

Main Legal Challenges for Businesses In the Anti-Terrorist Operation Zone

Donbas Regional Justice Reform Council

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In autumn 2018, the EU Project Pravo-Justice started working actively in the regions to support the implementation of justice sector reforms on the ground. In particular, in November 2018, Donbas Regional Justice Reform Council was established in the city of Kharkiv to implement bottom-up reform by bringing region-specific challenges and decisions to the central level and organizing a better exchange of information on sector reforms from the center to the regions and interregionally. The RJRC aims to identify problematic issues that arise in the process of the judicial reform, and to prepare generalized solutions to address them. The RJRC operation should become a solid basis for establishing a permanent professional dialogue between the regions and the center. Today, there are six RJRCs across Ukraine.

These developments on problematic issues related to the legal sphere during quarantine have been prepared by members of Kharkiv Regional Justice Reform Council..

Current summary of the main legal challenges for businesses in the Anti-Terrorist Operation Zone were prepared by the Donbas RJRC members.

1. Bankruptcy proceedings of enterprises the assets of which are in the temporarily uncontrolled territory.

Challenge: Even when re-registering enterprises from temporarily uncontrolled territory to the territory controlled by Ukraine, there is usually no access to the assets of such enterprises. As a result, in bankruptcy proceedings, it is impossible to fully sell such assets and complete the bankruptcy proceedings.

Decision option: Sale of bankrupt's assets which are accessible. If the debtor's assets remain in the uncontrolled territory and there is a bankruptcy case, such cases are to be suspended or terminated with the possibility for the creditor to make a motion in bankruptcy proceedings if the access to the debtor's property is made available again.

2. Double taxation of business.

Challenge: Some enterprises (especially the property of which remains in the uncontrolled territory) are forced to pay taxes, both in the controlled territory and in the uncontrolled territory.

Decision option: If the state provides benefits to an operating business, there may be a situation where the business has a benefit for taxes, fees, mandatory payments in the controlled area and continues paying taxes in the temporarily uncontrolled area. Therefore, at this stage there is one way out which is the preferential crediting with writing off debt for the period of anti-terrorist operation being in place.

3. Raiding and seizure of property rights to real estate, other property rights

Challenge: Fight against raiding is still ongoing. Since municipal enterprises deprived of the opportunity to acquire the status of subjects of state registration and exercise powers to execute registration actions at present, the problem of raiding became relevant again.

The absence of common approaches in drawing up methodological framework for the application of specific legal rules by state registrars, the impossibility of creating an effective channel for bringing across upcoming changes in legislation in the field of state registration and the peculiarities of their implementation in practice, – all this reduces the degree of rights protection to a minimum, almost unacceptable level. Also, these factors weaken investment attractiveness of Ukraine. Negative consequences affect administration processes adding corruption component to them and destroy the image of the state as an entity seeking to integrate into European society.

Decision option. Development of a unified methodological framework and clear algorithms for the application of relevant legal norms by state registrars in order to prevent them from violating the rights of citizens and legal entities in course of registration actions. Opening direct access to concluding agreements with the state-owned enterprise "National Information Systems" for prevention of raiding.

4. Violation of the rights of Ukrainian citizens – IDPs – to pension and social benefits.

Challenge: For almost last two years, citizens of Ukraine who have all the legal rights to receive pension benefits and who found themselves in temporarily uncontrolled territory are forced to undergo an exhausting procedure of physical identification in the state-owned bank Oshchadbank PJSC. For many retirees, this "path of fate" became the last one in their lives. Elderly people have to walk a few kilometers across the separation line, despite summer heat or winter cold, to obtain a fully legal and well-deserved pension

payment. The expediency of conducting such physical identification in the XXI century when people have access to the Internet and identification tools cannot but bewilder.

Particularly noteworthy is the fact that payment cards issued by Oshchadbank for internally displaced persons (hereinafter referred to as IDPs) are not supported by the electronic remote banking system "Oshchad24". These cards are not serviceable to the extent the cards of other non-IDPs from Ukraine are serviceable.

It is also necessary to highlight refusals to pay pensions and other social benefits in case of untimely physical identification. In this case, IDPs need to go to the pension fund bodies exclusively at the location of the registration case-file with an application for renewing the term for pension payment. The commission which decides on granting or transferring pensions sits once a month and causes a delay in the payment of pensions for at least two months, for which pension and social benefits are then not paid. In order to receive these , payments IDPs have to go before the court.

In fact, such legal rules lead to the fact that citizens of Ukraine from temporarily uncontrolled territories are limited in their rights. This is a gross violation by state as to observance of the principles of equality of civil rights and the rights to legally guaranteed payments and social benefits.

Decision option. Replace the physical identification of IDPs with modern remote identification tools using the Internet. Issuance of IDP bank cards that are supported by banking services via Internet banking systems and have no functional differences from the cards of other citizens of Ukraine. Possibility for IDPs to independently choose the bank in which all pension and other payments received from the state will be made. Analysis of legal acts governing the procedure for granting and paying pension and other social payments to IDPs to detect restrictions of their rights and freedoms compared to other citizens of Ukraine in order to introduce appropriate legislative initiatives and rectify such discrimination.

5. [Problems of compensation for damage caused by armed conflict.](#)

The armed conflict in Donbas caused significant damage to property and property rights of citizens. The party to the conflict recognized as a proper defendant in respect the violation of rights and freedoms may be prosecuted in claims for damages caused by a terrorist act to the property of individuals and legal entities. Numerous claims by citizens face difficulties due to the lack of a method of calculating such damage and the procedure for its payment, which leads to the refusal of national courts to satisfy claims for its recovery.

Decision option. Develop the methodology of calculation and the procedure for payment of the compensation for damage caused to property and property rights of individuals and legal entities by the armed conflict in Donbas in line with the international standards.

6. [Challenges of postal notification of citizens in temporarily uncontrolled territories.](#)

Challenge: Postal communication, despite the development of modern telecommunications technologies, plays an important social, informational, organizational and procedural role in the life and work of both individuals and legal entities. At present, there is no postal service, delivery of correspondence and postal items from or to the uncontrolled territory. Challenge of mail notification, the inability to timely inform by sending appropriate notifications, including by public authorities, adversely affects the rights of persons living in uncontrolled territories. Thus, the impossibility of notifying about case hearing where the defendant is a citizen of Ukraine living in an uncontrolled territory or a legal entity registered in these territories violates their right of access to court. At the same time, the state did not make any efforts to remedy this situation and fulfill its positive obligations.

Decision option. The challenge can be resolved by creating post offices in the "gray zone" between the checkpoints with points of entering in the uncontrolled territory that are obliged to recognize the marks of service of messages and postal items from and to the uncontrolled territory. The implementation of this paragraph requires, in addition to a bilateral agreement, the support and supervision by reputable international organizations that can ensure the inviolability, secrecy and confidentiality of postal notifications, control of their delivery to addressees and provide feedback to the party that sent such notification.