



## The UN Human Rights Committee

The Project «Advocacy, Protection and Legal Assistance to the Internally Displaced Population of Ukraine» is launched by CF «Right to Protection» with support of United Nations High Commissioner for refugees (UNHCR).

The Project is aimed to monitor violations of rights' and provide direct legal support to internally displaced population alongside with other groups affected by the conflict. The Project enhances the state authorities and civil sector potential and strengthens the legal and regulatory framework.

The Project is delivering legal assistance and other protection services to internally displaced people and conflict-affected people within Ukraine.

In response to Your public request to information about violations of the International covenant on civil and political rights, please find attached the following information which was collected by CF "Right to Protection" during implementation of the Project.

### **PROBLEM OF NON-PAYMENT OF PENSIONS TO PENSIONERS RESIDING IN THE NON-GOVERNMENT CONTROLLED AREAS OF UKRAINE ("NGCA") AND HAVING NO POSSIBILITY TO MOVE TO THE TERRITORIES UNDER THE CONTROL OF THE GOVERNMENT OF UKRAINE ("GCA") IN ORDER TO HAVE ACCESS TO THEIR PENSION PAYMENTS**

### **VIOLATION OF PENSIONERS WITH DISABILITIES' RIGHTS AS GUARANTEED BY THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**

The present information represents a pattern of reliably attested violations by the Government of Ukraine of **rights to equality before the law and freedom to choose one's residence** of Ukrainian pensioners with disabilities residing in the non-government-controlled areas of Ukraine.

The armed conflict that broke out in Eastern Ukraine (Donetsk and Luhansk regions of Ukraine) in April 2014 resulted in massive flux of internally displaced persons (including pensioners) and the Government of Ukraine's inability to exercise their powers (or to exercise their powers in full) in the NGCA. In particular, in June 2014 the armed groups operating in



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Eastern Ukraine started to seize offices of the National Bank of Ukraine and other regional financial institutions in Donetsk and Luhansk regions. The inability of the Government of Ukraine to exercise their powers in the NGCA significantly restricted if not deprived them of the possibility to effectively maintain social benefit payments in the territories outside their control.

On 24 July 2014, Ukrainian postal service “Ukrposhta” suspended its operations in Donetsk and Luhansk regions being outside the control of the Government due to frequent attacks on its vehicles and employees by the armed groups operating in Eastern Ukraine.

On 6 August 2014, the Board of the National Bank of Ukraine adopted Resolution No. 466 providing for the suspension of all financial transactions in the NGCA in order to secure the lives and health of employees of banking institutions and their clients, and ensure the stability of the banking system of Ukraine as a whole.

On 7 November 2014, the Cabinet of Ministers of Ukraine adopted Resolution No. 595, which approved the interim order on financing publicly funded institutions, paying social benefits to population and providing financial support to certain enterprises and organizations in Donetsk and Luhansk regions (the said Resolution came into force on 11 November 2014). According to the latter, in the settlements of Donetsk and Luhansk regions, where the State authorities temporarily do not exercise their powers in full, expenditures from the State Budget, the Pension Fund of Ukraine and other funds of compulsory State social insurance will only be carried out after the State authorities regain control over the territories outside the control of the Government of Ukraine.

Accordingly, pensioners residing in the NGCA had their pensions payments suspended starting from August 2014.

After the beginning of the armed conflict, pensioners residing in the NGCA could apply to any department of the Pension Fund of Ukraine in the government-controlled areas of Ukraine (“GCA”) to resume their pension payments without any additional requirements. With the adoption of further resolutions of the Cabinet of Ministers of Ukraine, pensioners were required to also provide their IDP certificates in order to have access to their pension payments. In particular, on 1 October 2014 the Cabinet of Ministers of Ukraine adopted Resolution No. 509 “On the registration of persons displaced from the temporarily occupied territory of Ukraine and Anti-Terrorist Operation area”, which established the procedure for issuing certificates of registration as IDPs. On 5 November 2014, the Cabinet of Ministers of Ukraine adopted Resolution No. 637 “On welfare payments to persons displaced from the temporarily occupied territory of Ukraine and anti-terrorist operation area”, enshrining that the assignment and continuation of social benefit payments to IDPs is carried out in accordance with his or her place of residence, which should be confirmed by a certificate of registration as an IDP issued in compliance with Resolution of the Cabinet of Ministers of Ukraine No. 509. Subsequently, due to a number of amendments made to the said resolutions, IDPs were only provided with an opportunity to receive pensions in bank accounts with PJSC “State Savings Bank of Ukraine” (“Oschadbank”). In 2016, an obligatory physical identification of IDPs with electronic pension certificates every 6 months in “Oschadbank” was introduced (for those without an electronic pension certificate such identification was to take place every 3 months). On 08 June 2016, the

Cabinet of Ministers of Ukraine adopted Resolution No. 365 “On certain questions of exercising social payments to IDPs”, providing, in violation of the Constitution and laws of Ukraine, for the possibility of suspension of pension payments to all IDPs who are not permanently present at the place of residence specified in their IDP certificates, as well as to persons who have had their IDP certificates cancelled. According to official statements of Ukrainian authorities, the declared goal of such measures is to tighten control over pension recipients, since the Pension Fund of Ukraine authorities cannot be sure that people receiving pension payments are still alive.

To sum up, in order to have access to their pension payments, residents of the NGCA have to leave the NGCA, move to the GCA, register as IDPs and continue residing in the GCA. This is the sole mechanism available as of today, which guarantees access to pensions for pensioners from the NGCA.

It is also worth mentioning that on 12 May 2015, the Board of the Pension Fund of Ukraine adopted Resolution No. 9-1 providing that the exercise of certain powers of territorial departments of the Pension Fund of Ukraine in Donetsk and Luhansk regions, which were located in the territories where the State authorities temporarily do not exercise their powers, are temporarily transferred to other departments of the Pension Fund of Ukraine, which are fully operational. Such territorial departments have been de-jure moved to the GCA as legal entities, have been re-registered, however, many of them currently do not exercise their powers and are still not de-facto operational at their new locations in the GCA. As provided for by current pension legislation, powers of appointment (recalculation) and payment of pensions to pension recipients residing in the NGCA cannot be once again transferred from such de-facto non-operational departments to other de-facto operational departments in the GCA. Thus, the Government of Ukraine’s failure to ensure the effective functioning of re-registered Pension Fund of Ukraine departments, pensioners from the NGCA are de-facto deprived of the opportunity to receive pensions even if moved to the GCA and register as IDPs.

At the same time, certain categories of population are being prevented from receiving pensions in general by the Government of Ukraine. In particular, no mechanism for resuming pension payments for pensioners residing in the NGCA and having no physical ability to leave their places of residence and, therefore, move to the GCA, register as IDPs and continue residing there due to their disabilities has been introduced by the Government of Ukraine as of today.

Referring to the case of **Mr. Victor Olenets**, a beneficiary of the CF “Right to Protection”, representing a pattern of reliably attested violations of rights of Ukrainian pensioners with disabilities residing in the NGCA, his health condition is critical. In particular, having suffered from a psychological trauma due to the death of his only son, he developed malignant neoplasms in the area of the carotid triangle of the neck. In 2008, he underwent surgery thereon and was prescribed chemotherapy with follow-up preventive examinations every six months. In 2013, he had a stroke. As a result of it, he lost ability to move independently outside his apartment and is in need of continuous treatment. In May 2014, any further medical treatment was stopped due to the beginning of the armed conflict in Eastern Ukraine. The beneficiary and his wife lived in the area of active hostilities, which was under frequent artillery shelling in 2014-2015. As from 10 August 2014 until 5 September 2014, the beneficiary and his wife lived in a crude bomb shelter. Due to critical living conditions therein, his health has deteriorated. In

December 2015, he had a second stroke, which led to his complete paralysis. According to information from his outpatient card as of 18 October 2018, he is not able to move independently and requires constant medical attention. The beneficiary's movements are extremely limited and slow. His face is partially drooping on one side: his face muscles are frozen and his blinking is rare. He speaks very little and is only able to do so with great difficulty. He often only manages single words at a time, which are sometimes slurred or whispered. He cannot sit upright or change his position by himself.

Since the beginning of the armed conflict in Eastern Ukraine in April 2014, a large number of residents of Donetsk and Luhansk regions moved to other regions of Ukraine under the control of the Government of Ukraine. Due to his complete paralysis and difficult health condition requiring continuous nursing and care, Mr. Olenets is unable to leave the area. His health condition does not permit displacement, which would lead to long waits in queues at entry-exit checkpoints being not adapted for needs of people with disabilities, and being deprived of necessary medical care facilities. Moreover, according to conclusions of medical experts, Mr. Olenets is not transportable. He also cannot be provided with safe transportation to the GCA due to both intensive fighting and his disability. As a result, any attempt to travel to the GCA will subject Mr. Olenets's life to an instant danger as he may not survive a long trip and crossing the contact line. In addition, Mr. Olenets does not have any relatives in the GCA who he could stay with, or who could provide him with financial support. His daughter-in-law died in 2016, and his only grandson died on 27 November 2018. These losses contributed to further deterioration of his health.

As of today, the only income of his entire family is the pension of his wife, which is UAH 3100 (about EUR 105). Mr. Olenets's wife periodically travels to the GCA to receive her pension payments. After the beginning of the armed conflict, she registered as an IDP and got an IDP certificate in order to have access to her pension. She has not de-facto moved to the GCA.

The beneficiary's wife permanently cares for her husband. Mr. Olenets being not able to take care of himself, his wife cannot leave him alone for a long time. She is an elderly person suffering from chronic cerebrovascular insufficiency of II degree. She also has problems with her spine.

According to current pension legislation, Mr. Olenets's wife (as Mr. Olenets's case represents a pattern of reliably attested violations of rights of Ukrainian pensioners residing in the NGCA, the same applies to any other relatives of pensioners with disabilities residing in the NGCA) has no right to receive her husband's pension on his behalf while in the GCA. In most circumstances, Ukrainian legislation provides for mechanisms allowing persons with disabilities to realize their right to apply to State authorities without being present in person in premises of State authorities. For instance, they may apply for home visits by representatives of State bodies or for some services, such as pension delivery, to be provided through the State postal service. In addition, they may give another person power of attorney, which should be further certified by notaries. An authorized representative may represent persons with disabilities' interests before State bodies, including the Pension Fund of Ukraine, open accounts, withdraw money, conduct banking operations and other actions on their behalf. In addition, Ukrainian legislation on notary services provides for the possibility of notarization

through on-site visits to persons with disabilities' homes. However, none of these mechanisms is available to Mr. Olenets because his place of residence is in the NGCA.

### **Violation of the right to equality before the law**

#### ***Article 26***

*All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.*

1) Art. 46 of the Constitution of Ukraine guarantees the right of all citizens of Ukraine to social security. Art. 1 of the Law of Ukraine "On Pensions" and Art. 8 of the Law of Ukraine "On Compulsory State Pension Insurance" guarantee the right to pension provision. Art. 85 of the Law of Ukraine "On Pensions" guarantees the right to receive a pension irrespective of pensioners' place of registration. Art. 49 of the Law of Ukraine "On Compulsory State Pension Insurance" contains an exclusive list of grounds for termination of pension payments none of which corresponds to Mr. Olenets's and similar ones' cases. Nevertheless, Mr. Olenets has been deprived of his pension with no effective possibility of resuming it being available to him.

Whereas mobile pensioners from the NGCA have physical ability to leave the NGCA, move to the GCA, register as IDPs and continue residing in the NGCA in order to be able to resume payment of their pensions, no mechanism for resuming pension payments for pensioners residing in the NGCA and having no physical ability to leave their places of residence and, therefore, move to the GCA, register as IDPs and continue residing therein due to their disabilities has been introduced by the Government of Ukraine as of today.

We acknowledge the inability of the Government of Ukraine to exercise their powers in the NGCA in full, including their impossibility to maintain the presence of the Government's representatives who could deliver Government services in the NGCA. However, in 2014 the Government of Ukraine adopted legislation prohibiting execution of any notary acts in the NGCA. Therefore, any individual living in the NGCA and wishing to utilize notary services is required to go in person to the GCA to execute any notary acts. However, Mr. Olenets, for instance, as well as other pensioners with disability residing in the NGCA, cannot move to the GCA and, therefore, cannot apply to a notary for any notary acts, including empowering their relatives to act on their behalf in receiving their pensions due to their complete paralysis, disability or other severe health condition.

In light of this, the Government of Ukraine, by not delivering services in the NGCA, while both establishing a total ban on notary activities in the NGCA and not establishing an alternative mechanism for individuals in the Mr. Olenets's situation, prevented such persons with disabilities from equally enjoying their rights, as guaranteed by International Covenant on Civil and Political Rights. We submit that pensioners with disabilities from the NGCA are

deprived of equal recognition before the law due to Ukrainian Government's failure to take appropriate measures to provide access by such persons to the support they require in exercising their legal capacity in order to receive their pensions. We submit that **the Government of Ukraine's failure to introduce any alternative mechanisms for persons with disabilities from the NGCA to have access to their pensions, such as through notary acts, is in breach of Art. 26 of International Covenant on Civil and Political Rights.**

2) We submit that Mr. Olenets, as well as other pensioners with disabilities from the NGCA, are being discriminated against on the basis of their disability, which has the effect of nullifying an effective exercise, on an equal basis with others, of their right to equal recognition before the law, adequate standard of living and social protection. By tying the right to receive pension payments to registration as an IDP and movement to the GCA, and by banning carrying out any notary acts in the NGCA, the Government of Ukraine have provided no reasonable accommodation to ensure to pensioners with disabilities from the NGCA an effective exercise of their right to equal recognition before the law, adequate standard of living and social protection.

We compare Mr. Olenets's personal situation to that of pensioners who reside in the NGCA, but who, due to their satisfactory health condition and physical ability to relocate, have the possibility to move to the GCA, register as IDPs and permanently reside there in order to be able to receive their pensions. Being completely paralyzed and in need of continuous nursing, Mr. Olenets is not physically able to travel to the GCA and register himself with a new Pension Fund of Ukraine department for the purpose of having access to pension payments. Nor can he get access to these payments through notary services in the NGCA, which have been banned by the Government of Ukraine. We further argue that there are less restrictive means available to the Government of Ukraine than the wholesale suspension of pensions (such as using Internet to grant power of attorney to individuals located in occupied Abkhazia and South Ossetia, as has been done in Georgia). Referring to the case-law of the ECtHR, the development of banking services and information technologies no longer justifies largely technically motivated restrictions on persons receiving social benefits (see *Pichkur v. Ukraine*, § 53).

While acknowledging that there may be an objective and reasonable justification for the difference in treatment between pensioners from the GCA and those from the NGCA due to the Government of Ukraine's not exercising their powers therein to the same extent, we submit that a distinction between pensioners from the NGCA on the ground of disability cannot be justified. The existing domestic legal mechanism restricts the enjoyment by persons with disabilities living in the NGCA of their right to equal recognition before the law, adequate standard of living and social security, which is not justified by public interest. Yet, no separate legal mechanism enabling such persons to have access to their pension payments has been introduced by the Government of Ukraine. Taken together, the Government of Ukraine's actions disproportionately impact an already vulnerable segment of the population that is unlikely to be able to travel to vindicate their rights either in court or before State authorities.

Thus, there is no justification for a difference in treatment between pensioners residing in the NGCA and having physical ability to move to the GCA, register as IDPs and permanently reside there for being able to receive their pensions and those deprived of such ability due to

their disability. Persons with disabilities in the situation of Mr. Olenets having been discriminated against with respect to their right to equal recognition before the law, adequate standard of living and social security on the ground of disability, we contend that **the Government of Ukraine have not taken appropriate steps to ensure that such persons were equal before the law providing for the right to receive pensions without any discrimination, as enshrined in Art. 26 of International Covenant on Civil and Political Rights.**

**Violation of the freedom to choose one's residence**

*Article 12*


*1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*

The Government of Ukraine's requirement to permanently reside in the GCA for being able to receive pensions breaches the freedom to choose their place of residence of disabled pensioners in the situation of Mr. Olenets, since it financially pressures them to leave their chosen place of residence, move to the GCA, register as IDPs and permanently reside in the GCA. The Government coerces Ukrainian citizens into relocating not to avoid negative effects of the armed conflict, but solely for the purpose of obtaining their social benefits. In addition, pension legislation does not provide a mechanism for receiving pensions for people who cannot move to the GCA due to their disability.

**We submit that by only granting access to pensions to pensioners who have moved to the GCA, permanently reside therein and have valid IDP certificates, the Government of Ukraine breached pensioners with disabilities' from the NGCA right to freedom to choose their residence, as guaranteed by Art. 12 of International Covenant on Civil and Political Rights.**

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Best regards,  
President of CF "Right to Protection"



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Oleksandr Galkin

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