

## **DECISION**

### **In the name of Ukraine**

*In the exemplary case of the suspension of pension to an internally displaced person*

03 May 2018

Kyiv

Case No.805/402/18

Proceeding No Pz/9901/20/18

### **The Supreme Court composed of a panel of judges of the Administrative Court of Cassation:**

Head – T.O. Antsupova,

Judges: M.M. Himon, N.V. Kovalenko, V.M. Kravchuk, O.P. Starodub,

with the participation of Secretary of the court session – D.V. Yarosh,

### **The parties:**

Plaintiff representatives: PERSON\_1, PERSON\_2,

Defendant representatives: Inna Leonidivna Levchenko, Olha Lymyryivna Malakhova, Iryna Volodymyrivna Petruchenia,

**Having examined the administrative case No. 805/402/18 in an open court session in the order of a summary action proceeding** according to a claim of PERSON\_6 to Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast to adjudge certain actions as unlawful and bind to undertake certain actions,

### **THE COURT HELD:**

#### **I. CASE HISTORY**

1. On January 15, 2018, PERSON\_6 appealed to Donetsk Regional Administrative Court with an administrative appeal to Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast, in which she asks:

- to recognize as unlawful actions of the Bachmutsky unified administration of the Pension Fund of Ukraine of Donetsk region in suspension of the payment of the retirement pension PERSON\_6, INFORMATION\_1, the identification number NUMBER\_1 from April 1, 2017;

- to oblige the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast to renew the payment PERSON\_6, INFORMATION\_1, ID-number NUMBER\_1, age-based pension, taking into account the debts that arose since April 01, 2017, by transferring funds to the current account opened in JSC "Oschadbank";

- to allow the immediate execution of a court decision in respect of the payment of pensions within the amount of the penalty for one month, in accordance with Paragraph 1 Section 1 [Article 371 of the Code of Administrative Justice of Ukraine](#) (hereinafter - [CAJ of Ukraine](#)).

2. T.V. Zahatska, judge at Donetsk Regional Administrative Court by the determination of January 17, 2018 poky opened the proceedings in the case No.805/402/18 according to the claim by PERSON\_6 against the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast.

3. On February 20, 2018, the Supreme Court received a submission from T.V. Zahatska, judge of Donetsk Regional Administrative Court, together with the administrative case No.805/402/18 on the consideration of this typical case by the Supreme Court as a model case. Copies of the materials on 26 typical cases have been added to the submission.

4. The Supreme Court, in the composition of the panel of judges of the Administrative Court of Cassation, issued a ruling on March 1, 2018, initiating proceedings in the exemplary administrative case brought by the representative of PERSON\_6 to the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast on the recognition of unlawful acts, an obligation to take certain actions. The case is scheduled for consideration on March 29, 2018, under the rules of simplified proceedings without notice to the participants of the case (in written proceedings) based on Paragraph 2 Section 1 [Article 263 of the Code of Administrative Justice of Ukraine](#).

5. The Supreme Court, in the composition of the panel of judges of the Administrative Court of Cassation, requested, from the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast, an explanation of the information received in it, in connection with the necessity of clarifying all the circumstances of the case, in a judgment dated March 29, 2018. March 2017 from the SSU, information on the accrual and amount of pension arrears PERSON\_6 as of April 1, 2018 and information on whether the defendant has taken a decision to terminate PERSON\_6 pension payments based on Section 1 [Article 49 of the Law of Ukraine "On Mandatory State Pension Insurance"](#). The case was assigned to the hearing in a court session with the notification (call) of the parties at 12:00 am on April 19, 2018.

6. In a court session on April 19, 2018, I.V. Petrushhenya, the representative of the defendant, filed a petition for the assignment of new evidence to the materials of the case, the existence of which the defendant had not previously known, namely, Protocol 14 of the meeting of the Commission on the Appointment (Renewal) of Social Benefits to Internally Displaced Persons. In order to get acquainted with new evidence, the trial was announced on May 3, 2018.

## **II. ARGUMENTS OF THE CASE PARTICIPANTS**

7. In the lawsuit, PERSON\_6 justifies her claim by being a retired person and receiving a retirement pension. In connection with the hostilities and the antiterrorist operation in her settlement, she was forced to leave her permanent place of residence and move to the Bakhmut district of the Donetsk region, where she became an internally displaced person. However, on April 1, 2017, the defendant ceased to pay her pension on grounds not envisaged in [Article 49 of the Law of Ukraine “On Mandatory State Pension Insurance”](#). The plaintiff considers such actions illegal because they violate her right to a pension.

8. On February 06, 2018, the defendant lodged an administrative objection, in which the suspension of pension payment PERSON\_6 explains by referring to [Decree 509 of the Cabinet of Ministers of Ukraine of October 1, 2014 “On registration of internally displaced persons”](#) (hereinafter - CMU Decree 509), Decree 637 of 05 November 2014 “*On Payment of Social Benefits to Internally Displaced Persons*” (hereinafter - CMU Decree 637) and Decree 365 of 08 June 2016 “*Some Issues Related to Social Payments to Internally Displaced Persons*” (hereinafter - CMU Decree 365).

9. The Respondent noted that in order to further renewal of the PERSON\_6 pension payment, it was necessary to contact the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast personally and provide the necessary documents..

10. The defendant emphasized that the plaintiff, in accordance with the procedure established by the law, did not take measures aimed at obtaining the amount of pension payments she received and in consequence, could not receive the said payments, that is, to implement the right guaranteed by the [Constitution of Ukraine](#). The respondent indicates that the plaintiff has not been provided with evidence to the court that she was deprived of the right and opportunity to exercise her right to a pension, guaranteed by the [Constitution of Ukraine](#).

11. Based on the above, the respondent believes that he acted within the powers and in the manner provided for in the [Constitution of Ukraine](#), [the Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”](#), by subordinate normative acts, [decrees adopted by the Cabinet of Ministers of Ukraine](#). Also, the defendant believes that the rights of the plaintiff were not violated, therefore, in order to satisfy the claims, it should be denied.

12. On March 23, 2018, the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast filed a statement of claim, requesting that the plaintiff is refused the satisfaction of the claims. The reference is grounded on the fact that the realization of the rights of registered internally displaced persons for pension provision is carried out taking into account the acts of the Cabinet of Ministers of Ukraine, which were not recognized as unconstitutional and incompatible with acts of higher legal force, and therefore there are no grounds not to take them into account in the implementation of pension provision for internally displaced persons.

13. The respondent indicates that in March 2017 the SSU received information on the return of the plaintiff who is internally displaced to the temporarily occupied territory of Ukraine, which, according to paragraph 1 of clause 12 of the Procedure for the control of social payments for internally displaced persons at the place their actual residence / stay, approved by CMU Decree 365, is the basis for suspension of pension payment.

**14.** The Respondent notes that in connection with the revealed unreliability of information about the actual place of residence of the plaintiff by order of the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast from March 24, 2017, the payment of pension to the plaintiff from April 01, 2017 has been terminated.

**15.** On April 16, 2018, the Supreme Court, in response to the requirements of the March 29, 2018 ruling, received written explanations from the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast. In these explanations, the defendant indicated that the order of March 24, 2017 on suspension of pension payment PERSON\_6 to determine the circumstances (actual place of residence) was taken on the basis of paragraph 12 of the Procedure for monitoring social payments to internally displaced persons at the place of their actual residence / stay approved by CMU Decree 365, taking into account the information of the SSU on the return of PERSON\_6 to uncontrolled Ukrainian territory by the Directorate of the Pension Fund of Ukraine, taking into account the provisions of [Article 49 of the Law of Ukraine "On Mandatory State Pension Insurance"](#) about the possibility and grounds for suspension of pension payment.

#### **CASE CIRCUMSTANCES ESTABLISHED BY THE COURT**

**16.** PERSON\_6, INFORMATION\_1, is a citizen of Ukraine and is registered at ADDRESS\_1, which is confirmed by a copy of her passport of a Ukrainian citizen of series NUMBER\_4.

**17.** The plaintiff is a retired person by age, as evidenced by a copy of her pension number No. NUMBER\_2 issued by JSC "Oshchadbank" with the validity period until November 16, 2019.

**18.** According to the certificate of the Directorate for Social Protection at the Bakhmut Rayon State Administration of August 23, 2016 No. 1436014652, the registration of an internally displaced person by the actual place of residence of the plaintiff is: ADDRESS\_2.

**19.** PERSON\_6 is registered with the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast and receives an old-age pension according to the [Law of Ukraine "On Mandatory State Pension Insurance"](#) on the basis of an electronic pension case from Kyivskiy Rayon Directorate of the Pension Fund of Ukraine in Donetsk.

**20.** Since April 2017, Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast has *de facto* suspended the payment of the pension.

**21.** In response to a lawyer's request, the representative of the plaintiff Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast wrote in a letter dated November 26, 2017 No.16801 / 02 that "in connection with the SSU's verification on April 01, 2017, the payment of the pension for retirement PERSON\_6 has been suspended until clarification".

**22.** On March 23, 2018, a copy of the order of March 24, 2017 "*On Suspension of Payment of Pension Until Clarification*" was received by the Supreme Court together with a statement of claim from the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast, according to which PERSON\_6 On April 01, 2017, the payment of the pension was suspended.

23. Considering the actions of the defendant to terminate the payment of the pension from April 01, 2017 as unlawful, the plaintiff, through her representative, appealed to the court with an administrative suit.

### III. SOURCES OF RIGHTS AND ACTS OF THEIR APPLICATION

#### 1. [Constitution of Ukraine](#)

24. The fundamentals of the social orientation of the state are enshrined in the relevant provisions of the [Constitution of Ukraine](#):

##### *Article 1*

*Ukraine is a sovereign and independent, democratic, social and law-governed state.*

##### *Article 3*

*Individuals, their life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. [...]*

##### *Article 19*

*[...]The bodies of state power and bodies of local self-government, their officials, are required to act only on the basis, within the limits of authority and in the manner provided by the [Constitution](#) and laws of Ukraine.*

##### *Article 46*

*Citizens have the right to social security, which includes the right to be provided for [...] in old age [...].*

##### *Article 92*

*The following is determined exclusively by the laws of Ukraine: [...]*

*6. the basis of social protection, forms and types of pensions [...]*

#### 2. [Decision 25-pn/2009 of 07 October 2009 by the Constitution Court of Ukraine](#)

25. This decision was declared by the Constitutional Court of Ukraine as non-compliant with the [Constitution of Ukraine](#) (unconstitutional), Section 2 Section 1 Article 49, second sentence [Article 51 of the Law of Ukraine “On Mandatory State Pension Insurance”](#) concerning the suspension of payment of pension for the whole period of residence (staying) of a pensioner abroad, unless otherwise provided by an international agreement of Ukraine, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine.

In the decision No. 25-rp / 2009, the Constitutional Court of Ukraine noted that, contrary to the constitutional guarantees of social protection for all persons entitled to old-age pensions, the legislature was deprived of this right of pensioners in cases when they chose the country of residence permanently, with which no agreement has been concluded. Proceeding from the legal, social nature of pensions, the right of a citizen to receive his pension can not be associated with such a condition as permanent residence in Ukraine; the state, in accordance with the constitutional principles, is obliged to guarantee this right irrespective of where the person to whom the pension is located resides in Ukraine or abroad.

3. [Convention on Human Rights and Fundamental Freedoms in the Protocol 11 and Protocol 14 edition \(November 4, 1950\)](#)

**26.** [Article 1 of the Convention on Human Rights and Fundamental Freedoms](#) stipulates that The High Contracting Parties guarantee to everyone within their jurisdiction the rights and freedoms set out in Section I of this Convention.

4. [Protocol 1 to the Convention on Human Rights and Fundamental Freedoms \(March 20, 1952\)](#)

**27.** Article 1 of Protocol 1 to the [Convention on Human Rights and Fundamental Freedoms](#) stipulates that every natural or legal person has the right to own his property peacefully. No one shall be deprived of his property except in the interests of society and under the conditions provided for by law and the general principles of international law.

6. [Decision of the European Court of Human Rights in the case «Pichkur vs Ukraine» \(Petition No.10441/06\) of November 7, 2013](#)

**28.** In the decision in the case “Pichkur vs Ukraine”, the European Court of Human Rights stated that the right to receive a pension as such became dependent on the applicant's place of residence. This led to the situation in which the applicant, having worked for many years in his country and paid contributions to the pension system, was completely deprived of the right to a pension on the sole ground that he no longer resides in the territory of Ukraine. For the reasons given above, the European Court of Human Rights has concluded that the difference in treatment applied for by the applicant violated Article 14 of the Convention, in conjunction with Article 1 of the First Protocol (paragraphs 51, 54).

7. [Decision of the European Court of Human Rights in the case «Sukhanov and Ilchenko vs Ukraine» \(Petitions No.68385/10 and No.71378/10\) of June 26, 2014](#)

**29.** In the decision in the case «Sukhanov and Ilchenko vs Ukraine» the European Court of Human Rights noted that a reduction in the amount or suspension of payment of properly established social assistance might constitute interference with the right to property (Paragraph 52).

**30.** The Court noted that Article 1 of Protocol 1 contains three separate rules: "the first rule, set forth in the first sentence of the first paragraph, has a general character and proclaims the principle of peaceful possession of property. The second rule contained in the second sentence of

the first paragraph concerns the deprivation of property and submits it to certain conditions. The third rule, enshrined in the second paragraph, envisages the right of the Contracting States, in particular, to control the use of property in accordance with the general interests. However, these norms are not completely unconnected. The second and third norms refer to specific cases of interference with the right to peaceful possession of the property, and therefore should be interpreted in the light of the general principle enshrined in the first norm "(Paragraph 30).

**31.** As regards social benefits, Article 1 of the First Protocol does not impose any restrictions on the freedom of Contracting States to decide whether or not to have any form of the social security system and to choose the type or amount of benefits under such a system. However, if a Contracting State has a valid law which provides for the payment of a right to social assistance (due to the prior payment of contributions or not), such legislation shall be deemed to provide for the property right falling within the scope of Article 1 of Protocol 1 concerning persons who meet its requirements (Paragraph 31).

**32.** The Court reiterated that the first and most important rule of Article 1 of the First Protocol is that any interference by public authorities in the right to peaceful possession of property should be lawful and should pursue a legitimate aim "in the interests of society". Any intervention should also be proportional to the pursued purpose. In other words, a "fair balance" between the general interests of society and the duty to protect the fundamental rights of a particular person should be ensured. The necessary balance will not be achieved if the person or persons concerned are faced with a personal and excessive burden (paragraph 53).

8. *Decision of the European Court of Human Rights in the case «Shchokin vs Ukraine» (Petitions No.23759/03 and No.37943/06) of October 14, 2010*

*33. The first and most important requirement of Article 1 of Protocol 1 to the Convention is that any interference by public authorities in the peaceful enjoyment of property must be lawful. Thus, the second sentence of the first paragraph stipulates that deprivation of property is possible only "under the conditions provided for by law," and the second paragraph recognizes that states have the right to exercise control over the use of the property by introducing "laws". Moreover, the rule of law, one of the founding principles of a democratic society, is inherent in all the articles of the Convention. Thus, the question whether a fair balance was struck between the general interests of society and the protection of fundamental rights of an individual only arises when it is established that the interference complained of complies with the requirement of legality and was not arbitrary (paragraph 50).*

9. *European Social Charter (revised), May 3, 1996*

**34.** The European Social Charter (revised), which entered into force in Ukraine on February 1, 2007, specifies that every elderly person has the right to social protection.

*The Parties recognize the goal of their policies, which they will introduce by all appropriate means, both nationally and internationally, to achieve the conditions under which the following rights and principles can be effectively exercised:*

[...]

23. Every elderly person has the right to social protection.

[...]

10. United Nations Organization: «Guiding Principles on Internal Displacement» (UN document E/CN.4/1998/53/Add.2 (1998))

**35.** The Introduction to the document, which defines the scope and purpose of the Guiding Principles, stipulates:

2. *For the purposes of these Principles, internally displaced persons are persons or groups of persons who have been forced or obliged to flee or leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.*

11. [Law of Ukraine of October 20, 2014, No.1706-VII «On Ensuring the Rights and Freedoms of Internally Displaced Persons» \(hereinafter - Law No.1706-VII\)](#)

**36.** The relevant articles of the [Law](#) envisage:

*Article 1. The concept of an internally displaced person*

*An internally displaced person is a citizen of Ukraine, a foreigner or a stateless person who stays legally in Ukraine and has the right to permanent residence in Ukraine, and who had been forced to leave or leave his place of residence as a result or in order to avoid the negative consequences of armed conflict, temporary occupation, generalized violence, human rights violations and natural or human-made disasters [...]*

*Article 4. Registration of internally displaced persons*

1. *The fact of internal movement is confirmed by the Certificate of Registration of an Internally Displaced Person, which is valid indefinitely, except in cases envisaged by [Article 12 of the Law](#).*

[...]

3. *To obtain the Certificate of Registration of an Internally Displaced Person, such person makes a statement to the structural subdivision on social protection of the population of district, district administrations in the city of Kyiv, executive bodies of city and district in cities (in the case of education) councils at the place of residence in order, established by the Cabinet of Ministers of Ukraine [...].*

*Article 7. Ensuring the realization of the rights of registered internally displaced persons*



*[...] Ukraine takes all possible steps aimed at solving problems related to social protection, in particular, the restoration of all social benefits for internally displaced people [...]*

12. [Law of Ukraine of July 9, 2003, No.1058-IV «On Mandatory State Pension Insurance»](#)  
(hereinafter - Law No.1058-IV)

**37.** The relevant articles of the [Law](#) envisage:

*Article 5. Scope of the Law*

*1. This [Law](#) regulates the relations that arise between subjects of the system of compulsory state pension insurance. The effect of other normative legal acts may extend to these relations only in the cases envisaged by this [Law](#), or in part that does not contradict this [Law](#) [...]*

*Article 46. Payment of pension for the past time*

*[...] 2. The accrued amounts of pension not received by the fault of the body that appoints and pays the pension are paid in the past without limitation by any term with the calculation of compensation for loss of part of income [...]*

*Article 47. Payment of pension*

*The pension is paid on a monthly basis, not later than on the 25th day of the month for which the pension is paid, exclusively in monetary form, according to the indicated place in the application, the place of actual residence of the pensioner within Ukraine by the organizations which pay and deliver the pensions, or through the institutions of banks in the manner prescribed by the Cabinet Ministers of Ukraine [...]*

*Article 49. Suspension and renewal of pension payment*

*1. Payment of pensions by decision of the territorial bodies of the Pension Fund or by a court decision shall be terminated:*

*1) if the pension is intended on the basis of documents containing unreliable information;*

*{ The provisions of clause 2 of part one of Article 49 have become invalid as being unconstitutional based on the [Decision of the Constitution Court No.25-pn/2009 of October 7, 2009](#)}*

*2) на весь час проживання пенсіонера за кордоном, якщо інше не передбачено міжнародним договором України, згода на обов'язковість якого надана Верховною Радою України;*

*3) in case of death of the pensioner;*

*4) if the pension is not received within 6 months in a row;*

5) in other cases stipulated by law.

2. The renewal of the pension payment is carried out by the decision of the territorial authority of the Pension Fund within 10 days after the clarification of the circumstances and the availability of conditions for the recovery of its payment. The payment of the pension is resumed in accordance with the procedure provided for in Section 3 of Article [35](#) and Article [46](#) of this [Law](#) [...]

13. [Decree 509 of the Cabinet of Ministers of Ukraine of October 1, 2014 «On Registration of Internally Displaced Persons»](#)

38. [Decree 509 of the Cabinet of Ministers of Ukraine of October 1, 2014 «On Registration of Internally Displaced Persons»](#) approves the Procedure for Issuance of a Certificate of Registering an Internally Displaced Person, Items 1 and 2 of which provide for::

Paragraph 1

[...]The certificate on the registration of an internally displaced person (hereinafter referred to as the certificate) is a document which confirms the fact of internal movement and registration of internally displaced persons. "

Paragraph 2

To receive the certificate, an adult or juvenile internally displaced person applies in person, and a minor child, an incapacitated person or a person whose capacity is limited - through a legal representative with an application for registration, the form of which is approved by the Ministry of Social Policy, to the Structural Unit for Social Protection of the Population of district, Kyiv rayon, state administrations, executive bodies of city, or city district (in case of education) councils. [...]

14. [Decree 637 of the Cabinet of Ministers of Ukraine of November 5, 2014 «On Payment of Social Benefits to Internally Displaced Persons»](#)

39. Section 1 of the [Decree 637 of the Cabinet of Ministers of Ukraine of November 5, 2014](#) (as amended, in force at the time of the occurrence of controversial legal relations) establishes that

*the appointment and continuation of payment of pensions (monthly life-time maintenance), life-time state scholarships, all types of social assistance and compensation, material support, provision of social services, subsidies and privileges at the expense of the state budget and funds of compulsory state social insurance for internally displaced persons are carried out at the place where such persons are registered, which is confirmed by the certificate issued in accordance with the Procedure for Issuing a Certificate of Registration of an Internally Displaced Person, approved by Decree 509 of the Cabinet of Ministers of Ukraine of October 1, 2014 [...]*

[...]

*The renewal or suspension of social benefits is carried out by the Public Joint-Stock Company "Derzhavnyi Oshchadnyi Bank Ukrainy" on the basis of the decision of the Commission on the appointment (renewal) of social benefits to internally displaced persons formed by district, district administrations in Kyiv and Sevastopol by state administrations, executive bodies of city, city councils in accordance with the Procedure for Monitoring the Payment of Social Benefits to Internally Displaced Persons at the place of their actual residence/stay approved by [Decree 365 of the Cabinet of Ministers of Ukraine of June 8, 2016](#).*

15. [Decree 365 of the Cabinet of Ministers of Ukraine of June 8, 2016 «Some Issues Related to Payment of Social Benefits to Internally Displaced Persons»](#)

40. On June 08, 2016, the Cabinet of Ministers of Ukraine adopted Decree 365 of the Cabinet of Ministers of Ukraine of June 8, 2016 «Some Issues Related to Payment of Social Benefits to Internally Displaced Persons» paragraph 1 of which approved *Procedure for Appointment (Restoration) of Social Benefits to Internally Displaced Persons and the Procedure for Exercising Control Over the Payment of Social Benefits to Internally Displaced Persons at the Place of Their Actual Residence /Stay*.

Paragraph 4 of the *Procedure for Appointment (Restoration) of Social Benefits to Internally Displaced Persons* stipulates that

*Social benefits for internally displaced persons are appointed and paid by [...] territorial bodies of the Pension Fund of Ukraine [...] at the place of their actual residence/stay, regardless of the fact of registration of the place of residence/stay.*

Paragraph 2 of the *Procedure for Exercising Control Over the Payment of Social Benefits to Internally Displaced Persons at the Place of Their Actual Residence /Stay* stipulates that:

*The control over the payment of social benefits to internally displaced persons is carried out by structural subdivisions on social protection of the population of rayon, district administrations in Kyiv, executive bodies of city and district councils in cities (in case of formation) (hereinafter - structural units on social protection of the population) through visit at least once every six months of the actual place of residence / stay of the internally displaced person, about which an act of examination of the living conditions of the family in the form Established by the Ministry of Social Policy. If in the Uniform Information Database on Internally Displaced Persons there is information about the physical identity of the person in the public joint stock company "State Savings Bank of Ukraine", the next check in the relevant period is not carried out. [...]*

According to Paragraph 12 of the *Procedure for Exercising Control Over the Payment of Social Benefits to Internally Displaced Persons at the Place of Their Actual Residence /Stay*:

Social benefits are **terminated** in case of:

1) the existence of the grounds envisaged by law regarding the conditions for the appointment of an appropriate type of social benefit;

- 2) establishment of the fact of absence of an internally displaced person at the actual place of residence / stay in accordance with an act of examination of the living conditions of the family;
- 3) receipt of recommendations from the Ministry of Finance regarding the facts found during the verification of social benefits;
- 4) cancellation of the certificate of the internally displaced person on the grounds specified in [Article 12 of the of Ukraine "On Ensuring the Rights and Freedoms Of Internally Displaced Persons "](#);
- 5) receipt of information from the State Border Guard Service, MoI, SSU, Ministry of Finance, National Police, SMS, State Financial Inspection, State Audit Service and other bodies of executive power and local self-government.

## **ASSESSMENT OF THE SUPREME COURT**

41. In considering this case, the Court considers that, according to information published on the official website of the Ministry of Social Policy of Ukraine, as of May 02, 2018, according to the data of the structural units of social protection of the population of the oblast and Kyiv city state administrations, there are 1,500,186 IDPs registered in Ukraine or 1,225,470 families from Donbass and Crimea.
42. The 2017 report of the Pension Fund of Ukraine contains statistical information on the number of pensioners from among the internally displaced persons who receive pensions. As of January 1, 2017, pensions were paid to 548.9 thousand of such pensioners, and as of January 1, 2018, their number was 516.1 thousand people. At the same time, there is no exact data on the number of pensioners who stay in non-government controlled areas, in particular, about the deceased and those who left to other countries (pages 36-37 of this Report).
43. The expedience of considering this case as a model is stipulated by the fact that as of February 7, 2018, in the proceeding of the Donetsk Regional Administrative Court, there are 226 typical cases of the recognition of unlawful acts and an obligation to take certain actions in the relevant territorial directorates of the Pension Fund of Ukraine.
44. The Claimant claims to be an internally displaced person, who is registered with the defendant as the recipient of the pension, the payment of which has been unjustifiably suspended from April 1, 2017.
45. Consequently, the essence of the claim lies in the unlawful, in the opinion of the plaintiff, the actions of the defendant to terminate from April 01, 2017, the payment of pension, assigned to her by age.
46. By providing legal assessment of the actual circumstances of the case, the Court finds that in order to resolve the dispute, it is necessary to determine whether the defendant has the authority to pay social benefits to the internally displaced person and the compliance of the defendant's

actions with the provisions of [Article 19 of the Constitution of Ukraine](#) and [Article 2 of the Code of Administrative Justice of Ukraine](#).

### **Status of internally displaced person**

**47.** The status of an internally displaced person is not defined in any international treaty in which Ukraine would have a duty. The concept of internally displaced persons is contained in the United Nations Guiding Principles of Internal Displacement (UN document E/CN.4/1998/53/Add.2 (1998)) (see the definition in p. 35 of the present [decision](#)).

**48.** Definition of the concept of an internally displaced person under national law is contained in [Article 1 of the Law No.1706-VII](#), which entered into force November 22, 2014.

**49.** This definition is descriptive and covers three types of constitutional and legal status of a person (a citizen of Ukraine, a foreigner and a stateless person). Given the definition, an internally displaced person is a person who:

- is in the territory of Ukraine on legal grounds;
- has the right to permanent residence in Ukraine;
- was forced to flee or leave his/her place of residence as a result, or in order to avoid the negative effects of armed conflict, temporary occupation, generalized violence, human rights violations, and natural or human-made emergencies.

**50.** Consequently, the special status of the internally displaced person does not coincide and can not be replaced by any of the constitutionally-legal statuses of the person enshrined in the [Constitution of Ukraine](#) and is not a separate constitutional and legal status of a person.

**51.** However, the registration of a person as an internally displaced person makes it possible for state bodies to take into account their special needs. Among such special needs is access to adequate housing and legal assistance, access to special state programs, including targeted programs for internally displaced persons, etc. It is obvious that the status of an internally displaced person grants a person special, additional rights (or "other rights" as stated in [Article 9 of the Law No.1706-VII](#)), without limiting the scope of the constitutional rights and freedoms of the individual and creating additional guarantees of their implementation.

### **The current mechanism of payment of pensions to internally displaced persons**

**52.** According to Paragraph 1 of CMU Decree 637 (in the version applicable at the time of suspension of pension payment to the plaintiff), it has been established that the appointment and continuation of payment of pensions (monthly lifetime maintenance) at the expense of the state budget and funds of compulsory state social insurance for internally displaced persons are carried out at the place where such persons are registered, as evidenced by a certificate issued in accordance with the *Procedure for Issuance of a Certificate of Registration to an Internally Displaced Person*, approved by CMU Decree 509.

The payment (continuation of payment) of pensions allocated to these persons is carried out exclusively through the accounts and the network of offices and devices of the public joint-stock company "Derzhavnyi Oshshadnyi Bank Ukrainy".

**53.** Consequently, the conditions for appointment and continued payment of pensions to internally displaced persons are: the location of internally displaced persons in the registration of the place of residence, which is confirmed by the certificate; the presence of an account in the institution of PJSC "Derzhavnyi Oshshadnyi Bank Ukrainy".

**54.** In accordance with Paragraph 6 of the Procedure for Registration and Issuance of a Certificate of a Internally Displaced Person approved by the Resolution of the Cabinet of Ministers of Ukraine No. 509, the certificate of registration of internally displaced persons is valid indefinitely, except as envisaged by [Article 12 of the Law No.1706-VII](#) and the sixth paragraph of this paragraph. The certificate issued before June 20, 2016, which has not been canceled and has not expired, is valid and valid indefinitely, except as envisaged by [Article 12 of the same Law](#).

**55.** According to paragraph 12 of the *Procedure for Monitoring the Payment of Social Benefits to Internally Displaced Persons at the Place of Their Actual Residence/stay*, approved by the CMU Decree 365, social benefits are terminated, in particular, upon receipt of information from the State Border Guard Service, the MoI, the SSU, the Ministry of the Interior Finance, National Police, SMS, the State Financial Inspection, the State Audit Service, and other bodies of executive power and local self-government.

**56.** The current mechanism of payment of pensions, which combines the right to receive a pension with the registration of a pensioner as an internally displaced person, has led to numerous appeals to the court with administrative lawsuits on the recognition of unlawful acts and the obligation to take certain actions by the relevant territorial directorates of the Pension Fund of Ukraine.

### **The right to pension benefits in Ukraine**

**57.** The right to social protection, which includes the right to old age, is guaranteed to Ukrainian citizens by Section 1 [of Article 46 of the Constitution of Ukraine](#).

**58.** The European Social Charter (revised) of 1996, the consent to which was given by the Verkhovna Rada of Ukraine and which came into force on February 1, 2007, specifies that every elderly person has the right to social protection. Accordingly, Ukraine has an international obligation to introduce, by all appropriate means, "*the achievement of conditions under which it can be effectively implemented*" the rights and principles enshrined in the Charter.

**59.** Principles, foundations and mechanisms of functioning of the system of compulsory state pension insurance, appointment, conversion and payment of pensions, provision of social services from the Pension Fund funds, which are formed at the expense of insurance premiums of employers, budgetary and other sources are stipulated by the [Law No.1058-IV](#).

**60.** [Article 8 of the Law No.1058-IV](#) envisages the right of Ukrainian citizens to receive pension benefits and social services.

**61.** Section 3 of [Article 4 of the Law No.1058-IV](#) stipulates the components of the legislation on pensions in Ukraine; the laws on pension provision exclusively determine, in particular, the conditions, norms and procedure of pensions; organization and order of management in the system of pension provision.

**62.** Considering that, in accordance with Section 3 of [Article 4 of the Law No.1058-IV](#), the conditions and rules of pension provision are determined exclusively by the laws on pensions, the issue of suspension of pension benefits (which are an integral part of the pension provision) can not be regulated by subordinate acts.

### **Assessment of actions by the defendant in suspension of payment of pension to the plaintiff**

**63.** Pensions for old age, length of service and its other forms, which are assigned in connection with work, are deserved by previous work and are one of the forms of social protection. This defines the content and nature of the State's duty to those citizens who have acquired the right to receive a pension.

**64.** Section 1 of [Article 49 of the Law No.1058-IV](#) stipulates a list of grounds for suspension of pension payment by the decision of territorial bodies of the Pension Fund or by court decision (see Paragraph 33 of the present [Decision](#)).

**65.** The list of grounds for suspension of pension payments, as defined in Section 1 of [Article 49 of the Law No.1058-IV](#), is exhaustive and provides for the possibility of suspension of payment of pensions on other grounds only in cases stipulated by law.

**66.** According to the case file, a copy of the letter from the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast of October 26, 2017, No.16801 / 02, payment of pension to the plaintiff from April 1, 2017 "was suspended due to the verification of lists of the SSU on the basis of verification of the place of actual residence ».

**67.** At the same time, [Law No.1058-IV](#) does not envisage such grounds for termination or suspension of pension payments as verification of the SSU lists on the basis of verification of the place of actual residence.

**68.** The Constitutional Court of Ukraine in its Decision of October 7, 2009 No.25-rp / 2009 noted that, based on the legal and social nature of pensions, the right of a citizen to receive a pension granted to him/her can not be associated with such a condition as permanent residence in Ukraine; the state, in accordance with the constitutional principles, is obliged to guarantee this right regardless of where the person who is entitled to receive the pension resides - in Ukraine or abroad.

**69.** In the "*Pichkur vs Ukraine*" case judgment, which became final on February 7, 2014, the European Court of Human Rights has indicated that the right to receive pension, which has

become dependent on the applicant's place of residence, indicates a difference in treatment, which violated Article 14 of the Convention combined with Article 1 of Protocol 1 (see quote in paragraph 25 of this decision).

**70.** In these decisions, the Constitutional Court of Ukraine and the European Court of Human Rights have adopted an approach according to which the right to receive a pension can not be related to the place of residence of a person. Such an approach can be extended not only to citizens who have moved to a permanent place of residence to other countries but also to internally displaced persons who have a permanent place of residence in the non-government controlled areas. In the context of the case under consideration, the legal relationship between the State and the person, which envisages mutual rights and obligations, is confirmed by the fact of acquiring citizenship. Freedom of movement and free choice of place of residence are guaranteed by [Article 33 of the Constitution of Ukraine](#) to anyone who legally resides in Ukraine.

**71.** At the same time, as determined by the court, the decree of the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast of March 24, 2017, on the suspension of PERSON\_6 from April 1, 2017, does not contain any indication of grounds for suspension of the pension claimant's payment.

**72.** In a letter of October 26, 2017, No. 16801/02 and objections to an administrative suit, the defendant as a basis for suspending payment of pension to a plaintiff refers to [Decree 509 of the Cabinet of Ministers of Ukraine of October 1, 2014 "On Registration of Internally Displaced Persons"](#), Decree 637 of 05 November 2014 "On Payment of Social Benefits to Internally Displaced Persons" and [Decree 365 of 08 June 2016 "Some Issues Related to Social Payments to Internally Displaced Persons"](#).

**73.** However, according to the analysis of the provisions of [Law No.1058-IV](#), suspension of the pension payment is possible only if the pension authority adopts the relevant decision on the grounds specified in [Article 49 of the Law No.1058-IV](#).

**74.** The defendant's arguments in response to a statement of claim, concerning the powers of the Cabinet of Ministers of Ukraine to take measures to ensure the rights and freedoms of man and citizen and implementation of social security policy, with reference to the [Decision of the Constitutional Court of Ukraine of December 26, 2011 No.20-rp/2011](#) and No.2-rp/99 of March 2, 1999, the panel of judges finds groundless, since, as the content of these decisions shows, the Constitutional Court of Ukraine expressed the position that the Cabinet of Ministers of Ukraine is an authority which ensures public policy in the social services, authorized to take measures to ensure the rights and freedoms of citizens and a policy on social protection.

**75.** At the same time, in the content of the constitutional norms, the Cabinet of Ministers of Ukraine is not empowered to resolve issues that fall within the exclusive competence of the Verkhovna Rada of Ukraine, as well as to adopt legal acts that are substituting or contradicting the laws of Ukraine.



**76.** In accordance with Paragraph 6 of Section 1 [of Article 92 of the Constitution of Ukraine](#), the laws of Ukraine determine, in particular, the forms and types of pensions, protection, forms and types of pensions.

**77.** Particular attention should be paid to the fact that in the preamble to [Law No.1058-IV](#) it is stated that the change of conditions and norms of the compulsory state pension insurance is carried out exclusively by amending this [Law](#).

**78.** The constitutional concept of "The Law of Ukraine", in contrast to the notion "legislation of Ukraine", is not subject to an expanded interpretation, a normative legal act adopted by the Verkhovna Rada of Ukraine within the limits of its powers. Changes to the [law](#) are introduced according to the established procedure by the Verkhovna Rada of Ukraine by passing a law on amendments. Regulatory legal acts of the Cabinet of Ministers of Ukraine are subordinate, and therefore they can not restrict the rights of citizens, which are established by laws.

**79.** At the same time, the Court notes that the non-validation of the actual place of residence is not envisaged by the [law](#) as the basis for suspension of pension payments, and the CMU's Decree No. 365 is a by-law regulatory act that restricts the lawful right of the plaintiff to receive his/her pension.

**80.** In this case, the fact of the plaintiff's status as an internally displaced person requires from him/her, in contrast to other citizens of Ukraine, additional actions not envisaged by the laws on pension provision – particularly, identification of a person, submission of an application for renewal of pension payments which was terminated by the Pension Fund body without any legal grounds.

**81.** According to Section 2 [Article 6 of the Code of Administrative Justice of Ukraine](#), the court applies the rule of law, taking into account the judicial practice of the European Court of Human Rights.

**82.** У рішенні у справі «*Sukhanov and Ilchenko vs Ukraine*» Європейський суд з прав людини зазначив, що зменшення розміру або припинення виплати належним чином встановленої соціальної допомоги може становити втручання у право власності (цитата у п. 25 цього рішення).

In the judgment in the case of “*Sukhanov and Ilchenko vs Ukraine*”, the European Court of Human Rights has noted that the reduction of the amount or suspension of payment of properly established social assistance may constitute interference with the right of ownership (quoted in Paragraph 25 of the present Decision).

**83.** Therefore, by terminating the calculation and payment of the plaintiff's pension in the absence of grounds foreseen by the laws of Ukraine, the defendant violated the claimant's right to receive a pension. However, the right to receive a pension is the subject of protection under Article 1 of Protocol 1 to the [Convention on Human Rights and Fundamental Freedoms](#).

**84.** The Court considers the interference of the defendant in the plaintiff's right to peaceful possession of his property in the form of a pension as such that is not based on any law.

**85.** As observed by the European Court of Human Rights in the judgment in the case of "*Shchokin vs Ukraine*", the question whether a fair balance was struck between the general interests of the society and the requirements of protecting the fundamental rights of an individual arises only when it is established that the interference that is appealed against, complies with the requirement of legality and was not arbitrary (quote in paragraph 33 of this decision).

**86.** Consequently, the Court's establishment of the lack of legality of the interference, that is, the commission of acts not in the manner determined by the [law](#), is sufficient grounds for concluding that the plaintiff's right to peaceful possession of her property was violated.

**87.** In view of the foregoing, the Court finds that the suspension of the pension payment to the plaintiff from April 1, 2017 was not carried out in the manner prescribed by [Law No.1058-IV](#), but from the point of view of the provisions of Article 1 of Protocol 1 to the [Convention on Human Rights and Fundamental Freedoms](#) there was an interference with the plaintiff's property, and such interference was not legal.

#### **Application of legal norms on the terms of appeal to the administrative court**

**88.** In accordance with the general rule established by the [Code of Administrative Justice of Ukraine](#), for the purpose of appealing to an administrative court for the protection of the rights, freedoms and interests of a person, a six-month period is set, which, unless otherwise stated, is calculated from the day the person has found out or should have been informed of the violation of his rights, freedoms or interests (Section 2 [Article 122 of the Code of Administrative Justice of Ukraine](#)).

**89.** According to Section 1 [Article 122 of the Code of Administrative Justice of Ukraine](#) an administrative claim may be filed within the deadline for an appeal to an administrative court established by this Code or other laws.

**90.** The content of the above norm shows that the [Code of Administrative Justice of Ukraine](#) is a general [law](#), which regulates the terms of appeal to the administrative court for the protection of rights. At the same time, relations regarding the terms of reference to an administrative court are regulated not only by the norms of the [Code of Administrative Justice of Ukraine](#) but also by other laws of Ukraine.

**91.** [Law No.1058-IV](#) is a special [law](#) that regulates the legal relations regarding the provision of pensions to citizens, the terms and procedure for the recalculation of pensions.

**92.** According to Section 2 [Article 46 of the Law No.1058-IV](#), the accrued amounts of pension not received from the fault of the body that appoints and pays a pension are paid in the past without limitation of any term.

**93.** The necessary conditions for application of the above norm by administrative courts are: 1) the fact of accrual of pension amounts in the past, which is proved by the relevant evidence; 2) proof of the fault of the pension authority - the presence of unlawful acts or unlawful inaction, the consequences of which are the non-payment of pension amounts.

**94.** According to the materials of the case, a pension of UAH 1511.61 was paid to the plaintiff monthly until March 2017 inclusive, after which the payment was suspended.

**95.** In the written explanations submitted to the Supreme Court on April 16, 2018, the defendant stated that the decision to cancel the protocol on the assignment of pension to PERSON\_6 was not taken, the plaintiff is registered as a pensioner in the Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast, and the pension she is assigned to is transferred according to the legislation, which is confirmed by calculation of pension payments.

**96.** In the said explanations, the defendant stated that PERSON\_6 has the right to receive pension from the time of its suspension after the inspection envisaged in Paragraphs 3-7, 9 of Order 365 and the fulfillment of the requirements of Paragraph 8 of the *Temporary Procedure for the Financing of Budgetary Institutions, the Social Payments to the Population and Provision of Financial Support to Individual Enterprises and Organizations in Donetsk and Luhansk Oblasts, and Other Payments from Accounts Opened in Treasury Bodies*, approved by [Decree 595 of the Cabinet of Ministers of Ukraine of November 7, 2014](#).

**97.** In the court hearing on April 19, 2018, representatives of the defendant presented a similar explanation that the accrual of the pension to the plaintiff was not stopped, and the payment was only suspended.

**98.** According to the calculation report that the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast has provided to the court, in the period from April 2017 to September 2017, a monthly pension of UAH 1511.61 was accrued to PERSON\_6 every month. In the period from October 2017 to March 2018 inclusive, the pension to the plaintiff was accrued monthly in the amount of UAH 1883.92.

**99.** The practice of applying the legal rules regarding the terms of reference to the administrative court envisaged their application, provided that the plaintiff's right to receive controversial amounts of pensions was not recognized by the defendant, which became the basis for applying to the court ([decree of the Supreme Court of Ukraine](#) of December 10, 2013, in the case No.21-329a13).

**100.** In the case under consideration, the defendant did not object to the plaintiff's right to receive a pension but ceased to pay it because the plaintiff, on the basis of information received from the SSU, returned to the temporarily occupied territory of Ukraine. At the same time, as evidenced by the written explanations of the defendant and evidence provided to confirm them, the suspension of pension payment PERSON\_6 was not accompanied by termination of its accrual.

**101.** As PERSON\_6 appealed to the court with a claim for renewal of pension payments, the right to which the defendant is not denied, and which accruals continued beyond the suspension

of his payment, however, he was subjected to formal limitations, on grounds and in a way that contravened the requirements of the [Constitution](#) and laws of Ukraine, according to Section 2 [Article 46 of the Law No.1058-IV](#), the pension payment to the plaintiff is subject to renewal from the moment of its suspension.

**102.** A similar position regarding the application of the terms of appeal to a court in cases of this category is set forth in the Supreme Court ruling of March 20, 2018, in case No.573/1759/17 (K/9901/3564/18).

**103.** In assessing the evidence in their totality, the Court concluded that the claims for recognition of the unlawful actions of the defendant in relation to the suspension of the payment of the PERSON\_6 retirement age and the obligation of the defendant to restore the payment to the appointed claimant are justified and are subject to satisfaction.

**104.** In view of the fact that at the time of filing an administrative claim to the court in this case, the plaintiff and his representative were not aware of the Decree "*On Suspension of Payment of Pension Until Clarification*" of the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast of March 24, 2017, the Court, finding that the adoption of this order was preceded by actions to suspend the payment of pension PERSON\_6, recognizes the specified order as unlawful, since it is the order and not the actions that produce the corresponding legal consequences.

At the same time, taking into account that the payment of pension to the plaintiff was terminated by the Decree "*On Suspension of Payment of Pension Until Clarification*" of the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast of March 24, 2017, of which the plaintiff was not informed about adoption, as evidenced by the letter of the defendant dated October 26, 2017, No. 16801/02, based on Section 2 [Article 9 of the Code of Administrative Justice of Ukraine](#), the Court, with a view to effectively protecting the rights of the plaintiff, considers it necessary to restore the rights of the plaintiff to the receipt of pension violated by the defendant by canceling the specified order.

**105.** Consequently, the Court has concluded that the claim for recognition of unlawful actions by the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast in relation to the suspension from April 1, 2017, of the retirement pension PERSON\_6 is covered by the recognition of invalidity and the cancellation of the said order.

**106.** The prescriptions in Section 1 Article 371 of the [Code of Administrative Justice of Ukraine](#) stipulate that the court's decision on the awarding of pensions, other periodic payments from the State Budget of Ukraine or extrabudgetary state funds is immediately executed within the limits of the amount of the penalty for one month.

**107.** Since the benefits awarded to the plaintiff are periodic and are executed from the State Budget of Ukraine, the decision is subject to immediate execution within the amount of the penalty for one month.

**108.** As to the establishment of judicial control over the enforcement of a court decision, the court considers it necessary to state the following.

**109.** Section 2 [Article 14 of the Code of Administrative Justice of Ukraine](#) stipulates that the judicial decisions that have become legally binding are mandatory for all state authorities, local self-government bodies, their officials, natural and legal persons, and their associations throughout the territory of Ukraine.

**110.** In accordance with the provisions of Section 1 Article 382 [Code of Administrative Justice of Ukraine](#), a court which has made a judicial decision in an administrative case may oblige the party of authority that is not in favor of a court decision to file a court report on the execution of a court decision.

**111.** From the analysis of the described norms, it is seen that the obligation of the subject of authority that is not in favor of a court decision to file a time-limit prescribed by the court, the report on the execution of a court decision is the right of the court and is resolved at its discretion.

**112.** In view of the foregoing, and also taking into account that the execution of the judgment in this case represents significant public interest and requires the respondent to take certain actions, namely, the restoration of the payment of pension to the plaintiff, the Court, in order to protect the rights of the plaintiff and to properly enforce the judgment, considers it necessary to oblige the defendant to submit a report on the execution of a court decision within a month from the date the decision comes into legal effect.

### **Features of typical cases**

**113.** The court has concluded that in the context of this exemplary administrative case, the features of typical cases identified in Paragraph 21 Section 1 [Article 4 of the Code of Administrative Justice of Ukraine](#) are the following:

- 1) the plaintiff in this category of cases is a pensioner who is assigned to a pension pursuant to [Law No.1058-IV](#) and who is an internally displaced person;
- 2) the respondent is a territorial body of the Pension Fund of Ukraine, serving the plaintiff with a pension account;
- 3) the dispute arose from similar grounds in relations governed by one of the rules of law (in connection with the suspension by the territorial bodies of the Pension Fund of Ukraine of payment of pensions to internally displaced persons on grounds not envisaged by paragraphs 1, 3-5 of Section 1 [Article 49 of the Law No.1058-IV](#));
- 4) the plaintiffs have filed similar lawsuits (differently expressed, but identical in essence: to recognize unlawful actions of suspension of payments and to oblige the defendant to restore the pension payment).

**The circumstances of the model case that determine the typical application of the substantive law**

**114.** The Supreme Court's findings in this exemplary case are subject to application in administrative cases in which the plaintiff:

- 1) is a citizen of Ukraine;
- 2) has the status of an internally displaced person, which is confirmed by the certificate of registration as an internally displaced person issued by social protection authorities;
- 3) is a pensioner and receives a pension, assigned to him in accordance with [Law No.1058-IV](#).

These restoration of pension payments requires additional actions from the plaintiff.

The respondent does not object to the claimant's right to receive a pension.

**Circumstances that exclude the typical application of the substantive law and the procedure for the implementation of such norms**

**115.** The conclusions of the Supreme Court in this exemplary case are not applicable to administrative cases concerning the treatment of pensioners who have been granted pensions pursuant to [Law No.1058-IV](#) and who are internally displaced persons if the payment and payment of pension to such a pension are terminated by the decision of the territorial bodies of the Pension Fund Of Ukraine on the grounds stipulated in paragraphs 1, 3-5, Section 1, [Article 49 of the Law No.1058-IV](#) as amended on the day of the adoption of this decision.

Based on the above, guided by articles [241- 246](#), [255](#), [262](#), 290, 295, 371 of the Code of Administrative Justice of Ukraine, -

**THE COURT HELD:**

The administrative claim of PERSON\_6 (place of residence: ADDRESS\_2) to the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast (location: 35 Mira Str., Bakhmut, Donetsk Oblast) on the recognition of unlawful actions and obligation to take certain actions shall be satisfied to the full extent.

The Decree "*On Suspension of Payment of Pension to PERSON\_6 Until Clarification*" of the Bakhmut Joint Directorate of the Pension Fund of Ukraine in the Donetsk Oblast of March 24, 2017, is declared unlawful and is cancelled.

The Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast is obliged to resume payment of pension to PERSON\_6, (INFORMATION\_1, ID NUMBER\_1) from April 01, 2017.

In the part of the award of a pension payment within the amount of the penalty within one month, the court decision is executed immediately.

The Bakhmut Joint Directorate of the Pension Fund of Ukraine in Donetsk Oblast is obliged to submit a report on the enforcement of the court decision within a month from the date this decision enters into force.

The decision of the Supreme Court in the exemplary case becomes valid after the expiration of the time limit for lodging an appeal if no such complaint is filed.

In the case of appealing, a court decision of the Supreme Court, if it has not been canceled, becomes valid after the results of the appeal review have validated the decision of the Grand Chamber of the Supreme Court.

An appeal against the decision of the Supreme Court in the exemplary case may be filed with the Grand Chamber of the Supreme Court within thirty days from the date of the full court decision.

**Head Judge**

**T.O. Antsupova**

**Judges**

**M.M. Himon**

**N.V. Kovalenko**

**V.M. Kravchuk**

**O.P. Starodub**