

Case category No.

428/6579/17

: Administrative cases; Cases on disputes over the implementation of public policies in the areas of labour, employment and social protection of citizens and disputes in the area of public housing policy, namely, disputes regarding: management, supervision and other administrative functions (assignment, recalculation and implementation of insurance benefits) in the area of the corresponding types of obligatory state social insurance, including: obligatory state pension insurance, including pension insurance for persons dismissed from the public service (military service).

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THE SUPREME COURT

JUDGMENT

IN THE NAME OF UKRAINE

30.01.2018, Kyiv

Case No. 428/6579/17

Proceedings No. K/9901/3099/17

The Supreme Court consisting of the chamber of the Cassation Administrative Court:

Chief Judge – A.Yu.Buchykh (judge-rapporteur),

judges: M.M. Gimon, L.L. Moroz,

participants in the case:

Claimant – PERSON_1,

Defendant – Directorate of Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast,

Third Party – Directorate for Labour and Social Protection at Sievierodonetsk City Council in Luhansk Oblast.

Having considered the cassation appeal of the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast against the Judgment of August 4, 2017 of Sievierodonetsk City Court in Luhansk Oblast consisting of Judge D.B. Baronin, and the Judgment of October 10, 2017 of Donetsk Administrative Court of Appeal in the Judicial Panel: A.A. Shyshova, I.V. Sivachenko, A.A. Chebanova,

the Court found that:

PERSON_1 appealed to the court with an administrative claim to recognize the unlawful inactivity of the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, regarding the suspension of pension, the obligation to renew the payment of pension effective April 1, 2017, and pay the backlog.

By Judgment of August 4, 2017 of Sievierodonetsk City Court in Luhansk Oblast, which was left unchanged by Judgment of October 10, 2017 of Donetsk Administrative Court of Appeal, the actions and inaction of the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, were recognized as unlawful. The Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, was bound to resume the payment of pension to PERSON_1 effective April 1, 2017 and pay the backlog in the payment of the pension.

In its cassation appeal, the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, requests that the appealed court judgments be cancelled and a new one that completely refuses PERSON _1 in satisfying the claims be accepted. The Directorate of the Pension Fund points out that since the Claimant did not apply to the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, for renewal of the pension payment according to the *Procedure for Assignment (Renewal) of Social Payments to Internally Displaced Persons* and Order 22-1, the respondent had no legal grounds to decide whether to resume or refuse to renew the payment of the Claimant's pension, and the defendant did not take any decision on this matter.

The Claimant did not file a response to the cassation appeal within the time period established by the Court.

The cassation appeal is not subject to satisfaction.

The courts of previous instances established that since March 1, 2016, PERSON _1 has been registered with the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast and receives the retirement pension.

According to the copy of Certificate on Registration of an Internally Displaced Person No. 919054024 of May 05, 2016, issued by the Directorate for Labour and Social Protection at Sievierodonetsk City Council, PERSON _1 who had been permanently residing at ADDRESS_1, on February 25, 2016 moved from temporarily occupied territory to ADDRESS_2 in Sievierodonetsk. The term of validity of the certificate is unlimited.

According to written explanations of the representative of the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, PERSON _1 the payment of pension to PERSON_1

was suspended effective April 1, 2017, since PERSON_1 was reported absent at the place of residence.

Disagreeing with the termination of payment of pension, PERSON _1 submitted this administrative claim.

While satisfying the claims, the court of first instance, the conclusions of which were accepted by the court of appeal, referred to the groundlessness of the respondent's reference to the receipt of information on the absence of the Claimant at the place of residence as the ground for suspending the payment of pension, since the law in force does not envisage such basis for the suspension of pension.

The Panel of Judges agrees with such arguments of the courts of previous instances, based on the following.

On 22.11.2014, the Law of Ukraine No. 1706-VII of October 20, 2014 "*On Ensuring the Rights and Freedoms of Internally Displaced Persons*", providing guarantees according to the Constitution and laws of Ukraine, international treaties of Ukraine, the consent to be bound by the Verkhovna Rada of Ukraine, confirms guarantees for internally displaced persons.

Particularly, in accordance with Article 7 of the said law, for a registered internally displaced person, the realization of the right for pension and social services is carried out in accordance with the legislation of Ukraine. Ukraine undertakes all possible actions aimed at solving issues related to social protection, including the renewal of all social payments to internally displaced persons. Citizens of retirement age, persons with disabilities, disabled children and any other persons in difficult life circumstances who are registered as internally displaced persons, have the right to receive social services in accordance with the legislation of Ukraine at their registered actual place of residence.

Clause 1 of the Resolution No. 637 of the Cabinet of Ministers of Ukraine of 05.11.2014 "*On the Exercise of Social Payments to Internally Displaced Persons*" specifies that internally displaced persons are assigned and continue to receive their pensions (lifelong monthly allowance), lifelong state scholarships, and all types of social assistance and compensation, material support, provision of social services at the expense of the state budget and funds of obligatory state social insurance at the place where such persons are registered, as evidenced by a certificate issued in accordance with the *Procedure for Issuance of Certificate of Registration to Internally Displaced Persons* approved by Resolution No. 509 of the Cabinet of Ministers of 01.10.2014. Payment (continuation of payment) of pensions (lifelong monthly allowance), lifelong state grants, all types of social assistance and compensation, material support (hereinafter - social payments) intended for these persons, shall be carried out exceptionally to the accounts and via the network of offices and devices of the Public Joint-Stock Company "Derzhavnyi Oshchadnyi Bank Ukrainy".

That is, according to the requirements of the abovementioned provision, the following conditions for assignment and continuation of payment of pensions to internally displaced persons shall be observed: presence of internally displaced persons at their place of stay, as evidenced by the certificate; presence of an account at an office of PJSC "Derzhavnyi Oshchadnyi Bank".

According to Paragraph 6 of the *Procedure for Issuance of Certificate of Registration to Internally Displaced Persons* approved by Resolution No. 509 of the Cabinet of Ministers of 01.10.2014 (amended by Resolution of the Cabinet of Ministers No. 352 of 08.06.2016) (hereinafter referred to as Procedure No. 509), the *Certificate of Registration of an Internally Displaced Person* shall be valid for an indefinite period, except in cases stipulated by Article 12 of the Law and the sixth section of this paragraph. A certificate issued before June 20, 2016, which has not been cancelled or expired, is valid for an indefinite period, except as stipulated in Article 12 of the Law.

The courts found that the Certificate No. 919054024 of 05.05.2016 that confirms the registration of the Claimant as a person who was displaced from the temporarily occupied territory of Ukraine or the area of the antiterrorist operation, is valid.

According to Article 12 of the Law of Ukraine "*On Ensuring of Rights and Freedoms of Internally Displaced Persons*", the grounds for cancelling the certificate of registration of an internally displaced person and making entries on this into the Unified Information Database on Internally Displaced Persons are the circumstances where an internally displaced person has: 1) submitted an application to renounce the certificate; 2) committed a crime: actions aimed at violent change or overthrow of the constitutional order or seizure of state power; encroachment on the territorial integrity and inviolability of Ukraine; terrorist acts; involvement in the commission of a terrorist act; public call for terrorist acts; creation of a terrorist group or terrorist organization; assistance in the commission of a terrorist act; financing of terrorism; genocide, crimes against humanity or war crimes; 3) returned to the place of permanent residence; 4) moved to a permanent place of residence abroad; 5) submitted knowingly false information.

According to the requirements of Section 71 of the Procedure No. 509, if there are grounds stipulated by Article 12 of the Law, the Ministry of Internal Affairs, the National Police, GTN, the Security Service of Ukraine, the State Border Guard Service and the Ministry of Finance shall submit the appropriate information to the authorized body to decide on deregistration of an internally displaced person.

The decision on cancellation of the certificate in accordance with Article 12 of the Law shall be made by the head of the authorized body at the place of residence of the person and shall be given to him within three days from the date of adoption of such decision or sent to the address of residence indicated in the IDP certificate.

There is no evidence in the case materials regarding the cancellation of the Claimant's *Certificate No. 9190054024 of an Internally Displaced Person issued 05.05.2016* by the body that issued it - the Directorate for Labour and Social Protection.

Considering the above, the Panel of Judges considers the reference of the defendant to a letter No. 3147/02 of 27.03.2017 from the General Directorate of the Pension Fund of Ukraine in Lugansk Oblast reporting absence of pension recipients from among internally displaced persons at their place of residence and announcing suspension of the pension effective April 1, 2017 to the indicated persons including the Claimant.

Section 2 of the *Procedure for Monitoring the Realization of Social Payments to Internally Displaced Persons at Their Actual Place of Residence / Stay*, approved by Decree No. 365 of the Cabinet of Ministers of Ukraine of June 8, 2016, stipulates that the realization of social payments to internally displaced persons shall be monitored by structural units on social protection at district administrations, district administrations in Kyiv, executive bodies in cities, district councils in cities (in case of formation) (hereinafter - structural units on social protection of the population) by visiting the actual place of residence / stay of an internally displaced person at least once every six months, which shall be recorded in the Housing Inspection Report in accordance with the form established by the Ministry of Social Policy.

According to Subsection 2 of Section 12 of the said Procedure, social payments are suspended in case of establishing the fact of absence of an internally displaced person at the actual place of residence / stay in accordance with the Housing Inspection Report.

The respondent did not provide any Housing Inspection Report for this internally displaced person at the actual place of residence / stay.

Article 49 of the Law of Ukraine "*On Compulsory State Pension Insurance*" specifies the grounds for suspension and renewal of pension payments. Paragraph 1 of this article determines that the payment of pension by decision of the territorial bodies of the Pension Fund or by a court decision shall be suspended: 1) if the pension is assigned on the basis of documents containing inaccurate information; 2) for the whole period of pensioner's stay abroad, unless otherwise envisaged by Ukraine's international treaty accepted by the Verkhovna Rada of Ukraine; 3) in case of pensioner's death; 4) in case of non-receipt of the assigned pension for 6 consecutive months; 5) in other cases stipulated by law.

The defendant has not submitted any evidence of existence of grounds for termination of the pension payment to the Claimant.

The courts have correctly noted the priority of application of the requirement of Article 49 of the Law of Ukraine "*On Compulsory State Pension Insurance*", and therefore the defendant's arguments about the need to apply the standards of the Decrees of the Cabinet of Ministers decisions are groundless.

Considering the above, the Panel of Judges considers that the courts of the first and appeals instances established the circumstances of the case correctly and fully, and took judicial decisions in compliance with the rules of substantive and procedural law, and therefore there are no grounds for its cancellation.

According to Part 1 of Article 350 of the Administrative Procedure Code of Ukraine, the court of cassation leaves the cassation appeal without satisfaction, and the judicial decisions shall remain unchanged, if it recognizes that while taking judicial decisions or exercising procedural actions, the courts of the first and appellate instances did not commit an improper application of substantive law or violations of procedural law rules.

Guided by Articles 349, 350, 355, 356 and 359 of the Administrative Procedure Code of Ukraine,
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the Court decided:

The cassation appeal of the Directorate of the Pension Fund of Ukraine in Sievierodonetsk, Luhansk Oblast, is left without satisfaction, and Judgment of August 4, 2017 of Sievierodonetsk City Court in Luhansk Oblast, as well as Judgment of October 10, 2017 of Donetsk Administrative Court of Appeal, remain unchanged.

This judgment is final and is not subject to appeal.

Chief Judge

A.Yu. Buchyk

judges

M.M. Gimon
L.L. Moroz