

THIRD JUDICIAL FORUM



“THE ADMINISTRATION OF JUSTICE
IN THE FACE OF ARMED CONFLICT
IN EASTERN UKRAINE”

KYIV, OCTOBER 31, 2019



THIRD JUDICIAL FORUM

“THE ADMINISTRATION OF JUSTICE
IN THE FACE OF ARMED CONFLICT
IN EASTERN UKRAINE”

KYIV, OCTOBER 31, 2019

Participation

The Forum was attended by more than 100 participants, the majority of them are judges of the first instance and appeal bodies, as well as the Supreme Court and courts of general and administrative jurisdiction. Among them were the following key guests from the Supreme Court and the government:

Olga Stupak,

Judge, the First Trial Chamber of the Civil Cassation Court at the Supreme Court of Ukraine;

Olga Onischuk,

Deputy Minister of Justice of Ukraine;

Serhii Nizhynskyi,

Deputy Minister of Social Policy

Andrii Zhuk,

Judge, the Trial Chamber for the electoral process and referendum, as well as the protection of political rights of citizens appealed to the Administrative Cassation Court at the Supreme Court;

Yevhen Petrov,

Judge, the Third Trial Chamber of the Civil Cassation Court at the Supreme Court;

Volodymyr Kravchuk,

Judge, the Trial Chamber for the protection of social rights of the Administrative Cassation Court at the Supreme Court;

Mykola Mazur,

Judge, the Second Trial Chamber of the Criminal Cassation Court at the Supreme Court;

Bohdan Monich,

the Chairperson of the Council of Judges, Judge of the Seventh Administrative Appeal Court;

Zenovii Kholodniuk,

the Chairperson of the State Judicial Administration of Ukraine

Representatives of following organizations were present: the United Nations High Commissioner for Refugees, UNWomen, UNFPA, Danish Refugee Council – Danish Demining Group, the Norwegian Refugee Council, the Board of Centre of Policy and Legal Reform, the Charitable Fund “Slavic Heart”, the Charity Fund “Right to Protection”, the Petro Mohyla Black Sea National University, Ukrainian Institute for Human Rights.

Opening session



Olga Stupak, Judge of the First Trial Chamber of the Civil Cassation Court at the Supreme Court, noted that there were a variety of problems that are a direct consequence of the situation in Eastern Ukraine and the Crimea and they required a prompt and effective solution.



Olga Onischuk, Deputy Minister of Justice of Ukraine responsible for State Registration, at the request of the participants briefly described the new administrative procedure which would regulate the process of reviewing documents that confirm the fact of birth or death of a person occurred in the temporarily non-government controlled territories of Donetsk and Luhansk oblasts, as well as procedures for issuing appropriate certificates.

The described steps of this procedure caused a lively discussion where the expediency of creating the Commissions, their activities, quantity, time for reviewing documents, and the possibility of submitting them by an authorized and legal representative were discussed. The participants expressed concern that the new procedure might delay rather than simplify the process of establishing the facts and would lead to additional claims appealing the Commission's decisions. The participants emphasized the principle of 'Namibian exemptions' and the Law of Ukraine of January 18th, 2018 No. 2268-VIII "On peculiarities of state policy on ensuring Ukraine's state sovereignty over temporarily occupied territories of Donetsk and Luhansk oblasts" providing that the documents confirming the fact of birth or death of a person occurred in the temporarily occupied territories in Donetsk and Luhansk oblasts created appropriate legal consequences and were attached to the applications for state registration of birth or death of a person. The forum participants also emphasized the need to involve practicing judges and the specialists of the international non-governmental organizations in the development of a new procedure.

Olga Onischuk answered all the questions and noted that the proposed procedure would be adopted after a thorough elaboration, and the Ministry of Justice would be open for cooperation and ready for further collaboration.



Serhii Nizhynskyi, Deputy Minister of Social Policy responsible for European Integration, stressed the importance of improving access to justice of people affected by the armed conflict. The efforts for improving the efficiency of the judicial services in the regions affected by the conflict in Eastern Ukraine would help to improve the social climate at the local level. He noted that the Ministry of Social Policy dealt with the problems of accommodation, employment, psychological rehabilitation, access to education, and cultural and social reintegration of internally displaced persons and was working diligently to restore their rights and legitimate interests. He also highlighted the issues of resuming the pension payments and executing the judgments.

The participants discussed the issues of the judgment execution and cooperation with structural units on social protection of the population at the local level, expressed the necessity of establishing a cooperation between the court and the structural units of social protection of the population, and opening to the judges a limited access to the Unified Database on Internally Displaced Persons for the effective administration of justice. The participants also stressed the importance of adequate capacity development and legal awareness/knowledge of the employees of the structural units of social protection regarding the application of the IDPs legislation and accentuated the problematic issues of obtaining the IDP certificates for graduating children. It was pointed out about the inconsistency of the legislation regulating back pension payments and confirmation of the work experience. Those present agreed that the appropriate legislation required additional adjustments.



Victor Munteanu, the manager of the UN Recovery and Peacebuilding Programme, noted the interesting and lively start of the Forum. He emphasized the depth and importance of the problems proposed for discussion and expressed hopes that the Forum would be a source of solutions to the issues of administering justice during the armed conflict in Eastern Ukraine.

Session I.

Pension and social security of the population affected by the armed conflict in Eastern Ukraine



The first speaker **Volodymyr Kravchuk**, judge of the Trial Chamber for the protection of social rights of the Administrative Cassation Court at the Supreme Court, spoke on “Protecting the social rights of those affected by the armed conflict”. He specified the statistics on the victims, identified the main problems of internally displaced persons regarding the protection of their social rights, principles and policy of the first priority when delivering a judgment. The speaker presented the most common categories of cases and the legal position of the Supreme Court in each of them:

- Category of cases on appealing the decisions of the pension authorities regarding the terminated pension payments to internally displaced persons – the judgment of the Administrative Cassation Court at the Supreme Court of May 3, 2018, No. 805/402/18 (Model case), and resolutions of the Administrative Cassation Court at the Supreme Court of February 13, 2018, No. 234/11095/17;
- Category of cases on appealing the decisions of social protection of population bodies regarding the refusal to grant/pay a monthly targeted assistance to internally displayed persons in order to pay also for housing and communal services and to cover living expenses - the judgment of the Administrative Cassation Court at the Supreme Court of March 27, 2018, No. 408/3046/17-a, of May 22, 2018, No. 234/3735/15, of September 26, 2019, No. 229/1602/16-a, of January 24, 2019, No. 266/1006/17, of August 15, 2019, No. 751/2087/16-a;
- Category of cases on appealing the decisions of social protection of population bodies regarding the refusal to grant maternity benefit – the judgment of the Administrative Cassation Court at the Supreme Court of May 2, 2018, No. 226/318/17;
- Category of cases on appealing the decisions of social protection of population bodies regarding the refusal to issue a certificate of an internally displaced person, refusal to register an internally displaced person – the resolutions of the Administrative Cassation Court at the Supreme Court of November 22, 2018, No. 265/3453/17, of June 27, 2018, No. 688/1196/17, of March 20, 2019, No. 826/319/17, of January 23, 2018, No. 583/392/17;

- Category of cases on appealing the decisions of social protection of population bodies regarding the refusal to pay material support in connection with temporary disability, pregnancy and childbirth - the resolutions of the Administrative Cassation Court at the Supreme Court of November 20, 2018, No. 227/4312/16-a, of March 29, 2019, No. 548/2056/16-a.

It was also emphasized that the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons” established additional guarantees rather than restrictions on rights of internally displaced persons, and stressed the importance of respecting the principle of non-discrimination.



The issue of “The ECHR decisions on the implementation of human rights during the conflict” was covered by **Valeria Lutkovska**, Head of the Ukrainian Institute for Human Rights. During the report, she noted that for five years in a row there was a problematic issue of the pension payment in the non-government controlled territory of Ukraine, which the state was not able to solve. The speaker noted that the decisions of the European Court of Human Rights were very useful in such situations. She gave examples of decisions that related to the problems of human rights in Ukraine, including the cases of “Pichkur vs Ukraine”, “Cekic and others vs Croatia”, and “Grudic vs Serbia”. She noted that not all the cases were translated into Ukrainian and expressed her hope that this translation would be made after that meeting. She also pointed to the length of proceedings in national courts limiting the plaintiff’s right to file a complaint to the European Court of Human Rights, since they had not used all legal remedies available in the country. As one of the problematic issues, she stressed the resumption of pension payments to the people being not internally displaced persons, but received a pension in the non-government controlled territory of Ukraine.



Isaac Robinson, Programme Manager, Legal Aid Unit, Danish Refugee Council – Danish Demining Group, presented a report “Access of IDPs to justice in the context of pension and welfare payments”. The speaker proposed to highlight the problematic issue not as a lawyer or a representative of the international organization, but as a foreigner. He noted that the existence of the judicial process would not imply access to justice, as it required additional costs and time. Isaac Robinson specified the statistics on registered internally displaced persons and pensioners among them who were potential plaintiffs in debt collection cases. The participants agreed with the reporter on the importance of resolving the issue of pension back payments at the legislative level as soon as possible.



Andrii Zhuk, judge of the Trial Chamber for electoral process and referendum, as well as the protection of political rights of citizens appealed to the Administrative Cassation Court at the Supreme Court presented a report which analyzed the judicial practice of the Administrative Cassation Court at the Supreme Court on cases of pension and social security of the population affected by the armed conflict in Eastern Ukraine. The reporter gave a detailed analysis of the judicial practice of the Administrative Cassation Court at the Supreme Court in the above cases, including the decision in the model case No. 805/402/18 of May 3, 2018, and the procedure for applying the Supreme Court’s conclusions in this model case. The participants agreed that the courts had developed good practice in resolving certain issues. However, this was not a substitute for the administrative procedure and needs to be resolved by amending the legislation.



Yulia Tralo, Legal Aid Coordinator, Charity Fund “Right to Protection”, presented a report “Experience of representing interests of individuals in the court on pension and social security in the context of the conflict in Eastern Ukraine”. In her report, she specified the statistics on court decisions on representation of the Charity Fund’s lawyers and the number of decisions executed, which differed significantly. The reporter noted that a judicial control was an effective mechanism for executing court decisions and called on judges to review this practice. Yulia also emphasized a considerable length of the Supreme Court’s proceedings and formulated the following steps expected from the Forum:

- Develop a unified approach and strengthen a judicial practice regarding legal disputes over the pension payments to those persons who have been registered as pension recipients within the territories which are now temporarily uncontrolled, and have been re-registered with the Pension Fund of Ukraine in the government-controlled territory. However, are not registered as internally displaced persons;
- Formulate a legal position by the Supreme Court regarding cases on termination of pension payments to those persons, who have been registered as pension recipients within the territories which are now temporarily uncontrolled, and have not been re-registered with the Pension Fund of Ukraine in the territory controlled by the Government;
- Speed up the Supreme Court’s consideration of cassation appeals in cases related to the termination of pension or social welfare pay-

ments, especially those directed before the Supreme Court became operational;

- Perform the analysis of the court practice applying in administrative cases the obligation of the power entity if the judgment was delivered not in his/her favor, as well as submitting the report on judgment execution.

Session II.

Establishing the facts of birth and death within the armed conflict. Heritage. Compensation for destroyed private housing.



Yevgen Petrov, judge of the Third Trial Chamber of the Civil Cassation Court at the Supreme Court, spoke on “The Supreme Court’s practice in establishing the facts of birth and death within the armed conflict, heritage, and compensation for the destroyed private housing”. He presented the analysis and findings on the resolution of the Cabinet of Ministers of Ukraine of October 23, 2019, “On Amendments to the Resolution of the Cabinet of Ministers of Ukraine dated January 9, 2013 No. 9”. The resolution allows for the regulation of the procedures of consideration for documents confirming the fact of birth or death of a person occurred in the non-government controlled territories of Donetsk and Luhansk oblasts. The reporter also analyzed a judicial practice for establishing the facts of birth and death, outlined the problematic issues and noted that when deciding on the evaluation of the evidence in appropriate cases, the courts applied the practice of the European Court of Human Rights as a source of law. In particular, when considering this category of cases, the courts considered the findings of the European Court of Human Rights in its judgments in the cases against Turkey, Moldova, and Russia.

Yevhen Petrov highlighted the problematic issues of inheritance in the temporarily uncontrolled territory of Ukraine and a judicial practice regarding those issues.

The participants discussed the issue of collecting court fees in the cases of establishing the facts of legal significance and came to the conclusion that the Law of Ukraine "On Court Fee" had an ambiguous interpretation for this category of cases.



The benefits of the administrative registration procedure for births and deaths occurred in the temporarily uncontrolled territories were highlighted in the report presented by **Lidia Kuzmenko**, Legal Expert at the Office of the UN High Commissioner for Refugees. She specified the current statistics on establishing the facts of birth and death in the non-government controlled territory of Ukraine and the Autonomous Republic of Crimea based on court decisions, and stressed the lack of real data on those facts. The reporter proposed some practical steps for the implementation of the administrative procedure, in particular: amending a regulatory framework, clarifying the procedure, staff training, informing about the procedure, and identifying the problematic issues. Lidia also stressed that children who had not received birth certificates were restricted in implementing their rights and, hereafter, were at risk of statelessness. She noted that the representatives of the international organizations were not involved in the discussion of the new procedure.

The report inspired interest among the participants, the risks of implementing a new procedure and creating additional Commissions were also discussed. The attendees highlighted the fact that, the administrative procedure had not yet been initiated. This was in response to the question of which of the ministries would take responsibility for the consequences of issuing birth/death certificates based on medical documents issued by health authorities of the uncontrolled territories.



Roman Kuibida, Deputy chairperson of the Board of the Center for Political and Legal Reforms, spoke on "The impact of the armed conflict in Eastern Ukraine on access to justice". He continued speaking on establishing the legal facts and highlighted the risks of implementing the administrative procedure, including the legalization of child abduction, and stressed the importance of verifying data in this category of cases. The reporter noted that the Ministry of Justice had shared the responsibility with the Ministry of Health when implementing a new procedure.

The report aroused keen interest among the attendees, the balance of risks and benefits of the administrative procedure were discussed, including the example of abusing the procedure with the prevailing number of undocumented children. The participants came to a conclusion about the importance of implementing the administrative procedure and possibility of state birth and death registration by State Civil Registration Authorities based on medical certificates issued within the uncontrolled territory.



During the discussion, **Olga Stupak**, judge of the First Trial Chamber of the Civil Cassation Court at the Supreme Court, presented additional information to the pressing issues of judicial practice related to the protection of the rights of internally displaced persons. The reporter stressed that the administrative procedure would not be a substitute for the judicial one, but would be an alternative for the applicants.

They also discussed the issue of this category of cases regarding the applicants who were not relatives of those deceased, but the establishment of these facts would engender for them a number of legal consequences. The attendees came to the conclusion that such cases were subject to be considered if they engendered legal consequences for the applicants and might be considered under the general rules governing separate proceedings.



Volodymyr Khorbaladze, Coordinator for Housing, Land, and Property Rights of the Norwegian Refugee Council, presented a report “Practical aspects of inheritance in conditions of armed conflict in Eastern Ukraine”. He highlighted the problematic issues of inheritance of real estate arising when taking property over and obtaining a certificate of inheritance. A separate issue regarding the place of inheritance registration, in particular, the government or non-government controlled territory of Ukraine, was highlighted. The reporter also made a point to the proposed steps of solving the above mentioned issues, including the coordination of the notary procedure with a current situation caused by the armed conflict in Eastern Ukraine and the creation of preference schemes for the vulnerable category of persons with their need to inherit real estate.

Session III.

Domestic violence



Mykola Mazur, judge of the Second Trial Chamber of the Criminal Cassation Court at the Supreme Court, presented a report on “The criminal aspects of combating domestic violence”. During the report, he described the practice of the ECHR on those issues and legal innovations of national legislation. He focused separately on the definition of domestic violence, criminal and procedural restrictive measures, and new signs of aggravating or mitigating circumstances. The reporter spoke about new types of crimes, private prosecution, and the importance of determining the form of guilt in crimes.

The participants were interested in this report and agreed that the issue of domestic violence was an urgent problem and required changes of consciousness and awareness among the population.



The peculiarities of the practice of issuing a restrictive injunction against an offender in armed conflict in Eastern Ukraine were highlighted by **Anastasia Mikhalchenko**, judge of the Kramatorsk Municipal Court of Donetsk oblast. She elaborated on the process of issuing a restrictive injunction against an offender, described the types of measures of temporarily restriction on rights of the offender or charging him with duties, time periods for issuing and risk assessment. The reporter emphasized the legal conflicts when establishing a restrictive injunction in cases, where the offender owned real property (place of residence (stay) of the victim), it was, therefore, impossible to prohibit the offender from staying in his own dwelling. She also stressed the lack of knowledge of police officers and the population, and highlighted the importance of estimating the probability of renewal or re-committing of gender-based violence, ensuing of grave or gravest consequences of its committing, as well as the death of the injured person.

The participants agreed with the speaker on the need to work with the population in order to change consciousness about that problem and to improve the awareness of the population and the employees of the competent authorities (police, prosecutors, lawyers) thereon.



Alla Blaga, PhD, Head of the Department of Civil and Criminal Law and Proceedings at Petro Mohyla Black Sea National University, presented a “Comparative analysis of judgments in combating domestic violence within Ukraine and armed conflict”. She provided statistics on court cases for 2019 which showed that 10,863 (12%) cases were returned by the court due to improper registration. The speaker highlighted current problems, including the application of the invalid legislation regulations, misinterpretation of the crime scene and scope of persons, procedural documents incorrectly drawn up by the representatives of National Police, different approaches of the courts to the necessity of determining the guilt of the person, and body of the crime incorrectly defined. She also elaborated on the concept of psychological violence.

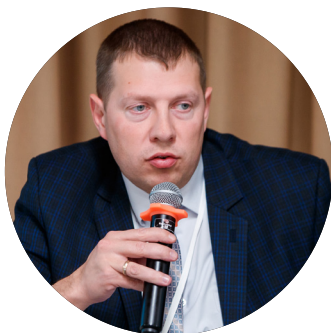


The issue of “The administrative responsibility for committing domestic violence” was highlighted by **Sophia Danyliv**, judge of the Krasnoarmeisk District Court of Donetsk oblast. She presented a legal framework regulating this issue, provided statistics on appeals regarding the committed law violations and other events related to the domestic violence. The speaker elaborated on the types of domestic and gender-based violence, and pointed out the lack of a mechanism to combat domestic violence by a person registered in the non-government controlled territory of Ukraine.



Valerii Mikhei, Legal Coordinator of the Charity Fund “Slavic Heart”, spoke on “The Slavic Heart Fund’s activities for combating domestic violence within the territory of Donetsk and Luhansk oblasts in 2019”. He spoke about the activities of the organization. The work of three mobile emergency teams were presented. The presentations identified cases of domestic violence and developed a roadmap for identifying instances of violence. He provided statistics on the Fund’s activities and gave some practical examples. Valerii highlighted the problems encountered in providing assistance to the victims and stressed the need for interaction between the participants on that issue.

Closing Remarks



Bohdan Monich, chairperson of the Council of Judges, judge of the Seventh Administrative Appeal Court, noted the relevance of the points discussed and the importance of the appropriate activities for common solutions to the problematic issues.



Zenovii Kholodniuk, chairperson of the State Judicial Administration, congratulated the participants and emphasized the importance of justice administration in the context of armed conflict in Eastern Ukraine. He also highlighted some important issues of justice restoration and elaborated on the importance and certain steps of providing material support to the judges working in armed conflict.



Rustam Pulatov, Component Lead on Community Security and Social Cohesion of the UN Recovery and Peacebuilding Programme, thanked the participants for lively discussion and noted that it was an indication of the relevance of those topics and time for discussion. He summarized the work of each section and stressed the importance of the appropriate activities.

Recommendations and guidance for future actions

During concluding deliberations, the forum participants emphasized the necessity of establishing cooperation and close coordination between all relevant institutions to resolve the issues of justice administration in armed conflict in Eastern Ukraine.

According to the results of the Forum, the participants formulated the following conclusions:

Pension and social security of the population affected by the armed conflict in Eastern Ukraine

- Judges need to be provided with access (limited) to the Unified Database on Internally Displaced Persons in order to facilitate effective justice administration
- Awareness of the employees of structural units (government) on social protection regarding the application of the legislation to the internally displaced persons must be improved
- The issue of obtaining certificates of internally displaced persons for graduating children needs to be resolved at the legislative level
- Legislation on restoration of pension and welfare payments requires coordination and adjustments
- The issues of back pension payments and confirmation of the accumulated period of work in the non-government territory must be regulated at the legislative level
- The issue of pension payments must be decided on the principle of non-discrimination
- The procedure of execution of court decisions on the implementation of social rights of citizens requires immediate settlement

Establishing the facts of birth and death within the armed conflict. Heritage. Compensation for destroyed private housing

- The presented procedure for the implementation of the administrative order for registration of birth and death needs further elaboration by government responsible agency/agencies
- The involvement of practicing judges and representatives of the relevant international organizations in the process of finalizing a new administrative order, which will regulate the procedure for consideration of documents confirming the fact of birth or death of a

person occurred in the temporarily occupied territories of Donetsk and Lugansk oblasts is appropriate

- The judicial procedure for establishing the facts of birth and death must remain as an alternative to the administrative one.
- The Law of Ukraine “On Court Fee” requires interpretation in terms of collecting court fees when considering cases of establishing the facts of birth and death and needs a clear definition of the category of cases that is released from the payment of court fees
- The notarial procedures regulating inheritance issues must be coordinated with the access to justice situation caused by the armed conflict in Eastern Ukraine
- Vulnerable categories of persons who need to inherit real estate, require the establishment of preference schemes

Domestic violence

- Awareness of the concept of domestic violence needs to be raised among the population, especially the work with potential victims and children is of a great importance
- Awareness of the National Police officers about their authorities and responsibilities in dealing with domestic violence needs to be strengthened
- Strong and close cooperation between the court, the police, the Prosecutor's office and other actors involved in combating domestic violence must be established and strengthened
- The personal data in the Register of Judgments, in particular, the addresses of the victims' residence and stay must not be public
- The application of the practice of the European Court of Human Rights in cases of domestic violence is necessary

The United Nations Recovery and Peacebuilding Programme (UN RPP) is being implemented by four United Nations agencies: the United Nations Development Programme (UNDP), the UN Entity for Gender Equality and the Empowerment of Women (UN Women), the United Nations Population Fund (UNFPA) and the Food and Agriculture Organization of the United Nations (FAO).

The Programme is supported by eleven international partners: the European Union, the European Investment Bank and the governments of Canada, Denmark, Japan, the Netherlands, Norway, Poland, Sweden, Switzerland and the UK.