossing EECPs in NGCA and Crimea in the direction of GCA (exceptions are provided for children under 12 years old, staff of international and diplomatic organisations, if negative COVID-test is obtained, and in some other cases). In regards to EECPs in Luhansk and Donetsk regions, however, the situation did not change as despite the cancellation of the self-isolation requirement in July 2020, the JFO Commander continued to enforce it.³ The self-isolation requirement is also applied to the citizens arriving back to Ukraine from the countries included to the [high-risk list](#) – however, the requirement does not apply if the person is tested negative for COVID.
- *Movement through EECPs with Crimea* has been [restricted](#) from 9 August through 27 August with the exception of allowing movement of Ukrainian citizens mainly based on their residency registration.⁴ Other grounds for movement include ‘humanitarian cases’ (on a case by case basis with the approval of the Head of the State Border Service), movement of staff members of diplomatic and humanitarian missions, and movement of school graduates applying to Ukrainian universities. Movement to mainland Ukraine is mostly conditioned on undergoing a 14-day-long self-isolation;
- *Movement of non-nationals to Ukraine* is once again [banned](#), effective from 28 August 2020 – with certain exceptions. For instance, entry is allowed for non-nationals who are parents/children/spouse of Ukrainian citizens, possess valid Ukrainian work or residency permits, or work for diplomatic or consulate institutions or accredited international missions (including their family members). Entry is also allowed for non-nationals studying in Ukraine or serving in the Armed Forces, persons arriving for short-term transit purpose, experts invited to Ukraine by national enterprises or the state bodies, cargo drivers, and refugees.

¹ For a review of the COVID-19 prevention measures relevant to the conflict-affected persons taken before 1 August 2020, please see [Special Legal Alert](#) on COVID-19 (initial measures), Legal Alert [Issue 50](#) (update for 16-30 March), [Issue 51](#) (April updates), [Issue 52](#) (May updates), [Issue 53](#) (June updates).

² The term *adaptive* quarantine was initially used by the government of Ukraine in regards to Cabinet Resolution No. 392. It marked the transition from the ‘all-restrictive’ approach for the economy, transportation, and other activities to the new one based on adapting the lasting quarantine realities and lifting or easing the restrictions locally depending on COVID-19 indicators in a particular region. For more information, see DRC-DDG Legal Alert Issue 52, Section 1.

³ See DRC-DDG [Legal Alert](#) Issue 54, Section 1.

⁴ For example, the movement to Crimea from mainland Ukraine for Ukrainian citizens with their residency registration in Crimea – or movement to mainland Ukraine from Crimea for Ukrainian citizens residing in mainland Ukraine.

2. Constitutional Court Delivers Its Ruling On Constitutionality of Cabinet’s Quarantine Restrictions

Background: An overwhelming majority of quarantine measures and other COVID-19-related restriction were introduced through executive orders as opposed to legislative acts. More than a dozen executive orders in the form of Cabinet Resolutions have been adopted (see DRC-DDG Legal Alert issues 49-53), often amending, cancelling, or transitioning each other’s provisions. Many of these restrictions directly conflict with fundamental constitutional rights, including freedom of movement, freedom of assembly, freedom of religion, right to property.

Recent Developments: On 28 August 2020, the Constitutional Court of Ukraine delivered its [ruling](#) in a case referred to it by the Supreme Court. One of the contentious issues for determination was whether separate quarantine restrictions introduced by Cabinet Resolution No. 392 were consistent with the Constitution.

Scope of the consideration (curtailed to reflect issues relevant to humanitarian actors):

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| <ul style="list-style-type: none"> • Ban of events with more than 10 attendees; • Ban on the functioning of cafes and restaurants, malls, and cultural facilities; • Restriction of regular and irregular passenger transportation; | <ul style="list-style-type: none"> • Restriction on planned hospitalisation; • Obligatory self-isolation of individuals aged over 60 years; • A requirement to stay within the place of self-isolation and to refrain from contacting other individuals. |
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Interestingly, the case did not question the constitutionality of movement restriction through the EECPs with NGCA and Crimea despite such restriction being a part of the same impugned Cabinet Resolution.

The decision of the Court:

- The Court **closed the case** regarding the quarantine restrictions imposed by the Cabinet Resolution No. 392 on the grounds that such restrictions have already been aborted;
- At the same time, the Court reaffirmed that constitutional rights could not be restricted except through a declaration of a State of Emergency or Martial Law (neither has been introduced in Ukraine during the quarantine);
- The Court also emphasised that restriction of constitutional rights, if allowed by the constitution, can only be done through a law adopted by the Parliament – not through by-laws (resolutions, orders, decrees, etc.) adopted by the Cabinet.

Significance of the Court Decision: The Court’s observation reinforced the well-established constitutional law principle that rights guaranteed by law and constitution cannot be taken away by the executive organ through executive orders such as a Cabinet Resolution. Restatement of this principle by the Court is timely onto the background of frequent instances of arbitrary executive orders restricting constitutional rights. The most recent example is the abovementioned unilateral decision of the Joint Force Operation’s (JFO) to impose self-isolation or observation requirement for persons crossing EECPs from NGCA to GCA side.

Limitations of the Court Decision: The Court’s reference to the cancellation of the restrictive provisions as grounds for closing the case might be considered too formalistic. The ‘cancelled’ provisions were reframed and further incorporated through new Cabinet resolutions which are currently in force.

3. Cabinet Adopts State Regional Development Strategy 2021-2027

On 5 August 2020, the Cabinet issued Resolution [No. 692](#) adopting the State Regional Development Strategy 2021-2027, surpassing the State Regional Development Strategy 2020. Outlined on 88 pages, the Strategy foresees two stages of its execution: 2021-2023 and 2024-2027.

One of the strategic priorities is the development of “territories requiring State’s support”, which includes “bordering territories in a disadvantaged environment” (disadvantaged territories):

- “Disadvantaged territories” group includes regions of Chernihiv, Sumy, Kharkiv, Luhansk, Donetsk, Zaporizhzhia, Kherson, Odesa, and Vinnytsya (bordering Transnistria);
- “Disadvantaged territories” group also includes, and specifically emphasised the “territories bordering Russia and TOT”.

The document is structured around three strategic aims detailed through 17 operational aims and tasks. Below is a generic compilation of the aims and tasks that are relevant to the humanitarian context:

Strategic Aim No. 1: Forming of Social, Economic, Ecological, and Safety Cohesion

<p>Operational Aim 2: [Inter alia] building development capacities of ‘territories requiring state support’.</p>	<p>Task: Restoration and development of the conflict-affected regions of Ukraine, and structural reconstruction of their economies:</p> <ul style="list-style-type: none"> • Prolongation and actualisation of State Programme for the Restoration and Peacebuilding in the eastern regions of Ukraine; • Development of a special infrastructural state programme; • Ensuring durable water supply; • Ensuring access to social, administrative, and healthcare services for the conflict-affected communities; <hr/> <p>Task: Development of Rural Territories:</p> <ul style="list-style-type: none"> • Stimulating the development of small- and medium-sized enterprises; • Improvement of transport connections with administrative centres and cities.
<p>Operational Aim 5: Creating united informational and cultural fields.</p>	<p>Task: IDP integration:</p> <ul style="list-style-type: none"> • Information management on IDP housing and employment opportunities; • Inventorying of real estate (potentially) suitable for IDP housing; • Supporting local IDP housing programmes (temporary and durable), including preferential loan programmes and rural housing; • Stimulating the development of small- and medium-sized enterprises owned by IDPs, creation of new jobs, provision of (re)training;

Operational Aim 5:

Creating united informational and cultural fields.

Task: Social and public services for Ukrainian citizens residing in NGCA, Crimea, and adjacent territories:

- Simplification of services;
- Access to healthcare and social services in GCA;
- Access to GCA education;
- Enhancing EECPs’ transport networks;
- Access to administrative services in villages and towns nearby EECPs;
- Developing a dialogue between residents of GCA and NGCA;

Task: Enhancing social protection of veterans and their family.

Strategic Aim No. 3: Development of Good Governance at All Levels

Operational Aim 1: Forming effective local self-governance and local state bodies based on the new territorial grounds [decentralisation reform].

Operational Aim 4: Capacity building for regional state policy.

Operational Aim 6: Development of analytical and informational support to decision-making.

4. Cabinet Increases Minimum Assistance to Family Members of Deceased ‘ATO’/JFO Participants

Background: Currently, Ukrainian law provides state assistance (called ‘pension’) to the dependant⁵ family members of a deceased breadwinner. Special assistance terms are provided if the breadwinner was deceased or went missing on his/her duties during the ‘ATO’/JFO:

Who is eligible:

- Spouse – if he/she raises a child under 8 years old;
- Spouse – if he/she is unable to work due to age or health reasons;
- Parents of the deceased person – if they have reached the pension age or have the disability health status;
- Children and other minor dependents of the deceased person including brothers, sisters, grandchildren (until they reach 18 years – a general rule).

Size of the assistance:

- If there is only one dependent person – 70% of the deceased person’s salary;
- If there are several dependent persons – 90% of the deceased person’s salary shared equally between the dependent persons;
- The minimal size of the assistance is – two times the living wage for the individuals who have lost their ability to work (3,424 UAH as of the date) per dependent person.

Recent Developments: On 3 August 2020, the Cabinet issued Resolution [No. 674](#) providing additional guarantees for families of ‘ATO’/JFO personnel, deceased on duty. Starting from August 2020, if the breadwinner has left one dependent, his/her assistance will be increased up to 7,800 UAH. If the breadwinner has left several dependent family members, the minimal size of the assistance will be increased to 6,100 UAH for each of the dependents.

The Cabinet [estimates](#) that the new formulation will provide assistance coverage to an additional nine thousand family members of the deceased ‘ATO’/JFO participants.

⁵ Family members are considered as dependent if during the breadwinner’s life she/he has provided them with the necessary resources or assistance, which served as a consistent and primary source of means for living for such person.

5. President Signs Law on Increasing Scholarships for Orphans and Children Deprived of Parental Care

On 6 August 2020, the President signed Law [No. 785](#) increasing the size of the state social scholarship for orphan students and students deprived of parental care. Previously, such individuals were eligible for scholarship equalling 100% of the respective living wage – now, the size of the scholarship is increased to 150% of the respective living wage. The increase is effective starting from 1 January, 2021.

State social scholarship monthly size as of August 2020 (UAH):

	Current	Updated (starting from 1 January 2021)
For students aged from 6 to 18 years old	2,318	3,477
For students above 18 years old	2,197	3,295

Some of the terminology used in this issue of the Legal Alert was taken from draft laws or current legislation and does not necessarily reflect the position of DRC-DDG.

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