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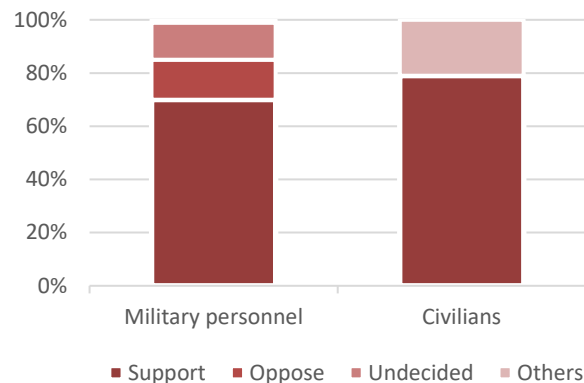


# DRC's Legal Alert: Issue 106 | 1 – 31 August 2024

## 1. Ukraine ratifies the Rome Statute

**Background information:** In 2014 and 2015, after the beginning of the war, Ukraine recognised the jurisdiction of the International Criminal Court (ICC) on its territory (in the Maidan cases, as well as in Crimea and Donbas)<sup>1</sup>. After the start of the full-scale invasion of the Russian Federation, an investigation into the situation in Ukraine was opened upon joint referral submitted by 42 ICC member states in March 2022.

According to the survey conducted between 25 July and 12 August 2024 by the NGO "Ukrainian Legal Advisory Group", in collaboration with the Sociological Group "Rating", the majority of both the civilian population and active military personnel of Ukraine support ratification of the Rome Statute<sup>2</sup>.



**Recent developments:** On 21 August 2024, Parliament adopted [Law №3909-IX](#), ratifying the Rome Statute of the International Criminal Court<sup>3</sup>. By ratification, Ukraine confirms<sup>4</sup> recognition of the ICC's jurisdiction over:

- Crimes against humanity;
- Genocide and war crimes since 21 November 2013;
- The crime of aggression since July 17, 2018 (the date of entry into force of the amendments adopted by the Assembly of States Parties to the Rome Statute in Kampala on the crime of aggression<sup>5</sup>).

### Jurisdiction of the ICC:

In Ukraine, the Court's jurisdiction does not apply to the crime of aggression<sup>6</sup> because the Russian Federation is not a Part of the Statute. The ICC can prosecute the crime of aggression only if it is committed by individuals from member

<sup>1</sup> Link to the source: <https://www.kmu.gov.ua/news/247226257>

<sup>2</sup> Link to the source: <https://ratinggroup.ua/en/research/ukraine/justice-context-russian-armed-aggression-assessments-and-moods-military-personnel.html>

<sup>3</sup> Rome Statute (full text), 1998, link to the source: <https://www.icc-cpi.int/sites/default/files/2024-05/Rome-Statute-eng.pdf>

<sup>4</sup> Link to the source: <https://www.kmu.gov.ua/news/248466065>

<sup>5</sup> Link to the source: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/RC2010/AMENDMENTS/CN.651.2010-ENG-CoA.pdf)

<sup>6</sup> According to the Rome Statute, crime of aggression means planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

states ratifying the amendments. This means that only citizens of countries that have ratified the Statute and amendments can be held responsible for the crime of aggression.

### Competences of the ICC

<ul style="list-style-type: none"> <li>• War crimes</li> <li>• Crimes against humanity</li> <li>• Genocide</li> <li>• Crime of aggression</li> </ul> <p>NB: ICC investigates cases and makes decisions only against senior officials.</p>	<ul style="list-style-type: none"> <li>• In the case of Ukraine, war crimes, crimes against humanity, and, presumably, genocide will be considered.</li> <li>• The Court's jurisdiction includes crimes committed on the territory of Ukraine, regardless of the citizenship of the suspects.</li> <li>• The Court's jurisdiction does not apply to the crime of aggression. Only citizens of countries that have ratified the Statute can be held responsible for the crime of aggression. The Russian Federation has not ratified it.</li> </ul>
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### Reparations and compensation:

Ratification of the Rome Statute will strengthen Ukraine's ability to seek compensation, particularly through the Trust Fund for Victims<sup>7</sup>, which provides reparations such as rebuilding infrastructure, implementing social and psychological programs, and direct compensation to victims for physical, emotional, and psychological harm. Although the Fund can operate in countries that recognise ICC jurisdiction without ratifying the Statute, ratification would enhance Ukraine's position in pursuing reparations actively and securing support for victims of crimes.

### Arguments in favour of the ratification:

Even though Ukraine has already recognised the jurisdiction of the ICC, the ratification of the Rome Statute now makes important practical sense as prior to the ratification, the ICC had rights and Ukraine had only obligations but no influence on the decision-making and cooperation processes within the ICC.

### The rights that Ukraine obtained upon the ratification:

- Participation in the work of the Assembly of States Parties to the Rome Statute<sup>8</sup>;
- The ability to propose candidates for judges and prosecutors and vote for their appointment;
- Allows effective cooperation with the ICC to prevent serious crimes and ensure the punishment of perpetrators;
- Right to participate in organisational decision-making procedures on issues including the organisation's budget and distribution of funds.

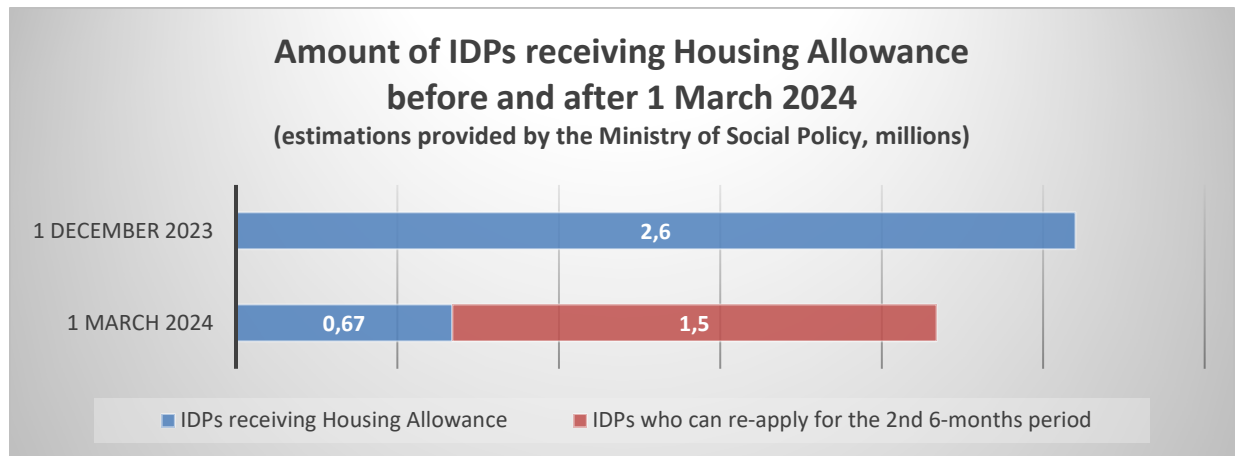
## 2. Amendment to the Provision of IDPs Allowance for another 6 months

**Background information:** After the full-scale invasion in February 2022, the number of internally displaced persons (IDPs) in Ukraine has grown dramatically. The Government of Ukraine has adopted a wide range of by-laws aimed at the prevention, minimization, and combating of the negative consequences of war. Financial assistance to IDPs (IDPs allowance) became the biggest social protection programme, with almost 2.3 million recipients in 2023.<sup>9</sup>

<sup>7</sup> Link to the source: <https://www.trustfundforvictims.org/index.php/en/about/vision>

<sup>8</sup> The Assembly meets at least once a year and resolves administrative issues within the Court

<sup>9</sup> For more information, please, see [DRC Legal Alert, Issue 101](#), Link: <https://pro.drc.ngo/media/v2qd31f0/legal-alert-101-special-issue-on-idps.pdf>



On 31 July 2023, the Cabinet of Ministers approved [Decree №789](#), envisaging that IDP allowance is granted for 6 months after becoming affluence tested, and later [Decree №94](#) of 26 January 2024 granted the possibility to extend allowance for another 6 months considering means-tested criteria.<sup>10</sup>

**Recent developments:** On 30 August 2024, the Cabinet adopted [Decree №989](#), extending IDP allowance for another 6 months for certain profiles. Thus, IDPs for whom the 2<sup>nd</sup> 6-month period began after 1 March 2024 and who are still falling under the respective criteria<sup>11</sup>, will receive an IDP allowance for one more 6-month period automatically. The social protection authorities will conduct verification of eligibility criteria by means-testing and affluence testing in respect of such persons or recipients.

**Extension of the allowance.** If the IDP has not had their payment of the allowance automatically extended, they may be granted the extension upon application. The extension of the allowance is now possible for no more than two 6-month periods, substituting the provisions of the Decree №94 where one 6-month extension was possible.

**Retroactivity of benefits` provision.** Another important novelty is that IDP allowance can be granted retroactively if it is not extended in time. The social protection authorities, upon the verification, can:

1. Identify that the person has not been extended the payment of assistance automatically;
2. Identify that such person has not received assistance but was entitled to it.

In such case the assistance will be provided retroactively for the whole period when the right for extension appeared, but not earlier than 1 March 2024. This is only applicable to IDPs who received IDP allowance by 1 March 2024 but for some reason, it has not been extended automatically, despite of eligibility criteria for such an extension.

**Family composition of the IDP.** The approach to the definition of family composition of the IDP has also been revised.

According to the amendments, the family of IDP does not include, among others:

- Persons who pay alimony;
- Persons conscripted for military service during mobilisation<sup>12</sup>.

<sup>10</sup> For more information, please, see DRC Legal Alert Special, Issue № 101, Link:

<https://pro.drc.ngo/media/v2qd31f0/legal-alert-101-special-issue-on-idps.pdf>

<sup>11</sup> I.e. pensioners whose pension amount as of 1 January 2024 does not exceed UAH 9,444 (four subsistence minimums for persons who have lost their ability to work); persons with disabilities of group I or II, children with disabilities under the age of 18, children with rare diseases; orphans and children deprived of parental care, persons under the age of 23, as well as foster parents and adoptive parents. For more information, please, see DRC Legal Alert Special, Issue № 101, Link: <https://pro.drc.ngo/media/v2qd31f0/legal-alert-101-special-issue-on-idps.pdf>

<sup>12</sup> Including persons directly involved in the implementation of measures to ensure national security and defence as part of the Armed Forces of Ukraine, other military formations established in accordance with the law.

This has two important outcomes:

- The average monthly gross income does not include the incomes of persons paying alimony.
- Such persons are not taken into consideration when the decision on granting IDP allowance and respective calculations are made.

Example of the respective calculations for family of 3 persons (2 able-bodied adults, with one of them being conscripted before the beginning of the 2<sup>nd</sup> 6-month period of payments, and a child), entitled to IDP allowance before and after the amendments were in place:

Before	After
<ol style="list-style-type: none"> <li>1. Family is entitled to IDP allowance in the amount of UAH 7,000 per month (UAH 2,000 per each adult and UAH 3,000 for child) for the 1<sup>st</sup> 6-month period.</li> <li>2. The family does not fall under means-testing criteria and does not continue to receive IDP Allowance for the 2<sup>nd</sup> 6-month period because incomes of the conscripted person are considered for the average monthly income of the family.</li> </ol>	<ol style="list-style-type: none"> <li>1. Family is entitled to IDP allowance in the amount of UAH 7,000 per month (UAH 2,000 per each adult and UAH 3,000 for child) for the 1<sup>st</sup> 6-month period.</li> <li>2. The family continue to receive IDP Allowance for the 2<sup>nd</sup> 6-month period but in the amount of UAH 5,000 (UAH 2,000 for an adult and UAH 3,000 for child) because conscripted family member excluded from family composition for the purpose of calculation of IDP allowance<sup>13</sup>.</li> </ol>

**NB:** If the person has been granted IDP Allowance, it is preserved for the whole 6-month period. If the family composition changes, for example, if a member is conscripted and the number of family members decreases, the allowance amount is recalculated.

### 3. The Cabinet Launched a Pilot on state registration of civil status acts outside Ukraine with an apostille

**Background information:** In most cases, Ukrainian consular offices abroad can only register civil status acts if not already done by the foreign State's competent authority. For example, in the case of registering the birth of a Ukrainian citizen abroad, the process is as follows:"

<sup>14</sup>:



<sup>13</sup> If the person has already been granted IDP Allowance before becomes conscripted, the allowance is preserved for the whole 6-month period but is not subject to further extension for the next period.

<sup>14</sup> The procedure is generalized and does not include any peculiarities that may vary in each foreign State.

Overall, such a procedure has some negative sights, including:

- **Lead-time.** Legislation envisages demand to register a child within a month upon birth, but the current procedure may take up to half a year, considering queues at Consular Offices and the time that the delivery of a passport takes.
- **Cost.** The procedure is quite expensive. Despite having registration procedures free of charge, the expenditures for translation and legalization are still high<sup>15</sup>.
- **Access issues.** This obstacle includes:
  - access to the institutions abroad. For example, in France there is only one Consular Service of Ukraine in Paris, that is not always accessible to persons from distant regions.
  - access to benefits and services (both administrative and social) in Ukraine. To apply for social assistance or services the civil status documents are obligatory. The Government of Ukraine introduces the possibility to apply online for the majority of programmes which simplifies the general process of application and reduces lead time significantly. However, online application requires the documents accessible in Ukrainian registers, which is impossible in cases where the documents have been issued by foreign state authorities.<sup>16</sup>
  - Another access issue arises when the foreign civil status certificate is lost or damaged. The reissuance of such documents requires an application to foreign authorities for a copy, which in most cases shall be done through an in-person application.

To address access issues and ensure that Ukrainian citizens residing abroad can obtain Ukrainian civil registration documents in accordance with Ukrainian standards, the Cabinet decided to revise the legislation.

**Recent developments:** On 12 July 2024, the Cabinet adopted [Decree №817](#), implementing a pilot project on state registration of civil status acts and issuance of documents on state registration of civil status acts outside Ukraine with an apostille<sup>17</sup>.

The Decree envisages state registration of birth, marriage, divorce, and death based on civil registration documents issued by the competent authorities of foreign states in respect of Ukrainian nationals:

- Step 1.** A person obtains a foreign civil status document<sup>18</sup>, gets legalization or apostille, and translates into Ukrainian language;
- Step 2.** A person applies to the separate subdivisions of the Ministry of Justice<sup>19</sup> for issuance of the civil status document following Ukrainian standards;
- Step 3.** A person gets the certificates of state registration of civil status acts<sup>20</sup> and extracts from the State Register of Civil Status Acts with an apostille affixed thereto.

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<sup>15</sup> E.g. according to the [Order of the MFA of Ukraine №182 of 2018](#), the consular fees charged for consular actions performed by foreign diplomatic missions of Ukraine are: legalisation (per document) is USD 50, certification of the authenticity of each signature on documents, including the signature of a translator is USD 20 and certification of the accuracy of translation of documents from one language into another (per page) is USD 40. Link: <https://zakon.rada.gov.ua/laws/show/z0610-18#Text>

<sup>16</sup> The application for social assistance and services with the documents issued by foreign authorities is still possible in-person, but this includes access barriers and significant lead-time to process documents.

<sup>17</sup> An apostille is an international certification comparable to a notarisaton and is used for verifying the authenticity of foreign official documents. The apostille is applicable only among 127 contracting states of the Hague Apostille Convention with accept it as a form of legal authentication, eliminating the need for further diplomatic or consular legalization of official documents. In this case, an apostille on documents of the Ukrainian standard is necessary for the unimpeded use of documents abroad.

<sup>18</sup> I.e. birth, marriage, divorce, or death certificate.

<sup>19</sup> Institutions, providing administrative services abroad.

<sup>20</sup> This is also possible to be done repeatedly.

In general, the procedure remains unaltered, state registration of birth, marriage, divorce, and death is carried out by the competent authorities of foreign countries and should be duly legalised (apostille if applicable). But based on foreign documents, it becomes possible to get Ukrainian registration of the same civil act, which will lead to:

- submission of the relevant data to Ukrainian registers, which means that the documents will become available in electronic form;
- issuance of the documents of the Ukrainian standard. The procedure to renew the documents in case of loss or damage will be much easier, as there will be no necessity to apply to competent authorities of the foreign State.

**NB:** The original civil registration document issued by a foreign State shall be returned to the applicant after a copy of the document has been made and certified by the person who carried out such registration. Returning to the example of the birth certificate, there will be two equal certificates, the foreign-issued certificate and the Ukrainian one.

#### 4. The Parliament slightly amended services for the issuance of passports

On 9 May 2024, the Parliament adopted [Law №3709-IX<sup>21</sup>](#), amending provisions related to certain administrative services provided to Ukrainian nationals, including those abroad. One of these principal changes is related to the issuance of internal passports and passports for travelling abroad, i.e.:

- A Ukrainian passport is issued for life to persons over the age of sixty-five. Before, persons over the age of eighteen (including elderlies) had been issued passports valid for only 10 years. Recent amendments removed the requirement for elderlies over 65 to renew their internal passports after a limited validity period and thus some access challenges for elderlies were addressed.
- A new administrative service for simultaneous issuance of an internal passport and a passport for travelling abroad, with the respective fees, has been introduced:
  - Non-urgent issuance (20 working days) — 0.3 of the subsistence minimum<sup>22</sup>;
  - Urgent issuance (7 working days) — 0.6 of the subsistence minimum<sup>23</sup>.

#### 5. Pilot project on social service provision: principle “money follows the person”

**Background information:** Social services can be provided on an emergency (crisis) basis. In such cases, services are provided on the day of application and free of charge. Such services include counselling, shelter, care, supported accommodation, short-term accommodation, in-kind assistance, transport services, etc. If it is necessary to continue providing social services, it is done at the cost of the recipient.

The social service provider conducts a need assessment, draws up an individual plan, and concludes an agreement specifying the cost for the provision of services. The recipient of social services may apply to the government for the compensation of the cost of services.

**Recent developments:** On 6 August 2024, the Cabinet adopted [Decree №888](#), introducing a pilot project on the provision of inpatient care and supported living services to elderly internally displaced persons (IDPs) and persons with disabilities. The project is based on the principle of "money follows the person" and is implemented in the following steps:

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<sup>21</sup> The Law entered into force on 19 August 2024.

<sup>22</sup> Subsistence minimum for able-bodied persons as of 1 January 2024 is UAH 3,028. So, the fee for 2024 is UAH 908.

<sup>23</sup> Subsistence minimum for able-bodied persons as of 1 January 2024 is UAH 3,028. So, the fee for 2024 is UAH 1,817.

### 1. Application

- Person of concern applies to the Department of Social Protection (or other competent authority)

Despite the fact that the pilot project focuses on IDPs, during the period when the social service of inpatient care is provided, the IDP allowance is not paid

### 2. Decision making

- The competent authority verifies budgetary capacity and conducts comprehensive individual needs assessment

### 3. Choice of service provider

- If person is entitled to social services, the person provided with assistance (if necessary) chooses a social service provider.

### 4. Open Special Bank Account

- The person of concern has to open a special bank account at PrivatBank (or any other bank) and concludes a contract with social service provider.

All travel expenses for people in need of social services are covered by such a persons and not a subject of compensation.

### 5. Payment for Services

- The person of concern receives money on a special bank account on a monthly basis and can use it only for paying for social services. The cost of services is calculated by the government. The recipient may conclude an agreement with the social service provider, where the cost exceeds the calculated limit for social services, with the excess amount paid by the recipient

**NB:** Money received in a special bank account to pay for social services is not considered when calculating the total monthly income of the household.

*This Legal Alert was produced under the project funded by the European Union through its Civil Protection and Humanitarian Aid Operations.*

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