

Pensions for IDPs and persons living in the areas not controlled by the Government in the east of Ukraine

July 2018

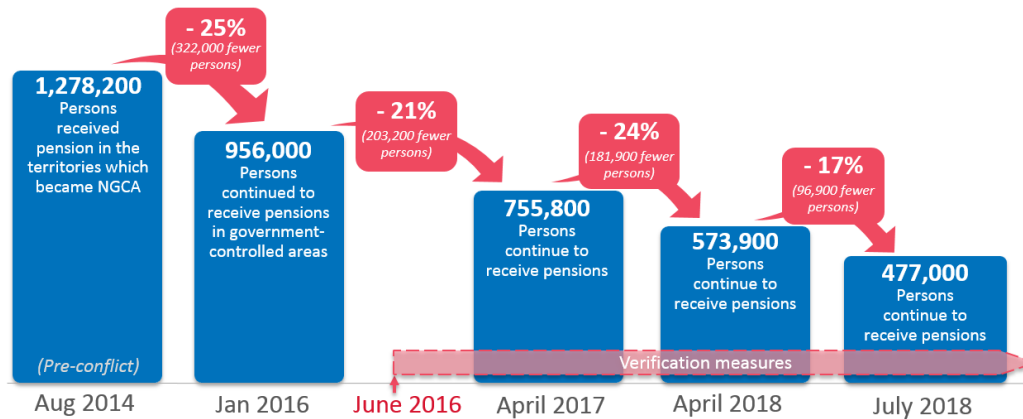
General overview

As of August 2014, 1,278,200 pensioners were registered in the non-government-controlled area (NGCA). As of July 2018, as reported by the Pension Fund, 477,000 pensioners with residence registration in the NGCA continued to receive pensions. This trend remains worrying since as of April 2018, 573,900 pensioners have been receiving their pension.

Since the outbreak of the conflict and since Government institutions ceased to operate in certain areas of Donetsk and Luhansk regions, persons from the NGCA have been able to receive pensions only if they travel to the government-controlled area (GCA) to register as an internally displaced person (IDP) and undergo a verification procedure. Over time this linkage between IDP registration and eligibility for pension has disenfranchised different groups of people, all holding the legitimate right to receive a pension:

1. In 2014, 160,000 pensioners unable to leave the NGCA and travel to government-controlled territory were the first to be impacted by the IDP registration requirement. This group included people who are not mobile, for example: older persons who could not travel or who did not understand the requirement and procedure; persons with disabilities; and persons with low income.
2. Of the total number of pensioners in the NGCA actual as of August 2014, 75 per cent did follow the requirement and registered as IDPs in the GCA. Many maintained their actual place of residence in the NGCA and frequently crossed the contact line back and forth. The authorities were aware of the situation and accepted it.
3. In 2016, the authorities introduced measures to verify if all pensioners with IDP registration had indeed moved to the GCA. The measures had the goal of stopping the payment of pensions to persons who actually reside in the NGCA. The verification measures included home visits by social workers, physical verification at the bank where pensions are paid out, and cross-checking of lists provided by the State Border Guard Service (measuring the number of days persons spent in the NGCA) and the State Security Service.
4. In 2017, another trend emerged. The Pension Fund halted pension payments to IDP-pensioners who had acquired residence registration in the GCA and consequently relinquished their IDP certificates. This action arose from an administrative procedure requiring “paper files” transfer from a regional Pension Fund department in the former place of residence as a pre-condition for the payment of pensions in a new location. Only holders of an IDP certificate are exempted from this rule, receiving their pension based on the information from an electronic case, without “paper files” transfer. There is no clear data on the scope of this problem, but the number of affected persons is likely to grow.

The following diagram based on the data from the Pension Fund¹ illustrates the significant reduction of the number of persons from the NGCA who receive pensions:



*Note: the data does not track deaths in NGCA, nor does it track individuals who reached pension age since August 2014 and reside at NGCA. There is no available data on this.

The Pension Fund continues to suspend pensions of IDP-pensioners who are suspected of not residing permanently in the government-controlled territory. The Pension Fund reports that since April 2017, it has suspended the pensions of more than 200,200 persons based on information received from the State Security Service. Of these (as of April 2018), 123,500 persons applied to have their pensions reinstated, and the pensions were renewed in 91,600 cases. Each suspension means that an individual faces a gap in receiving the monthly income they depend upon.

In April 2018, the Government has amended the regulations regarding verification and suspension of pensions again. The changes confirm the right of persons whose pensions have been suspended and later reinstated to have their accumulated pension subsequently paid out. The pensioners must apply for retroactive payment using a special procedure. However, the Government has not yet developed this special administrative procedure. Thus, pensioners still have no access to these funds. This remains an additional burden of restriction imposed only on pensioners from NGCA.

Key message

The Government of Ukraine should eliminate the obstacles that prevent Ukrainian citizens from having equal access to pensions regardless of their place of residence or registration as IDPs. This entails:

¹ Information is updated monthly at http://www.pfu.gov.ua/pfu/control/uk/publish/article?art_id=304887&cat_id=94750

- Resuming payment of pensions to all individuals irrespective of their place of residence.
- De-linking the payment of pensions from IDP registration.
- Approving draft legislation that would enable residents of NGCA to receive pensions without the need to register as IDPs. They can receive their pension on Ukrainian-controlled territory through Ukrainian banks.

“
My mother, 91, cannot get her pension since 2014. She is too old to travel to the government-controlled side. She worked for it all her life.

”

Resident of a village near the contact line

“
You should have thought about this in 2014! When will they terminate your pension?

”

Border Guard to pensioner crossing the contact line

Main challenges and recommendations

De-linking the right to pension from IDP registration

The current policy distorts statistics, complicates planning for IDPs, and imposes large administrative costs through the necessity of conducting multiple rounds of verifications. As a result of the policy, the Government of Ukraine is in arrears of unpaid pensions. People retain their right to receive payment of pension arrears in the future, and if these debts are ultimately litigated at the European Court of Human Rights, Ukraine could find itself obliged to pay both material and moral damages.

The draft law #6692², which was registered in the Verkhovna Rada of Ukraine in July 2017, would enable residents of the NGCA and of localities along the contact line to receive pensions in the territory controlled by the Government without having to register as IDPs.

² The text in Ukrainian is available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=62241

The Parliamentary Committees on social policy and on human rights recommended its adoption in the first reading.

The draft law introduces amendments to the existing legislation, including the Law of Ukraine 'On Mandatory State Pension Insurance'. The amendments confirm that payment of pensions shall be conducted on general grounds for all citizens of Ukraine through authorized banking institutions. Pensioners from the territory not controlled by the Government will be permitted to apply for their pensions, either personally or through an authorized representative, at any pension department in Ukraine. Furthermore, pensions for people from NGCA shall be paid retroactively without any time limitations.

As of 9 July 2018, the draft law has not yet been brought to the plenary of parliament for a first reading.

Recommendation:

- Encourage Parliament to put draft law #6692 on its agenda (the law provides for de-linking the payment of pensions from IDP registration) for a first reading and then fine-tune it for adoption at second reading in 2018.

Pensions to IDPs who relinquished their IDP certificates

Under the current scheme, people who relinquish their IDP certificate and obtain residence registration in their new homes are deprived of their pension. As a result, people face an unreasonable choice between receiving their pensions and obtaining residence registration in their new homes, which is necessary to secure certain rights, including the right to vote in local elections. State policy should facilitate, not impede, durable solutions for IDPs.

Recommendations:

- Ensure that persons whose “paper files” remain in the NGCA receive their pensions based on the data from their electronic file, regardless of whether they remain registered as IDPs. This could be done by prioritizing IDPs and residents of NGCA in the general process of digitalization of the services.
- Ensure that IDPs who applied for a pension for the first time after relocation to GCA and whose “paper file” has been compiled in government-controlled territory receive their pension in the same way as any other citizen of Ukraine without the need to provide an IDP certificate.

Pensions for persons with disabilities or other persons who cannot travel from NGCA

The access to pensions of persons who cannot travel out of NGCA, even to sign a power of attorney authorizing a relative to collect his or her pension in the future, is a critical issue. Resolving this matter is complex and requires all the parties to reach an agreement.

Recommendation:

Following the adoption of a law extending pensions to all persons who can travel to government-controlled territory, initiate discussions regarding a mechanism to enable the payment of pensions to those who are not able to travel.

Annex

International standards

Even when a State is forced out of its own territory, or has less control over the territory, international human rights law provides that it has positive obligations toward persons residing there: it must still undertake “measures in its power to take and are in accordance with international law” to secure the human rights of individuals³.

Article 9 of the International Covenant on Economic, Social and Cultural Rights recognizes the right of everyone to social security, including social insurance. Particular attention should be paid to persons residing in remote, disaster or conflict affected areas.

The right to pension is interpreted as being of pecuniary nature and thus regarded as falling within the scope of the right to property⁴. Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 (right to property), provides for the entitlement to the peaceful enjoyment of possessions, including pensions.

The principle of non-discrimination is enshrined in Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Discrimination on the basis of place of residence or registration as an IDP is unacceptable.

Guiding Principles on Internal Displacement, Principle 5 (protection from displacement) obliges all authorities to prevent and avoid conditions that might lead to displacement of persons. Policies that require someone to be displaced in order to access their pensions are in violation of this principle.

National legal framework

All Ukrainian citizens have an equal right to receive their pensions, regardless of their place of residence or their registration as IDPs.

Article 46 of the Constitution of Ukraine guarantees the right to social security “that includes the right to assistance in cases of complete, partial or temporary disability, survivor pension, unemployment and old age benefits, and other assistance established by law.” The right to property is guaranteed under Article 41 of the Constitution of Ukraine.

Article 49(1) of the Law of Ukraine ‘On Mandatory State Pension Insurance’ sets out an exhaustive list of reasons under which a pension can be suspended, which do not include absence of the registration as an IDP or residence at the temporarily occupied territories or NGCA. Thus, Ukrainian law does not have a basis for suspending pensions of persons residing in NGCA. The current policy of suspending pensions is rooted in various Resolutions of the Cabinet of Ministers (#595, 637 and 365). In May, the administrative chamber of the Supreme Court ruled in an “exemplary case”⁵ that

³ ECtHR, *Ilașcu v. Moldova*, paras.330-331.

⁴ See *Muller v. Austria* (ECtHR, 1975) and *Pichkur v. Ukraine* (ECtHR, 2013).

⁵ Supreme Court of Ukraine, judgment of 3 May 2018 case no. 805/402/18, text available at: <http://reyestr.court.gov.ua/Review/73869341>.

the law on pensions has greater legal force than these resolutions, and therefore the suspension of pensions on the basis of such resolutions is unlawful and constitutes an unjustified interference into the applicant's right to property. The ruling has been appealed to the Grand Chamber of the Supreme Court and a final decision is expected in September.

The case-law of the European Court of Human Rights which forms part of Ukraine's legal framework interprets pensions as falling within the scope of the right to property. This position was confirmed in the case *Pichkur v. Ukraine* (2013)⁶: "If a Contracting State has legislation in force providing for the payment of a welfare benefit as a right, whether conditional or not on the prior payment of contributions, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for those satisfying its requirements." In this case, the Court found that suspension of the payment of pension to a citizen who moved abroad constitutes interference with his/her right to property and creates an unjustified difference in treatment amounting to discrimination. The applicant was awarded 5,000 EUR in pecuniary and non-pecuniary damages.

A judgment delivered in an "exemplary case" (under art. 291 of the Code of Administrative Procedure of Ukraine) means that 1) it will be used as a model decision in similar cases (the judgment sets out the characteristics of cases that would qualified as similar to this one), 2) similar cases will be considered "non-complex" and be heard faster, and 3) in similar cases, there are only two grounds for cassation appeal.

⁶ Case of *Pichkur v. Ukraine*, No. 10441/06, ECtHR (Fifth Section), Judgment (Merits and Just Satisfaction) of 07 November 2013.