

### SUSPENSION OF SOCIAL AND PENSION PAYMENTS TO IDPs

#### BACKGROUND

- On 16 February the Ministry of Social Policy (MoSP) issued a letter ordering all MoSP regional offices to suspend social payments for IDPs until their residence address is verified either by the State Migration Services of Ukraine, or by personally visiting Department of Social Protection (DoSP). There is however no procedure for such a verification and it is not stipulated by current legislation, which makes it impossible to comply with.
- The process followed to establish the lists of IDPs whose payments are suspended is not known. No official explanation has been received so far despite requests from international and national organizations requesting clarification.
- Based on information collected by protection partners, the lists include:
  - Registered displaced persons who have not applied for permit to cross the line of contact;
  - Persons who are known to have crossed the line of contact for an extended period of time.
- Per a statement made by the Chief of Security Service of Ukraine<sup>1</sup> on 25 February 2016, bank cards and civil registration data may also have been used in identifying persons. Lists have not been made public and there is no individual notification so IDPs do not know if they are, or not, on these lists. Based on information collected in the field, it is reported that these lists include displaced people living in Government Controlled Areas (GCA) and who have never moved back to Non-Government Controlled Area (NGCA), therefore creating unnecessary anxiety and time consuming verification process.
- To date, and based on available information, lists have only been prepared for displaced persons registered in Dnipropetrovsk, Donetsk, Kharkiv, Luhansk, and Zaporizha oblasts. Estimates of the number of persons affected vary widely. The office of the Ombudsman has estimated that as many as 500,000 persons may be affected, though this is not confirmed.
- The types of benefits that have been suspended include benefits paid to displaced persons under CoM 505<sup>2</sup> but other types of social benefits including pensions (which are not linked to displacement) have been suspended as well.
- In Kharkiv region, these measures have led to the suspension of all social payments (whether IDP benefits or payment of pensions outside of IDP registration). Implementation varies widely between different branches and between the oblasts. Payments are suspended for 97,000 in Kharkiv. As a consequence, suspension has led to the cancelation of 22,000 IDP certificates in Kharkiv.
- The Pension Fund in Luhansk oblast has already suspended paying pensions to 47% of IDP pensioners registered in the Government Controlled part of the oblast.

#### RECOMMENDATIONS/KEY MESSAGES

- While recognizing that the Government of Ukraine has a duty to combat fraud, the Protection Cluster is concerned about the lack of transparency on the procedure followed and the lack of clear communication of the decision (and the criteria used) to those concerned. Clear instructions should be sent from the Ministry of Social Policy to its regional branches to ensure a systematic application of the procedure. Clear information should also be shared with the concerned individuals.
- The Protection Cluster is also concerned that thousands of IDPs are at risk of having their IDP certificate cancelled and being cut from the social payments including targeted IDP assistance and pension. Displaced persons must have access to social services, benefits, pensions and bank services without restrictions and limitations just as any other citizens of Ukraine.
- These verifications are in contradiction with the existing legislative framework and may lead to the cancellation of the IDP certificate outside of the existing grounds for cancellation. DoSP in the regions should inform internally displaced persons about the decision to cancel their certificate in accordance with the procedure prescribed by the Law "On ensuring the rights and freedoms of internally displaced persons" in Ukraine with the reasons and grounds for the cancellation of the corresponding certificates.
- The Government of Ukraine should de-link the pensions and social payments – which are an acquired right of all citizens who meet certain eligibility requirements and are in no way linked to displacement – to the additional requirement of registering as an IDP and establishing a residence in GCA. This additional requirement is discriminatory.
- Every effort should be made to ensure that pensions and State social assistance are accessible for all Ukrainians, including in the areas not controlled by the Government of Ukraine.

<sup>1</sup> <http://112.ua/obshchestvo/rozenko-godovoy-obem-vyplat-pereselencam-sostavlyayet-30-mlrd-griven-294350.html>

<sup>2</sup> Council of Minister Resolution 505 provides monthly targeted financial support to internally displaced persons

## KEY PROTECTION CONCERNS

- These measures and announcements have created anxiety amongst the IDPs as illustrated by a sharp increase in phone calls received by information hotlines.
- This suspension affects the most vulnerable, those with less mobility and access to information. Persons with specific needs, in particular older persons and persons with disabilities, may face difficulty in reaching offices of the Department of Social Protection to confirm their residence.
- Such measures also stigmatize further IDPs and are discriminatory against people coming from NGCA and Crimea who already have had to comply with CoM resolutions No. 637 and 595, stating that persons living in NGCA may receive pensions and other social payments only if they move to the GCA. Furthermore, according to Resolution No. 637 they have to register as IDPs to receive their benefits. The regulations have caused many people to register as IDPs only in order to continue receiving benefits to which they are entitled and which they need to survive, although these benefits are not linked to displacement.
- On the 16 October 2015, the Court of Cassation acknowledged that the Resolution No. 595 of the CoM of Ukraine (in the part which stopped payment of pensions to the people living in the areas controlled by armed groups) was illegal and obliged the Cabinet to resume the payments. Until now the court decision remains unimplemented.
- Displaced persons continue to face issues with accommodation, and frequently are forced to change domicile. As a result, some may have the same address in MoSP registries. The system itself has forced this situation, and it does not necessarily imply fraud.
- These latest measures have put significant pressure on DoSP that lack the staffing and resources to cope and to conduct the required spot checks.
- The delay to reinstate payments is unclear and could mean loss of a vital source of income for the most vulnerable IDPs.
- The procedure of verification is in contradiction with the Constitution of Ukraine and the Law of Ukraine "On ensuring rights and freedoms of internally displaced persons" (hereinafter - the "Law"). The newly introduced verification procedure and the transfer of personal data from the Security Services (SBU) and the State Border Service raises particular concern as personal data protection has to be safeguarded in social transactions. It remains unclear how exactly such data are retrieved from the ministries and other central and local authorities, bodies of local self-government, enterprises, institutions and organizations as set out in the Decree 136 of the Cabinet of Ministers from 18<sup>th</sup> February 2016.
- The Ministry of Social Policy violates Ukrainian law by depriving these citizens of the statutory benefits to which they are legally entitled to, depriving them of these critical social benefits and pensions which are often their only source of income. Suspension of IDP certificates implies not only IDP payments but also the suspension of pensions, maternity leave allowances, payments for children, medical treatment, access to banking services etc.
- This, in turn, is a violation of Article 46 of the Ukrainian Constitution which guarantees citizens Ukraine the right to social security and an adequate standard of living, as well as a violation of international standards including the UN Guiding Principles on Internal Displacement.
- There is no legislative procedure to invalidate IDP certificates. The exhaustive list of grounds, in respect of which an IDP certificate may be canceled according to Article 12 of the Law, is: (1) submission of an application of refusal from an IDP certificate; (2) committing a crime according to the list set out in paragraph 2 of Article 12; (3) return to an abandoned place of residence; (4) setting out for permanent residence abroad; (5) the submission of knowingly false information.
- Moreover, in the same Article, the Law directly stipulates that the decision to cancel an IDP certificate shall be made by the Head of DoSP at the place of IDP residence and given to internally displaced persons within three days from the decision. Currently there is no notification of such cancellation.
- The numerous changes and amendments to the current IDP law have led to confusion for the social services, in addition to the various CoM Resolutions. As a consequence, implementation varies in different parts of the country and creates legal insecurity for Ukrainian citizens .

## PROCEDURE TO REINSTATE SOCIAL PAYMENTS<sup>3</sup>

There is no systematic procedure across Ukraine for the resumption of payments and no unified database between DoSP and Pension Fund. In Dnipropetrovsk, an IDP with suspended benefits needs to come to the DoSP office where they will check if the person is on the list; if that's the case, the IDP has to write an application stating that he/she lives here and the payments will be renewed. Spot checks at the registered place of residence have resumed, conducted by DoSP, State Migration Service (SMS) and some other social services. If the IDP residence is confirmed during a spot-check visit, their payments can be resumed, although the delay between confirmation of the residence and resumption of payments is unclear. In Kharkiv, IDPs must provide their passport, IDP certificate and a "substantial" proof of their residence on the territory, which can be based on statements from neighbors, officials, people who are in contact with the IDP, as well as kindergarten and municipal housing and maintenance administration enrollment documents, which are difficult (or sometimes impossible) to obtain. Despite the lack of a unified database between the DoSP and local Pension Fund branch, this procedure would suffice in small locations to reinstate both social payments to IDPs and pension as the offices would exchange information on individual cases. In larger cities, however, the displaced person might have to approach the DoSP and the local Pension Fund branch separately.

<sup>3</sup> A guide to reinstatement, including for persons living in non-Government areas has been prepared by Donbas SOS, and is available here: [http://donbasssos.org/20160225\\_spravka/](http://donbasssos.org/20160225_spravka/); Guidelines prepared by R2P is available at: <http://vpl.com.ua/uk/news>