

## Non-enforcement of judgments on pensions for residents of non-government controlled areas



### Background

De-linking access to pensions from a requirement to be registered as an internally displaced person (IDP) for residents of non-Government controlled territories remains one of the main challenges in addressing the needs of all Ukrainian citizens, regardless of their residence. This would ensure correct calculation of the actual number of IDPs and uphold international human rights. While draft law no.6692, which introduces amendments to ensure payment of pensions to all citizens of Ukraine through authorised banking institutions irrespective of their place of residence, is yet to be brought to the plenary of the Verkhovna Rada, many people seek to obtain redress for violation of their rights and entitlements through the court system. Despite consistent court practices, access to justice remains an issue, as the judgments remain unenforced, as the following cases will demonstrate.

#### *Matviichuk's case*

Mrs. Matviichuk is an 83-year old woman living in a non-government controlled area (NGCA). While there in 2015, she badly broke her leg by the hip, and had a long rehabilitation period. She became non-transportable, and could hardly move around her apartment, even with assistance. The understanding that she could not receive her pension was making the elderly woman even more upset. Mrs. Matviichuk's son managed to organise a trip for her to the government controlled area (GCA), where she was registered as an IDP. Because all Mrs. Matviichuk's family members live in NGCA's, she returned to that area. After the costly and difficult journey across the line of contact (LoC) her condition deteriorated, and she became bedridden, preventing her from taking further perilous journeys across the LoC. On 1 February 2017, the pension fund suspended pension payments to Mrs. Matviichuk. On 4 October of that year, the Artemivsk city district court<sup>1</sup> ordered the pension fund to pay her pension arrears in full, and renew pension payments to the plaintiff.

<sup>1</sup> <http://reyestr.court.gov.ua/Review/69361377>

After enforcement proceedings, the due amounts were paid in full to Mrs. Matviichuk's bank account. In the interim, however, the validity of her bank card had expired, and she needed to renew it personally at Oschadbank in accordance with the legal procedure (outlined Resolution of Cabinet of Ministries of Ukraine (CMU) no.1596). Because of her illness and inability to travel, she has been unable to meet these legislative requirements, and thus remains without her pension.

#### *Bilokon's case*

Mrs. Bilokon is a 92-year old woman. She lives with her husband in Donetsk. Due to their old age, they are both limited in their movements. In fact, Mrs. Bilokon's situation is very similar to that of Mrs. Matviichuk. In 2014, their children wanted to bring them across to the GCA in order to obtain IDP status and their pensions. However, due to their old age, the couple was unable to travel through the LoC in either dangerous summer heat or winter cold. They also did not have a place to stay in the GCA, so they had to remain permanently in their hometown in the NGCA. In March of 2016, their pension payments were suspended. On 21 August 2017, Mrs. Bilokon applied to Krasnoarmiisk city court to remedy the situation, and nearly two months later, on 17 October, the court rendered a decision in her favour<sup>2</sup>, a ruling bolstered by an appeals court<sup>3</sup>. The defendant's appeal to the court of cassation was dismissed due to non-payment of the court fees<sup>4</sup>, and the decision became final.

Mrs. Bilokon, however, has no legal representative in the GCA, and for that reason, even having a positive final court decision has not resulted in her obtaining her pension. There is nobody to receive documents with her power of attorney or initiate executive proceedings on her behalf.

#### *Tsoia's case*

Mrs. Tsoia is an 86-year old woman with a disability, who lives in the NGCA. She has been disabled since

her working years, but when she reached the retirement age, she changed her pension status to be based on her age. Although her disease is progressing, and she can hardly move on a walker, even inside her house, she decided not to undergo an examination by a medical commission to verify her eligibility for a disability pension. At the very beginning of the conflict, Mrs. Tsoia's relatives took her to register for a pension in Kurakhove, in the GCA. The pension case-file was transferred to that office and her pension was paid to her Oschadbank account.

In the summer of 2016, the Cabinet of Ministers of Ukraine adopted Resolution No. 365 "On some issues of payments to IDPs"<sup>5</sup>. As a result of this change, Mrs. Tsoia's pension payments were suspended. By that time, she was unable to travel to Kurakhove and pass the necessary checks and identification to restore her pension payments. There were several reasons for that. First of all, she cannot walk without help. Secondly, she has no money to rent a room in Kurakhove. Finally, she became too weak to stay in a queue at the LoC checkpoints. The only way to restore a pension for Mrs. Tsoia was for her to apply to the Mariinka district court. On 4 July 2017, the court ruled in the pensioner's favour<sup>6</sup>. Furthermore, the Court of Appeal affirmed the ruling<sup>7</sup>, making the decision final and starting executive proceedings.

Mrs. Tsoia's pension account remained blocked by Oschadbank due to her failure to pass the needed physical identification prescribed by the CMU's Resolution no.637 (naturally, she could not appear at the bank due to her illness). Thus, executive proceedings were terminated by a bailiff. Despite the fact that Mrs. Tsoia did not receive her money, the bailiff stated that proceedings were terminated due to court decision's execution in full.

Mrs. Tsoia's representative successfully challenged the bailiff's decision, and executive proceedings were renewed. The beneficiary has already received

<sup>2</sup> <http://reyestr.court.gov.ua/Review/69607740>

<sup>3</sup> <http://reyestr.court.gov.ua/Review/70597487>

<sup>4</sup> <http://reyestr.court.gov.ua/Review/72288613>

<sup>5</sup> <https://www.kmu.gov.ua/ua/npas/249110200>

<sup>6</sup> <http://reyestr.court.gov.ua/Review/67601731>

<sup>7</sup> [www.reyestr.court.gov.ua/Review/68820785](http://www.reyestr.court.gov.ua/Review/68820785)

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pension arrears (about UAH 22 000). Nevertheless, her bank account was blocked yet again, and future payments are unlikely to be forthcoming.

## Ukrainian law

According to article 129<sup>1</sup> of the Constitution of Ukraine: "*Court brings a decision by the name of Ukraine. The decision is obligatory for enforcement*".

Article 370 of the Administrative Procedure Code provides the following: "*Each enforced court decision is binding to all sides of the case, their heirs, and to all bodies, enterprises, institutions, public officials and private persons. It should be executed throughout all the territory of Ukraine...*".

Article 382 of the Criminal Code provides liability for criminal offence of intentional obstruction to court decisions' enforcement.

## International Law

The issue of pensions is also regulated by International Human Rights Law.

Thus, Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>8</sup> prescribes that every natural or legal person is entitled to the peaceful enjoyment of his possessions. The European Court of Human Rights (ECtHR) established in its case-law that 'If a Contracting State has in force legislation providing for the payment as of right of a welfare benefit, whether conditional or not on the prior payment of contributions, that legislation must be regarded as generating a proprietary interest falling within the scope of Article 1 of Protocol No. 1 for persons

<sup>8</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, signed on 04.11.1950 in Rome, and Protocol 1 to the Convention, signed in Paris on 20.03.1952, were ratified by Ukraine on 17.07.1997 by Law № 475/97-BP.

<sup>9</sup> *Stec and others v. the United Kingdom*, decision as to the admissibility of applications nos. 65731/01 and 65900/01, 6 July 2005, par. 54.

<http://hudoc.echr.coe.int/eng?i=001-70087>

<sup>10</sup> *Shchokin v. Ukraine*, nos. 23759/03 and 37943/06, 14 October 2010, par. 50.

<http://hudoc.echr.coe.int/eng?i=001-100944>

<sup>11</sup> *Burdov v. Russia*, no 59498/00, 7 May 2002.

satisfying its requirements'.<sup>9</sup> Moreover, in this decision the ECtHR defined that: 'Although Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14.'

In other judgments the Court specified that any interference by a public authority with the peaceful enjoyment of possessions should be made in accordance with the law.<sup>10</sup>

Article 6 of the European Convention of Human Rights guarantees a right to a fair trial, which includes a right to enforcement of judgements made in a court of law.<sup>11</sup> The ECtHR has repeatedly found a breach of Article 6 in individual applications against Ukraine on account of failure to enforce final court judgments<sup>12</sup>. The non-enforcement of final national courts' decisions is a systemic problem in Ukraine<sup>13</sup>.

## Conclusion

Failure of the State to find reasonable solutions to enforce the final judgments undermines the respect for the national court system and, in general, contradicts the rule of law. In the context of access to pensions and social benefits for the most vulnerable categories of residents in the NGCA, such a policy challenges equality and non-discrimination and undermines the social protection and inclusion of the elderly, people with disabilities and other vulnerable individuals.

<sup>12</sup> *Yuriy Nikolayevich Ivanov v. Ukraine*, no. 40450/04, 15 November 2009.

<http://hudoc.echr.coe.int/eng?i=001-95032>

<sup>13</sup> *Burmych and others v. Ukraine*, nos. 46852/13 and others, 12 November 2017.

<http://hudoc.echr.coe.int/eng?i=001-178082>. Also [problem](#) of non-enforcement was highlighted on Council of Europe, Round Table on Implementation of Court Judgments in Ukraine (<https://www.coe.int/en/web/execution/-/working-visit-to-the-constitutional-court-of-ukraine-and-bilateral-consultations-on-issues-related-to-the-execution-of-judgments>)

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Ukraine should take concrete steps to address the problem of the non-enforcement or delayed enforcement of national judicial decisions concerning access to pensions for residents of NGCA.

In the meantime, the plaintiffs in cases concerning renewal and payment of pension arrears would do well by appointing a representative residing in GCA in order to participate in the proceedings and receive payments on their behalf.

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