

Spurned: Elderly in Ukraine's Uncontrolled East Left to Fend for Themselves

More than a million citizens of Ukraine living in non-government controlled areas have been cut-off from their entitled benefits, or face a range of barriers and obstacles when seeking to obtain them. Such practice contradicts the international obligations of Ukraine and is discriminatory towards its citizens. The Government of Ukraine should urgently resume payment of pensions to all its citizens, irrespective of their place of residence

Background

Article 46 of the Constitution of Ukraine guarantees the right of citizens to social protection including pensions. According to the Law of Ukraine *On State Pension Provision*, all citizens of Ukraine have the right of receiving pension upon reaching a defined age, due to disability or other reasons. However on November 7, 2014, the Cabinet of Ministers of Ukraine issued Decree #595 restricting the right to pensions and social benefits for citizens of Ukraine residing in the non-Government controlled areas (NGCA). This left approximately 1,200,000 people without benefits that are critical for their subsistence. This policy was challenged in the court and on October 16 2015 the High Administrative Court of Ukraine issued a decision declaring the Resolution of the

Cabinet of Ministers #595 illegal and void. However, this court ruling has never been enforced. As of today, in order to access social benefits and pensions, residents of NGCA have to move to the territory controlled by the government (GCA) and register as IDPs. This requirement has forced many people to register as internally displaced persons (IDPs), but in practice means that many people are forced to periodically “commute” from NGCA to GCA to receive their pensions. In response to this, the Government introduced further restrictions. In 2016 the Cabinet of Ministers adopted a number of Resolutions (365, 167, 964) laying out the framework for access to social payments and pensions for IDPs and outlining the procedure for suspension, verification and reinstatement. At the same time the Government suspended social payments and pensions to some 500,000-

600,000 IDPs in eastern Ukraine, pending verification of their continued presence in the place of IDP registration.

Challenging International Law and Practice

Ukraine is party to the international conventions guaranteeing the rights for social protection. Notably, rights for social security and adequate standards of living are protected by articles 22 and 25 of the Universal Declaration of Human Rights and by Article 9 of the International Covenant on Economic, Social and Cultural Rights. The ILO Convention 102 on Social Security sets the minimum standards of protection, which includes payments of pension and social benefits. Article 12 of the European Social Charter protects the right to social security, including pensions, which can be broadly described as protecting the material conditions necessary for an adequate standard of living and from life-threatening and degrading conditions of poverty and material insecurity. Pension entitlements fall within the scope of the right to property guaranteed by Article 1 of Protocol 1 to the European Convention on Human Rights. It follows that any interferences with that right must be based on law, must pursue a legitimate aim and strike a fair balance between the interests of the individual and those of the public. They must also not impose a heavy and disproportionate burden on citizens. The discontinuation of pension entitlements may therefore constitute an interference with the right to peaceful enjoyment of possessions.

European Court Practice:

Mr Mahmut Grudić and Ms Ljutvija Grudić (husband and wife) lodged a case against Serbia at the European Court of Human Rights (ECHR) in 2008. Both applicants had been granted disability pensions by the Serbian Pensions and Disability Insurance Fund.

However, pension payments for Ljutvija ceased during the war in Kosovo and the pension of Mahmut was annulled immediately after the conflict. The Serbian Pension Fund adopted a formal decision to suspend payment of Grudićs' pensions because Kosovo was under international administration. The couple took the case to the District Court and won. The Serbian Pension Fund appealed stating that its decision was based on the binding order of the Ministry of Social Policy of Serbia. The Supreme Court of Serbia upheld the decision of the court of the first instance. However, the Serbian Pension Fund decided to suspend resumption of pension payments until that time when all issues between the Serbian authorities and the international administration in Kosovo would be resolved. The Grudićs took the case to the ECHR and won. The Court unanimously decided that Serbia shall pay both compensation and retroactive pension payments due from the date they were frozen together with interest.

The reasoning of the Serbian Pension Fund is similar to the approach currently taken by the government of Ukraine: (1) the pensions were suspended until the political solution of the conflict is resolved; (2) the suspension was based not on the law but on acts of the Government. This case provides some insight on how policies of the Ukrainian Government might be viewed by the ECHR

A Discriminatory and Unjust Policy

As enacted by the government of Ukraine, the abovementioned policies establish additional adverse conditions for those citizens of Ukraine residing in NGCA in order to receive the benefits to which they are entitled. Namely, these include:

- citizens are forced to change their place of residence and go through an additional verification and identification process.
- citizens are not permitted the right to power of attorney and cannot designate someone to represent their interests on the

territories where state bodies of Ukraine function.

The current practice places additional burdens on people and penalises them for residing on the conflict-affected territory of eastern Ukraine. Linking pensions to IDP registration forces people to undertake frequent travel between checkpoints separating GCA from NGCA. This generates additional expenses for travel and too often means that court fees are incurred by people seeking to restore pensions. Travel through checkpoints also increases security risks for people. Particularly difficult is the situation of those pensioners who have chronic illnesses or disabilities. These people are virtually cut off from accessing their pensions. Their health conditions often do not allow them to travel to GCA. Due to the ban imposed by the Government, they cannot provide anyone with power of attorney to represent their interests in GCA. Although it is difficult to assess the exact number of such people living in NGCA, the NRC telephone hotline regularly receives calls from elderly citizens living in NGCA who have no relatives to support them and are not able to travel. The conflict is the primary cause of their suffering; however, the existing government policy has made their lives even more difficult since it blocks the opportunity for such people to access their pensions in order to obtain such critically important items as food and medicine.

Case from Donetsk

The NRC hotline received a call from Elena Nikolayevna, 84, who lives in Donetsk. Elena Nikolayevna was disabled before retirement, but her illness has become worse and she can now hardly move around her apartment. At the beginning of the conflict, her relatives still lived in Donetsk and helped Elena Nikolaevna to travel through the check points to government controlled territories in order to re-register her pension account in Kurakhove, where state institutions of Ukraine function. Following the restrictions imposed by Government Resolution #365, the payment of Elena Nikolayevna's pension stopped. Now, Elena Nikolaevna is in Donetsk alone, she has no one to help her cross the frontline and she has no money to rent an apartment in Kurakhove in order to stay there for the time needed to go through the verification procedure and all the checks. Elena is not even physically able to stand in long-lines at banks and at the social protection office. In such a situation, Elena Nikolaevna simply does not know what to do. To help Elena Nikolaevna and hundreds of pensioners like her, policy change is needed. Such people cannot wait years until the conflict is resolved.

NRC recommendations:

- Pension is a property of a person. No additional requirements should be imposed on people to access their property. Pension payments should be de-linked from IDP status and from establishing residency in GCA.
- The decision of the High Administrative Court from October 16, 2015, which declared the Resolution of the Cabinet of Ministers #595 as unlawful, should be implemented and Ukraine should regulate the payment of pensions by law.

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