



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



Credit: OCHA Ukraine/Y.Maloletka

### KEY MESSAGES

The Government of Ukraine should ensure that all Ukrainian citizens have equal access to pensions regardless of their place of residence or registration as internally displaced persons (IDPs). This entails:

- Resuming payment of pensions to all individuals irrespective of their place of residence or registration.
- De-linking the payment of pensions from IDP registration.
- Adopting the draft law that would enable residents of non-government controlled areas of Ukraine (NGCA) to receive pensions without the need to register as IDPs. They can receive their pension on Government-controlled territory through Ukrainian banks.
- Establishing a procedure to pay pensions that have accumulated in arrears, including the necessary allocation in the state budget.

### IMPACT ON SOCIAL COHESION

If the Government of Ukraine implements these recommendations<sup>1</sup>, all eligible citizens and residents of Ukraine will receive their pensions on an equal basis and in dignity, regardless of their place of residence and registration. Pensioners, who are among the most vulnerable people affected by the conflict, will be able to meet their basic needs without undue hardship, a significant stride towards ensuring they live in dignity. Having paid into the pension system for years, they will receive what they deserve and will perceive the system as fair and accountable, strengthening their trust in state institutions. The elements of social cohesion are essential for sustainable peacebuilding and for achieving a truly sustainable development in line with Ukraine's commitment to the 2030 Agenda for Sustainable Development and implementation of Sustainable Development Goals (SDGs).

To guarantee that no older person is left behind, including those that may be internally displaced, policy- and decision-makers have been charged with developing comprehensive social protection systems based on the principle of universality under the 2030 Agenda for Sustainable Development. Implementation of SDGs 1, 5, 10, 11 and 16<sup>2</sup> would also contribute to social inclusion of the population affected by the conflict by ensuring access to social services and reforming pension insurance based on principles of fairness and transparency. Furthermore, when assessing progress made on social protection, countries are specifically requested to disaggregate data by age, since this provides evidence about the situation of older persons.

### GENERAL OVERVIEW

The main objective of pension systems globally is to prevent poverty and provide income security to older women and men. Any Government reform must balance pension adequacy and financial stability.<sup>3</sup>

As of August 2014, 1,278,200 pensioners were registered in the non-government-controlled area (NGCA). In November 2019, as reported by the Pension Fund, only 622,200 pensioners with residence registration in the NGCA continued to receive pensions. The proportion of persons receiving pensions remains under 50 per cent.

1. See UPR recommendation: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/000/33/PDF/G1800033.pdf?OpenElement>.

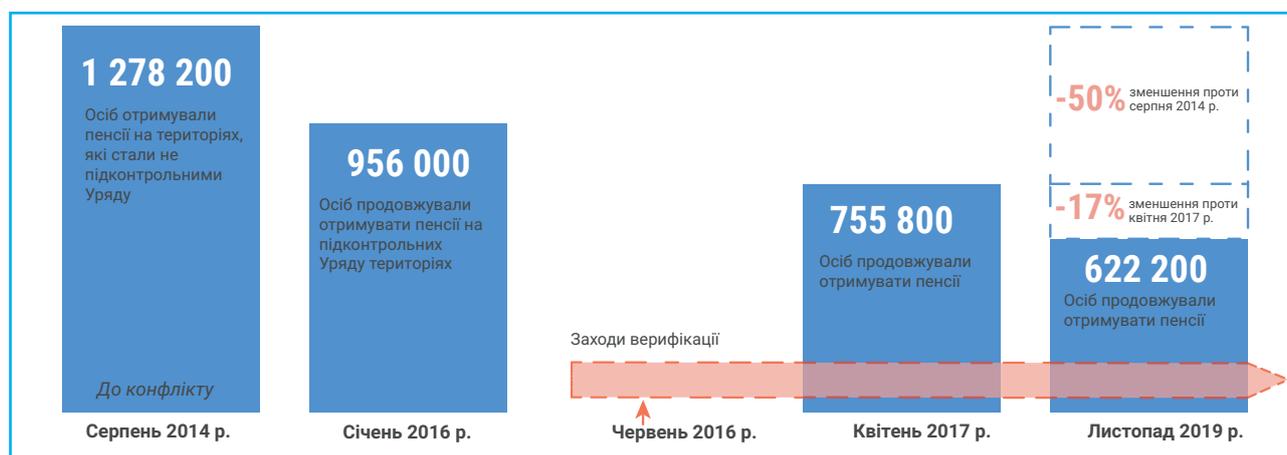
2. For example, SDG targets 10.2, 10.3 and 16.b.1 specifically refer to reducing inequality and providing peace and justice, including by eliminating discriminatory laws, policies and practices. For more information, please refer to the ILO Social Protection Policy Paper 17, available from <https://www.social-protection.org/gimi/RessourcePDF.action?id=55212>.

3. Pension is key element of SDG target 1.3. Further information is available from <https://www.social-protection.org/gimi/ShowWiki.action?id=63>.

Since Government institutions ceased to operate in certain areas of Donetsk and Luhansk regions in November 2014, persons from the NGCA have been able to receive pensions only if they travel to the government-controlled area (GCA) to register as an IDP. In 2016, strict verification procedures were introduced. Over time this linkage between IDP registration and eligibility for pension has disenfranchised different groups of people, all holding the legitimate right to receive a pension:

1. In 2014, 160,000 pensioners unable to leave the NGCA and travel to GCA were the first to be impacted by the IDP registration requirement. This group included people who are not mobile, for example: older persons who could not travel or who did not understand the requirement and procedure; persons with disabilities; and persons with low income.
2. Of the total number of pensioners in the NGCA as of August 2014, 75 per cent did follow the requirement and registered as IDPs in the GCA. Many maintained their actual place of residence in the NGCA and frequently crossed the contact line back and forth. The authorities were aware of the situation and accepted it. In 2016, the authorities introduced measures to verify if pensioners with IDP registration had indeed moved to the GCA. The measures had the goal of stopping the payment of pensions to persons who actually resided in the NGCA. The verification measures included home visits by social workers, physical verification at the bank where pensions are paid out, and cross-checking of lists provided by the State Border Guard Service (measuring the number of days persons spent in the NGCA) and the State Security Service.
3. In 2017, another trend emerged. The Pension Fund halted pension payments to IDP-pensioners who had acquired residence registration in the GCA and consequently relinquished their IDP certificates. This action arose from an administrative procedure requiring the transfer of “paper files” from a regional Pension Fund department in the former place of residence as a pre-condition for the payment of pensions in a new location. Only holders of an IDP certificate are exempted from this rule; they receive their pension based on information in the electronic database, without the transfer of “paper files”. There is no clear data on the scope of this problem, but the number of affected persons is likely to grow. In August 2019, the Cabinet of Ministers adopted Resolution no. 788<sup>4</sup> that was expected to simplify access to pensions for persons who relocated from NGCA and relinquished their IDP certificates. Under the provisions of the Resolution, no IDP certificate shall be requested from such individuals to access their pensions. However, in practice, the Pension Fund continues to request IDP certificates from all persons whose place of residence registration is listed as NGCA. Moreover, the document establishes a ground for the suspension of pension payment if individuals return to their previous place of residence in NGCA.<sup>5</sup>

The following diagram based on the data from the Pension Fund<sup>6</sup> illustrates the significant reduction of the number of persons from the NGCA who receive pensions:



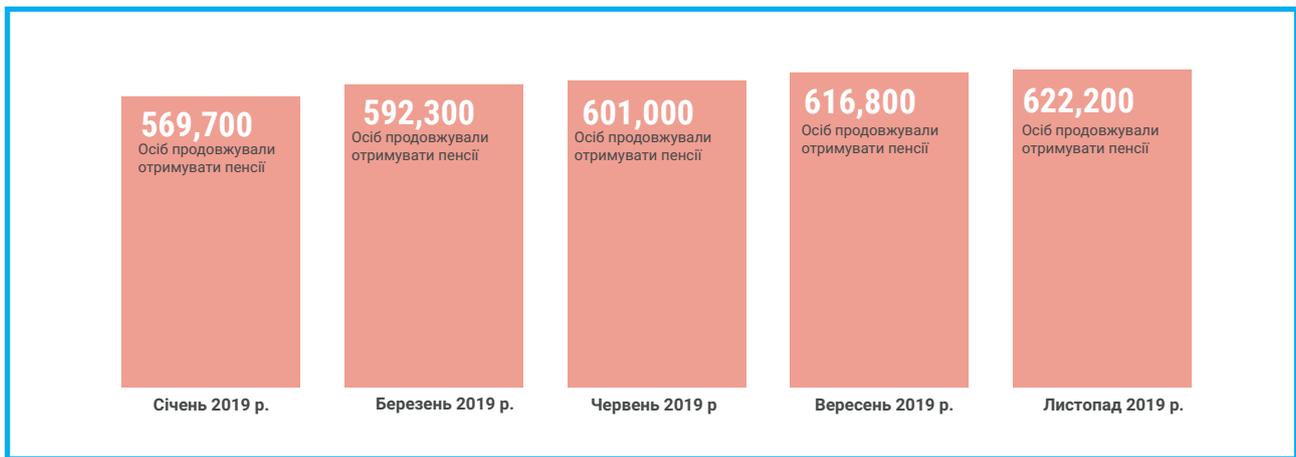
\*Note: the data does not track deaths in NGCA, nor does it track individuals who reached pension age since August 2014 and reside at NGCA. There is no available data on this.

These figures demonstrate that based on verification requirements the Pension Fund has been suspending pensions of IDP-pensioners who were suspected of not residing permanently in the government-controlled territory. Each suspension meant that individuals faced a gap in receiving the monthly income they depend upon. Over 2019, the number of persons receiving pensions increased by 10 per cent, from 562,000 in December 2018 to 622,200 in November 2019. This positive development may be linked to several positive court judgements,

4. The Resolution of the Cabinet of Ministers is available at <https://www.kmu.gov.ua/npas/pro-vnesennya-zmin-do-deyakih-postanov-kabinetu-ministriv-ukrayini-s210819>.

5. To note that a similar paragraph of the Resolution of the Cabinet of Ministers no. 365 is recognized ex delicto by the Ukrainian court.

6. Monthly updates used to be published at the official website of the Pension Fund of Ukraine. However, since July 2018, they are no longer publicly available.



including a landmark judgment of the Supreme Court<sup>7</sup> issued in May 2018. The Court restored the rights of an IDP whose pension payments had been terminated as the result of verification measures. In July 2018, the Kyiv Appellate Administrative Court ruled that the authorities should no longer verify the residence of IDPs or suspend their pension payments based on information gathered during these home visits. The ruling rendered null and void the relevant provisions of the Cabinet of Ministers Resolutions #365 and 637.<sup>8</sup> In December 2018, the Supreme Court confirmed this decision.<sup>9</sup> The Government needs to review its regulations concerning the payment of pensions and social benefits to pensioners from the NGCA in line with this positive court practice. Even when people have their pensions reinstated, they cannot receive payment for the arrears that accumulated when their pension was suspended. The Government explains that it must develop a separate procedure for paying these arrears. Adoption of this procedure has been pending since April 2018.

## MAIN CHALLENGES AND RECOMMENDATIONS

### De-linking the right to pension from IDP registration



The current policy distorts statistics, complicates planning for IDPs, and imposes large administrative costs through the necessity of conducting multiple rounds of verifications.

In November 2019, draft law #2083-d<sup>10</sup> was registered in the Verkhovna Rada of Ukraine. The adoption and enforcement of this draft law would enable individuals with the residence registration in NGCA and in localities along the contact line to access their pension payments in the territory controlled by the Government without having to register as IDPs. Two Parliamentary Committees recommended its adoption in the first reading.<sup>11</sup> The draft law introduces amendments to the existing legislation, including the Law of Ukraine 'On Mandatory State Pension Insurance'. The amendments confirm that payment of pensions shall be conducted on general grounds for all citizens of Ukraine through authorized banking institutions. Pensioners from NGCA will be able to apply for and access their pensions, either personally or through an authorized representative, at any pension department in the Government-controlled territory. Furthermore, pensions for people from NGCA shall be paid retroactively without any time limitations.

*"I have earned it (pension), so I should receive it, right? I worked for 43 years."*

*Resident of a village near the contact line*

*"I am 84 years old. How could I get to Popasna (4 km one way) for the identification? I cannot walk there."*

*Resident of Novooleksandrivka*

7. Supreme Court, judgment of 3 May 2018 case no. 805/402/18, text available at <http://reyestr.court.gov.ua/Review/73869341>. Upheld in the final judgment of the Grand Chamber of the Supreme Court as of 4 September 2018 available at <http://www.reyestr.court.gov.ua/Review/76945461>.

8. Kyiv Appellate Administrative Court, judgment of 4 July 2018 case no. 826/12123/16, text available at <http://www.reyestr.court.gov.ua/Review/75172804>.

9. Administrative Chamber of the Supreme Court, judgment of 20 December 2018 case no. 826/12123/16, text available at <http://reyestr.court.gov.ua/Review/78808062>.

10. Draft law on pension initially registered as 2083-d. This document replaced a former draft law no. 6692. The text in Ukrainian is available at [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=67473](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67473).

11. Committee on Social Policy and the Protection of the Rights of Veterans; Committee on Human Rights, De-occupation and Re-integration of the Temporarily Occupied Territories of Donetsk and Luhansk Oblasts, the Autonomous Republic of Crimea and City of Sevastopol, National Minorities and Inter-Ethnic Relations.

### Recommendation:

- Parliament to table draft law #2083-d for vote (the law provides for de-linking the payment of pensions from IDP registration) and adopt it without undue delay.

## Payment of accumulated arrears to IDPs whose pension was suspended



Persons maintain a right to claim pensions that have accumulated in arrears.

The Government of Ukraine has suspended the pensions of hundreds of thousands of persons. Thus, these arrears have grown tremendously, and pose a risk for the state budget. In November 2019, the Pension Fund reported that pension arrears owed to persons from the NGCA amount to UAH 86 billion (USD 3.58 bn). The Pension Fund has not set aside reserves to pay out this amount. Furthermore, if these debts are ultimately litigated at the European Court of Human Rights, Ukraine could find itself obliged to pay both material and moral damages. Since the Government has not yet developed a regulation for the payment of arrears, civil society with expert support from UN agencies prepared a draft document for the Government's consideration. Given the significant sum of accumulated pension arrears, draft law 2083-d foresees the payment of pension arrears in installments. An installment plan would provide financial support to vulnerable pensioners, gradually reduce the arrears and prevent harmful financial consequences for the State's budget.

### Recommendation:

- Ensure that persons whose pension was suspended receive it accumulated in arrears.

## Pensions to IDPs who relinquished their IDP certificates



Under the current scheme, people who relinquish their IDP certificate and obtain residence registration in their new homes are deprived of their pension. As a result, people face an unreasonable choice between receiving their pensions and obtaining residence registration in their new homes, which is necessary to secure certain rights, including the right to vote in local elections. Even though Resolution 788 adopted in August 2019 provides that IDPs who relinquish their certificates shall have access to pensions and social benefits without them, this norm does not preclude the same treatment as other citizens of Ukraine. On the contrary, such former IDPs procedurally remain considered as internally displaced and all the restrictive measures (including servicing of accounts in the Oshchadbank only and bi-monthly verifications) remain. State policy should facilitate, not impede, durable solutions for IDPs.

### Recommendations:

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

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



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

### Recommendation:

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

## ANNEX

### International standards

Even when a State is forced out of its own territory, or has less control over the territory, international human rights law provides that it has positive obligations toward persons residing there: it must still undertake “measures in its power to take and [which] are in accordance with international law” to secure the human rights of individuals.<sup>12</sup>

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

The right to pension is interpreted as being of pecuniary nature and thus regarded as falling within the scope of the right to property.<sup>13</sup> Protocol I to the Convention for the Protection of Human Rights and Fundamental Freedoms, Article 1 (right to property), provides for the entitlement to the peaceful enjoyment of possessions, including pensions.

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

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

### National legal framework

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

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

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

On 4 September 2018, the Grand Chamber of the Supreme Court issued a decision in an “exemplary case”<sup>14</sup> confirming that the law on pensions has greater legal force than these resolutions, and therefore the suspension of pensions on the basis of such resolutions is unlawful and constitutes an unjustified interference with the applicant’s right to property. Despite this decision by the highest court, the regulations have not yet been amended.

On 20 December 2018, the administrative chamber of the Supreme Court confirmed that the residence verification requirements for IDPs introduced by Cabinet of Ministers Resolutions #365 and #637 contradicted Ukrainian legislation. The Court found that they limited access to pensions and social security and resulted in discrimination against IDPs as compared to other Ukrainian pensioners.<sup>15</sup> This final ruling invalidated provisions of these resolutions relating to the verification of an individual’s place of residence.<sup>16</sup> Thus, the authorities can no longer conduct residence verification of IDPs and suspend pension payments on these grounds. The Cabinet of Ministers needs to amend the mechanism for the payment of pensions and social benefits to IDPs in line with this court decision. On 20 September 2018, deviating from its previous case-law<sup>17</sup>,

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

13. See *Müller v. Austria* (ECtHR, 1975) and *Pichkur v. Ukraine* (ECtHR, 2013).

14. The Grand Chamber of the Supreme Court upheld the earlier Supreme Court judgment of 3 May 2018 case no. 805/402/18. Text is available from <http://www.reyestr.court.gov.ua/Review/76945461>. A judgment delivered in an “exemplary case” (under art. 291 of the Code of Administrative Procedure of Ukraine) means that 1) it will be used as a model decision in similar cases (the judgment sets out the characteristics of cases that would qualified as similar to this one), 2) similar cases will be considered “non-complex” and be heard faster, and 3) in similar cases, there are only two grounds for cassation appeal.

15. The Supreme Court upheld the earlier Kyiv Appellate Administrative Court judgment of 4 July 2018 case no. 826/12123/16., text available from <http://reyestr.court.gov.ua/Review/78808062>.

16. The Procedure for exercising control over the payment of social benefits to internally displaced persons at the place of their actual residence/stay and paras. 7-9, 13 of the Procedure for allocation (renewal) of social benefits to internally displaced persons, approved by the Cabinet of Ministers Resolution no. 365; as well as para. 1(10) of the Cabinet of Ministers Resolution no. 637.

17. Supreme Court, judgment of 12 April 2017 case no. 6-51ц17, text available from <https://oda.court.gov.ua/sud1590/pravovipoziciivsu/6-51cs17>.

the Supreme Court ruled that absence of IDP registration cannot be a ground for denial of the allocated social insurance benefits to persons residing in NGCA.<sup>18</sup> This court decision indicates that there is a gap in the national legal framework that must be filled to regulate the provision of social benefits to persons from NGCA. The case-law of the European Court of Human Rights which forms part of Ukraine's legal framework interprets pensions as falling within the scope of the right to property. This position was confirmed in the case *Pichkur v. Ukraine* (2013)<sup>19</sup>: "If a Contracting State has legislation in force providing for the payment of a welfare benefit as a right, whether conditional or not on the prior payment of contributions, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for those satisfying its requirements." In this case, the Court found that suspension of the payment of pension to a citizen who moved abroad constitutes interference with his/her right to property and creates an unjustified difference in treatment amounting to discrimination. The applicant was awarded 5,000 EUR in pecuniary and non-pecuniary damages.

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18. Supreme Court, judgment of 20 September 2018 case no. 243/3505/16-ц, text available from <http://reyestr.court.gov.ua/Review/76812061>.

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