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ENSURING THE IMPLEMENTATION OF SOCIAL AND ECONOMIC RIGHTS OF PERSONS AFFECTED BY THE CONFLICT IN UKRAINE

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ENSURING THE IMPLEMENTATION OF SOCIAL AND ECONOMIC RIGHTS OF PERSONS AFFECTED BY THE CONFLICT IN UKRAINE

Submission for the review of the Ukraine 7th State Report on the International Covenant On Economic, Social and Cultural Rights (ICESCR)

This submission has been prepared by the Coalition of non-Government organizations that work towards protection of the IDPs` rights and those who remain on the temporarily occupied territory of Ukraine. The submission has been arranged in order to prepare the next periodic report of Ukraine to UN Committee on Economic, Social and Cultural Rights. The authors of the submission have considerable experience in the development and advocacy of draft normative legal acts in the field of protection of the rights of IDPs, participate in working groups under the framework of relevant Ministries, provide significant social and legal assistance to those who have been affected by the conflict, and are engaged in a coverage of events taking place on the temporarily occupied territory of Ukraine.

The Coalition includes:

- NGO “Donbass SOS”, <http://www.donbasssos.org>
- NGO “Crimea SOS”, <http://krymsos.com/>
- CF “Right to Protection”, <http://vpl.com.ua/uk/>
- CF “Vostok-SOS”, <http://vostok-sos.org/>
- NGO Civil Holding “Group of influence”, <https://www.vplyv.org.ua/>
- Liaison Officer (Radnyk) on IDPs` program is implemented by CF “Stabilization Support Services”, <http://radnyk.org>
- NGO “Human Rights Information Center”, <https://humanrights.org.ua/>

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Contents

Introduction and Context	4
1. Guarantee and implementation of social and economic rights of IDPs (articles 4, 9, 11 of the Covenant)	6
1.1. Payment of pensions to IDPs	7
1.2. Exercising of a right to receive social payments by IDPs	8
1.3. Obstacles to the integration of IDPs.....	10
2. Realization of social and economic rights of residents of the TOT of Ukraine (articles 4, 9, 11, 13 of the Covenant)	12
2.1. Violations of the right to social protection of residents of the TOT	13
2.2. Guarantee of the observance of property rights of residents of the TOT.....	14
2.3. Education of residents of the TOT	16
2.4. Restrictions in business activities, tax, and banking spheres.....	17
3. Right to social protection of persons held in places of an unlawful deprivation of liberty and members of their families (articles 6, 9, 12 of the Covenant)	18
3.1. Compensatory payments to persons who have been released from captivity	18
3.2. Provision of medical and psychological assistance to former prisoners	19
3.3. Right to work.....	20
3.4. Social guarantees for family members of persons who were held in places of an unlawful deprivation of liberty.....	20
Suggested Questions	21
Recommendations	22

List of Acronyms

ATO	anti terrorist operation
ARC	Autonomous Republic of Crimea
CMU	Cabinet of Ministers of Ukraine
DoLSP	Department of Labour and Social Protection
EEC	entry-exit checkpoint
GCA	governmentally controlled area
IDP	internally displaced person
IHE	institutions of higher education
MoSP	Ministry of Social Policy of Ukraine
MTOT	Ministry of temporarily occupied territories and internally displaced persons
NGCA	non-governmentally controlled area
PACE	Parliamentary Assembly of the Council of Europe
PE	private entrepreneur
PFU	Pension Fund of Ukraine
SSU	Security Service of Ukraine
TOT	temporarily occupied territory of Ukraine

Introduction and Context

As a result of military aggression of the Russian Federation, part of the Ukrainian territory, including – Autonomous Republic of Crimea, Sevastopol city, and part of the Donetsk and Luhansk oblasts – are now recognised as temporarily occupied. Due to military actions, more than 40 thousand homes were ruined.¹ Public roads, electricity networks, railway facilities, and industrial infrastructure within the Donetsk and Luhansk oblasts experienced various degrees of damage.²

FOR REFERENCE

The International Covenant on Economic, Social and Cultural Rights (ICESCR) was ratified by Ukraine (as the Ukrainian Soviet Socialist Republic) in 1973. According to the Art. 16 of the Covenant State is obliged to submit periodical reports on measures that were taken by State to steps to implement rights which were determined by the Covenant and on the progress achieved in ensuring these rights to the Committee on Economic, Social and Cultural Rights. The next 7th report will be submitted by Ukraine in 2019. Meanwhile, NGOs and national human rights institutions provide alternative reports to the Committee. These reports are a source of information on the state of observance of human rights and freedoms in the state. The preparation of such documents is an opportunity of the influence of non-governmental organizations on the state to encourage the latter to fulfill its obligations. The reports are discussed at the plenary meeting of the UN Committee, the result of such discussions is the preparation of Concluding Observations with recommendations for the participating country.

Military actions and occupation caused numerous losses among the civilian population. According to the UN Human Rights Monitoring Mission in Ukraine, at least 3,023 civilians died since April 14, 2014; seven to nine thousand civilians were wounded.³ According to the International Committee of the Red Cross, more than 1,500 people have disappeared during the conflict, half of them were civilians.⁴

In addition, the armed conflict has led to a large-scale internal displacement of persons. As of July 30, 2018, according to the Ministry of Social Policy of Ukraine, 1,516,246 internally displaced persons (IDPs) from the occupied territories of the Donetsk and Luhansk oblasts and ARC were registered.⁵ Despite the continuation of the active phase of military actions, large part of the population – more



¹ https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/ukraine_humanitarian_needs_overview_2018_en_1.pdf

² http://www.mbo.gov.ua/files/2014/war_price.pdf

³ https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf

⁴ <http://ua.icrc.org/2018/07/12/icrc-welcomes-adoption-law-missing/>

⁵ <https://www.msp.gov.ua/news/15672.html>



than 4.5 million people – continue to reside on the temporarily occupied territories.

Due to military actions, transport, economic, and social ties with the occupied territory were interrupted. Established demarcation line between the occupied territories and the territories controlled by the Government of Ukraine within the Donetsk and Luhansk oblasts, as well as the permits required to cross it through one of five checkpoints, is to a large extent a limiting factor for the maintenance of stable ties (including humanitarian) with the population on the temporarily occupied territories.

At the same time, we observe that Ukraine as a state does not take all appropriate and necessary measures to ensure the exercise of the basic rights of persons who were affected by the conflict. In particular, the following has been recorded: violation of the right to social protection of IDPs and residents of the occupied territories, the lack of equal access to education, discrimination in access to banking services, numerous violations of property rights, etc.

If you would like more information or have any questions, please contact Alena Lunova, advocacy manager of “Human Rights Information Center” by al@humanrights.org.ua

1

Guarantee and implementation of social and economic rights of IDPs (articles 4, 9, 11 of the Covenant)

According to the UN Guiding Principles on Internal Displacement⁶, IDPs should not be discriminated against when exercising any of their rights and freedoms based on the grounds that they are internally displaced persons inside the country. The public policy in this area should be aimed at facilitating either resettlement, or integration into new communities or safe return to the former places of residence after the end of military actions based on a choice of a person. It also shall be guided by the principle that internal displacement is a fact that occurred

in a person's life, rather than a "status" which depends solely on the fact of the registration as an internally displaced person and issuance of a respective certificate (hereinafter- IDP certificate).

Instead, so far, social and economic rights of IDPs are being violated, state policy does not comply with the Guiding Principles, adversely affecting the possibility of realizing social and economic rights of IDPs and their integration into host communities.



⁶ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G98/104/93/PDF/G9810493.pdf?OpenElement>



1.1. Payment of pensions to IDPs

According to the data provided by the MoSP of Ukraine, as of June 2018, there are 510 thousand IDPs being registered at the Departments of the PFU and who are entitled to pensions. At the same time, in June 2018, only 477 thousand IDPs have received pensions.⁷

For the time being, additional discriminatory conditions have been set up for IDPs to receive their retirement payment. Thus, pensioners registered as IDPs should periodically go through a so-called *verification procedure* at the Oshadbank of Ukraine⁸. In case of the absence of a pensioner at his/her place of residence at the GCA, payments of pension may be terminated for the indefinite period. Unpaid sums of pensions payments for the past period are not being returned.⁹

As a result of the established verification procedures, pensioners from among IDPs are unable to travel outside the territory of Ukraine without a risk of their pension being suspended.

In fact, additional conditions established to receive pension payment by IDPs are not applicable to all other pensioners of Ukraine, these conditions are of a discriminatory nature and do not comply

with the criteria of necessity and proportionality applicable to the restrictions imposed. In addition, they do not comply with the Law of Ukraine “On Compulsory State Pension Insurance,” which was established in numerous decisions of courts, including the Supreme Court of Ukraine.¹¹



At the end of December 2017, Igor Kozlovsky, a well-known Ukrainian scientist, religious scholar was released from the captivity where he was held by illegal armed groups on the occupied part of the Donetsk oblast, where he spent almost two years¹⁰. After his release, Mr. Kozlovsky received an IDP certificate, so his pension was restored. However, in May 2018, Mr Kozlovsky’s pension was terminated, allegedly because he had left Ukraine. At this time, Mr Kozlovsky traveled abroad to testify about crimes committed by Russia on the TOT (in particular, he had meetings in London and Brussels). The fact of the termination of pension payments to Mr. Kozlovsky was widely publicized, members of Parliament of Ukraine intervened in this situation. Therefore, the pension was renewed in June, and Mr. Kozlovsky received his two-months debt.

⁷ <http://www.pfu.gov.ua/36015-u-cherwni-2018-roku/>

⁸ JSC “State Oshchadbank of Ukraine” is defined as the only Bank through which IDPs have the right to receive social payments and pensions

⁹ According to the resolution of the Cabinet of Ministers №335 as of April 25th, 2018, social payments and pensions that have not been paid in the past period are calculated and paid according to a separate order determined by the Cabinet of Ministers of Ukraine. This Procedure has not yet been developed.

¹⁰ <https://www.kyivpost.com/ukraine-politics/112-ua-ukrainian-scholar-kozlovsky-released-separatist-captivity.html>

¹¹ The Supreme Court in the hearing of the case No. 263/7763/17, explained that it was impossible to stop paying pensions to displaced persons because of their absence from their place of residence.



In addition to formal procedures established by the Government of Ukraine through separate Resolution, in practice, the reason for the suspension of pension payments to IDPs are the so-called *SSU lists*. According to the CMU Resolution No. 365, all

types of social payments and IDP pensions may be suspended on the basis of information from the SSU that a person has returned to his/her permanent place of residence at the TOT. The absence of any approved procedures for the preparation, verification and provision of such information has led to significant abuses, and unjustified termination of payments”.

According to the NGO “Donbas SOS”, at the beginning of 2016, 460,000 IDPs ended up without social payments and pensions because of the mentioned above “SSU lists”, whereas in 2017 – it was 200,000.¹³

Thus, state authorities of Ukraine contravene legislative norms and arbitrarily terminate payment of pensions to IDPs on discriminatory grounds, even though the pension is usually the only source of income for the elderly. This violates Articles 2, 4, 9 and 11 of the Covenant.

1.2. Exercising of a right to receive social payments by IDPs

Allocation of financial assistance to IDPs (to subsidize housing expenditures). In order to protect citizens and provide social protection to those affected as a result of the occupation of the Crimea¹² and the ATO in the East of the country, on 1 October, 2014, the Cabinet of Ministers approved Resolution No.505 “On provision of the monthly targeted assistance to the persons, who move from temporarily occupied territory of Ukraine and from areas of anti-terrorist operation, to cover the living expenses, including for utilities and communal payments”.

It is worth noting that the sum of the assistance provided for in this Resolution is extremely low (especially for able-bodied persons) and does not cover payment for utilities.¹⁴

In addition, for some categories of citizens, such as able-bodied, pensioners and children, the amount of monthly targeted assistance is constant and does not depend on the level of the subsistence minimum, which is unfair, since this

linkage would allow to dynamically change the amount of assistance depending on the inflation and recalculation of the subsistence minimum.

The discriminatory provision regarding the obtainment of all types of social payments exclusively through a single state bank. For the purpose of regulation of social and pension payments for IDPs, on 5 November, 2014, CMU adopted Resolution No. 637 “On social payments for internally displaced persons”. Under it, firstly, pension payments were equated to social payments, and secondly, the imperative norm was adopted according to which all social payments for IDPs are carried out only through state bank JSC “Oshadbank”. In addition, IDPs are required to undergo a process of physical identification only at the offices of JSC “Oshadbank”.

The introduction of the discriminatory order of the control over social payments. On 8 June, 2016, CMU Resolution No. 365 was adopted “Some issues of social payments for internally displaced persons”, which established two procedures that regulate the allocation, restoration, termination, and control of social and pension payments of internally displaced persons. The procedures provide for a periodic verification of the actual place of residence of an IDP, the obli-

¹² Autonomous Republic of Crimea and Sevastopol city

¹³ <https://dnews.dn.ua/news/592592>

¹⁴ as of August 1st, 2018, the amount of targeted assistance being paid to able-bodied IDPs is 442 UAH (16 USD), for disabled persons (pensioners, children, students) – 1000 UAH (37 USD). At the same time, the subsistence minimum for an able-bodied person is 1841 UAH (68 USD)



gation to inform the DoLSP in case of change of his/her place of residence within ten days, additional verifications based on the information from the SSU, the Ministry of Finance and the state border service, general and special conditions for the termination and restoration of payments (for example, in case of cancellation of an IDP certificate, the restoration of financial assistance is possible only after 6 months).

The implementation of this Resolution led to massive suspensions of social payments and pensions to IDPs, which, in turn, led to numerous lawsuits filed to courts. In courts' decisions it was repeatedly noted that the current system of control over social payments and pension payments to IDPs does not comply with the legislation of Ukraine, as well as international treaties of Ukraine, and on 3 May, 2018, the Supreme Court in the exemplary case № 805/402/18 pointed to the unlawfulness of the application of provisions of Resolution №365 leading to suspension of pensions and social benefits.¹⁵

In addition, on 4 July, 2018, the decision of the Kyiv Administrative Court of Appeal in case No. 826/123/16 entered into force. By referencing to discrimination and unconstitutionality, it abolished certain provisions of Resolution No. 365 and

¹⁵ As of August 1st, 2018, the exemplary ruling of the Supreme Court of Ukraine has not entered into force, as it is being appealed by the Ministry of Social Policy of Ukraine



Since 2014, I am a displaced person residing in Mariupol. Since November 2014, I have been receiving monthly targeted assistance, and every half year I prolong it. In the fall of 2017, I wrote an application for another prolongation and began to expect a verification visit from social inspectors. They never came.

I addressed the district DoLSP where I was told that social inspectors already made a visit two weeks ago, but allegedly I was not at home. So, now I will be deprived of the right to receive a monthly targeted assistance. I was shocked: I spent the whole month waiting for the verification visit, left the house only when it was absolutely necessary, mostly after 6 p.m., because I knew that social inspectors work till 5 p.m. Besides, my daughter-in-law is residing with me with her minor children and her father and they never leave a house. So there is always someone at home.

I started explaining to the inspector and she replied: "I have been to your house, and left a notice ...". At that moment I was not sure how to keep going, a pension was delayed because I got to another SSU's lists and the monthly targeted assistance is now terminated. I will be forced to depend on children who have their own young children.

And then the social inspector took out her phone and showed me a picture of her leaving a notice at the gate of allegedly my address. On this photo was a completely different house, and the gate was made of wood instead of iron....

Irina, 58 y.o.



Resolution No. 637 with regard to a verification of the actual place of residence/stay of IDPs for the obtainment of social payments. However, the practice of conducting verification has not stopped, and those persons who fail these verifications are being deprived of their social payments.

Due to the existence of numerous additional mechanisms to control payments to IDPs, some IDPs refuse to obtain an IDP certificate. However, in such a case, the government stops paying pensions and/or social benefits to such individuals.

1.3. Obstacles to the integration of IDPs

In accordance with its Resolution 2028 (2015) “Humanitarian situation: Ukrainian refugees and displaced persons”,¹⁶ PACE appealed to Ukraine regarding the full implementation of the UN Guiding Principles on internal displacement, as well as provision of support to IDPs regarding their choice of place of residence – return to their places of permanent residence, local integration or resettlement in other parts of the country.

Integration and adaptation of IDPs in new communities are among the key objectives in the context of an involuntary resettlement. According to a social survey conducted by International Foundation for Electoral Systems (IFES) in February 2018, number of IDPs wishing to

remain in their new communities, increased by 9% in comparison to 2017 and reached 36%. At the same time, the number of those who plan to return to their former home provided that the situation is normalized and the safety of such a return is guaranteed has decreased by 17% (now 28% of IDPs). Additionally, 64% of respondents say that they are fully integrated into the new community, and 44% feel as active members of the community.¹⁷

It is worth noting that IDPs face many obstacles in the process of integration into local communities. IDPs are deprived of the right to participate in local elections in the communities where they live, and therefore they cannot influence the formation of the local policy.

¹⁶ <http://www.assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=21480&lang=en>

¹⁷ <https://www.vplyv.org.ua/archives/1533>

We moved to Kyiv in July 2014. We left because in Donetsk active military actions have already begun, there was shooting right next to our house, and our daughter was just born, we didn't want to risk...

The first moments of integration are connected with the child – search for a doctor, trips to the hospital (with the baby you need to visit a doctor every month), communication with mothers, search for children's infrastructure... very quickly I began to actively participate in public life – petitions requesting to build a playground and a sports ground (they were built after three years, but still), cleaning the area adjacent to our home, etc. We live near the park and forest, often go for walks there and therefore actively participate in a cleaning of the territory and its improvement. We do not miss socially important petitions and discussions. Integration began with this desire to do something good for the city you had to move to unwillingly.

By the second year, I was active not only in children's spheres. I, along with neighbors, have dealt with our local utility issues (we finally got our tubes patched so it will not be necessary to turn off water for longer than 2-3 weeks), required officials to repair the road near the house (it was fixed this year). We have installed new elevators, relocated garbage cans that were too close to the house, perhaps we will get the repair in the front entrance of the house. Why am I doing this here? Because I have never done this in Donetsk and realized that you have to be responsible for your city, otherwise there are more chances to lose it.

Anna, 36 y. o.



Also, IDPs are forced to spend additional resources on the purchase of necessary items because of restrictions imposed on transportation of personal belongings from/to the TOT. The existing customs and tax rules that operate on the contact line / boundary with the TOT, significantly limit the possibility of IDPs and residents of the TOT who do not possess an IDP certificate to transfer their belongings (household appliances, furniture, medical equipment for individual use, etc.) from the TOT territory.¹⁸

One of the main factors for the successful integration of IDPs is their access to permanent housing. At the national level, there are only few programs that enable IDPs to obtain housing in private ownership while paying by installments or by taking out a mortgage payment. However, these programs do not consider IDPs as a priority target group, and the latter participate in these programs on general terms with other categories of people. In addition, financing of these programs from the state budget of Ukraine is insufficient and actually began only in 2017, which negatively affects their implementation. Currently, a small number of IDPs temporarily live in dormitories, modular towns



and social hotels that were allocated by the state in 2014 during the largest displacement from the conflict zone. Recent changes in the legislation provide IDPs with an opportunity to obtain temporary or social housing, but in fact, such housing stock is absent.

¹⁸ <http://zakon2.rada.gov.ua/laws/show/1636-18>

2

Realization of social and economic rights of residents of the TOT of Ukraine (articles 4, 9, 11, 13 of the Covenant)

Since the outbreak of the armed conflict in Ukraine, part of the territory controlled by the Russian Federation or its affiliated illegal armed groups has in fact been isolated, living conditions deteriorating over time. Now Ukraine stopped any passenger transportation, as well as trade with the occupied territories. In addition, the adoption of the Law of Ukraine “On Creation of the Free Economic Zone “Crimea” and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine” introduced a special procedure for the application of regulatory, tax and customs legislation of Ukraine, as well as a special regime of internal and external migration of individuals from Crimea. The estab-

lished procedure leads to restrictions in crossing of the administrative boundary, transportation of personal belongings, creates special conditions for banking services, etc.

On the GCA, documents issued by representatives of the de facto authorities on the TOT are not recognized. On this territory any Ukrainian media is absent. At the same time, in order to exercise their rights guaranteed by the Constitution, the residents of the TOT are forced to register as IDPs, since the ability to exercise their social and economic rights directly depends on the availability of an IDP certificate.





2.1. Violations of the right to social protection of residents of the TOT

The exercising of the right to pension provision by residents of the TOT. Currently, for residents of the temporarily occupied ARC and Sevastopol and the occupied part of the territory of Donetsk and Luhansk oblasts, various procedures for an obtainment of pensions were introduced.

Thus, for citizens of Ukraine who live on the TOT of the ARC and Sevastopol it is necessary to apply to the PFU department of GCA and obtain additional documents from the authorized body of the Russian Federation proving that a person does not receive a pension at the place of registration on the territory of Crimea, as well as the personal declaration on the absence of citizenship of the occupying state to receive pensions.¹⁹

The payment of pension is reinstated after a receipt of a pension file at the request of the territorial Departments of the PFU made to the respective authorities of the Russian Federation and provision of the documents on the termination or failure to allocate a pension payment in Crimea. This situation leads to the disclosure of personal data of a recipient to the aggressor state.²⁰

At the same time, the Government of Ukraine does not guarantee the residents of the Donetsk and Luhansk oblasts the exercise of their right to social and pension payments, and encourages them to use the procedure for an

obtainment of a pension, which is valid only for IDPs, according to resolution №637 of the Cabinet of Ministers as of 5 November, 2014.²¹ In order to be able to receive their earned pension, such citizens are forced to travel to the GCA and register as IDPs. This situation has led to distorted official statistics about the number of IDPs and the real number of citizens who were forced to leave their homes because of the war and need help with integration into new communities on the GCA of Ukraine.

According to the MoSP, about 1,278,000 citizens who are entitled to a state pension lived on the TOT of the Donetsk and Luhansk oblasts in 2014. Whereas in June 2018, only 510,000 pensioners from among IDPs from the Donetsk and Luhansk oblasts are receiving pensions. This means that about 700,000 pensioners residing on the TOT do not receive pensions from Ukraine.

According to judicial practice, most of the claims in which the termination of pension payments to the residents of the TOT was appealed, were resolved in favor of applicants.

The impossibility to receive pension may cause a new wave of displacement or encourage people to become “artificial” IDPs with the sole purpose of the realization of their pension right. This can also be regarded as forced displacement, which can be considered as contradictory to the UN Guiding principles on internal displacement.

¹⁹ <http://zakon3.rada.gov.ua/laws/show/1058-15/page11>

²⁰ payment will not allocated unless the pension case on paper will be received

²¹ <http://zakon0.rada.gov.ua/laws/show/637-2014-%D0%BF>



Social payments to the TOT residents. Now, any social payments to residents of the TOT are carried out in case of their registration as IDPs. However, the legislation establishes certain conditions for the exercise of a right of a person to receive social payments. In particular, in order to receive a payment at the birth of a child, one of the parents must apply to the territorial bodies of DoLSP within 12 months from the date of birth of a child. Taking into consideration the conditions of the occupation, safety risks and the need to confirm the fact of birth in a court²², parents often are unable to comply with the 12-month period for the application and as a result, are deprived of the possibility to access this type of social payment. Currently, such situations are resolved only in court, because the legislation does not define the conditions under which such a period can be restored. In its decisions, the court notes that the untimely request from parents results from the annexation of the part of the territory of Ukraine, and reasons for failing deadlines are respectful.²³

²² currently, in Ukraine there is no administrative out-of-court procedure of recognition of the facts of birth and the death that have occurred on the TOT.

²³ <http://reyestr.court.gov.ua/Review/68075972>

2.2. Guarantee of the observance of property rights of residents of the TOT

Guarantees of preservation of immovable property located on the TOT. According to the legislation of Ukraine, the owners of the prop-

erty retain ownership, as well as other real rights to property, including ownership over real estate and land located in the TOT. Any act





issued in connection with the activities of the armed forces of the Russian Federation and the occupying administration of the Russian Federation on the TOT is invalid and does not cause any legal consequences (except for documents on registration of the facts of birth and death on the TOT of the Donetsk and Luhansk oblasts). However, given the fact that Ukraine does not exercise its jurisdiction over these territories, such legislative provisions cannot be considered as guarantees of the safety of property on the TOT. These provisions point only to the fact that for the state of Ukraine the owners of a property are those persons who are defined as owners in the Unified State Registry of Rights to Immovable Property and Related Transactions or other documents that confirm their ownership in accordance with the Ukrainian legislation. In case of change of an owner of a property, the relevant transactions must be conducted exclusively under Ukrainian laws.

Compensation for a property damage caused by the armed conflict. One of the most pressing and yet unresolved issues with regard to protection of the property rights of persons affected by the conflict in Ukraine, is the issue

of their right to compensation for housing damaged or destroyed within a course of military actions. To date, such compensation is provided for in Article 19 of the Law of Ukraine “On combating terrorism”, but this Article provides only for the possibility of obtaining such compensation, but there is no mechanism and procedure for a compensation per se, which makes it impossible for persons to exercise the above mentioned right extrajudicially. However, even if a claimant receives a positive court’s decision, for example, in the appeal instance, it is not possible to fulfill it.

In addition, the procedure for obtaining compensation from the state of Ukraine is complicated by the fact that the legislation of Ukraine declares the Russian Federation fully responsible to provide compensation for material and moral damages caused to legal entities, public associations, citizens of Ukraine, foreigners, and stateless persons due to the temporary occupation of the state of Ukraine..



2.3. Education of residents of the TOT

Children who remained on the TOT mainly receive secondary education in schools located on the occupied territories. Due to the fact that the Government of Ukraine does not recognize the documents issued on the TOT, certificate of secondary (complete) education issued on the TOT, does not give the right to enroll into the higher education institutions at the GCA.

Moreover, starting from 2014, the policy of the de facto authorities on the TOT was aimed at the reduction of Ukrainian-language classes, the closure of Ukrainian-language schools and the removal of certain classes (in particular, Ukrainian language, Ukrainian literature, Ukrainian history) from the school curriculum. In addition, in order to enroll into IHE entrants have to cross the administrative boundary with Crimea or the contact line within the Donetsk and Luhansk oblasts several times. Taking into account the absence of public transport between the TOT and the GCA, all these factors greatly complicate the enrollment process for the TOT residents.

All this puts applicants from the TOT who are willing to study in Ukrainian IHE in an unfavorable position in comparison to other applicants.

At the same time, the state provides a simplified procedure for the residents of the TOT – through the educational centers “Crimea-Ukraine” and “Donbass-Ukraine”. But, unfortunately, through these centers the residents can enter only to a limited number of universities on the GCA. Moreover, students from Crimea and applicants from the TOT of Donetsk and Luhansk have different lists of institutions, mostly depending on geographical proximity to respective occupied territories. This simplified procedure has already demonstrated its ineffectiveness: for example, in 2017, only 204 residents of Crimea joined as a result of this procedure, despite the fact that every year 10-12 thousand children are graduating from schools at the occupied Peninsula.

2.4. Restrictions in business activities, tax, and banking spheres

According to the State fiscal service of Ukraine, as of 1 February, 2017, the number of private entrepreneurs (hereinafter PE), the registered place of residence of whom is the TOT of the Donetsk and Luhansk oblasts, was about 118,100 people.

PEs who carried out business activities and were registered on the TOT when applying to fiscal authorities on the GCA face the requirement of payment of taxes and fees for the whole period starting from the beginning of the conflict irrespectively of whether they were conducting business activities during this time or not. At the same time, the procedure for a cancellation of this debt is non-transparent and inefficient

In addition, PEs who are registered on the TOT are required to pay an additional 19.5% of the income tax, unlike other entrepreneurs who are registered outside the TOT. On 1 January, 2017, amendments to the Tax Code of Ukraine, which contain signs of discrimination against self-employed persons, entered into force.²⁴ According to these changes, at the time of accrument (of payment) to private entrepreneurs, whose place of stay or registered place of residence is the TOT (regardless of the tax system), of an income from the conduction of their business, the business entity and/or self-employed person who accrue (pay) such income, are obliged to withhold an income tax from the source of payment. Such tax burden (rate of 18%) extends only to this category of entrepreneurs from the TOT.

Regarding the banking sector, according to the Law of Ukraine «On Creation of the Free Economic Zone “Crimea” and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine», PEs who have registered place of residence on the temporarily occupied territory of Crimea, for the purpose of taxation and conduction of customs formalities are recognized as non-residents, whereas any income, generated at the TOT is taxed as a foreign income. For example, in case of selling of a movable property – a car



that is registered in Crimea, a person must pay 18% tax at the same time, other citizens of Ukraine will pay 5%.

The effect of this law applies to the banking services as well, and the only condition for access to such services for residents of Crimea is an obtainment of an IDP certificate.²⁵

²⁴ Paragraph 38.9 of the subsection 10 of the section XIX of the Tax code of Ukraine

²⁵ <http://zakon2.rada.gov.ua/laws/show/v0699500-14>

3

Right to social protection of persons held in places of an unlawful deprivation of liberty and members of their families (articles 6, 9, 12 of the Covenant)

With the beginning of the armed conflict at the Donbas, the phenomenon of a capture and retention of hostages by representatives of illegal armed groups in Eastern Ukraine became widespread. According to the SSU, since the beginning of the conflict 3,215 people were released from captivity, whereas 103 persons are still being held.²⁶

Currently, there is no Law that would determine the legal status and social guarantees for such persons. Respectively, they do not have

a legally enshrined right and a special mechanism for a status obtainment, medical and psychological assistance, legal assistance, any guarantees in the field of employment, the compensation system that would be defined on the legislative level.

At the same time, governmental agencies can occasionally provide assistance to former prisoners of war, without establishing a general system of social guarantees for such individuals.

3.1. Compensatory payments to persons who have been released from captivity

On 31 January, 2018, the Cabinet of Ministers of Ukraine adopted Resolution No. 38, which approved the procedure for the payment of one-time financial assistance to persons who have been unlawfully deprived of personal liberty as a result of actions conducted by illegal armed groups and/or authorities of the Russian Federation on certain territories of the Donetsk and Luhansk oblasts, where public authorities temporarily do not exercise their powers.

This Procedure concerns only hostages released on 27 December 2017 and 24 January 2018 and provides for the payment of a one-time financial assistance in the amount of 100 thousand UAH.²⁷ At the same time, the issue of payment

of financial assistance to people who were deprived of personal freedom under the same circumstances, but were released on different dates, still remains unresolved. In fact, such people are denied financial assistance under CMU Resolution № 38.

In addition, there is practice of paying one-time financial assistance to persons who were held in places of unlawful deprivation of liberty, at the expense of local budgets.²⁸ However, such assistance can only be received by former prisoners who were released from captivity on 27 December 2017 and 24 January 2018 provided that they are registered and actually reside in the Donetsk region.

²⁶ As of December 27th, 2017 <https://ssu.gov.ua/ua/news/1/category/2/view/4242#.FKTeXXIS.dpbs>

²⁷ the equivalent of 3700 USD

²⁸ <http://dn.gov.ua/rozporyadzhennya-golovy-oda-vid-14-02-2018-223-5-18-pro-poryadok-nadannya-odnorazovoyi-groshovoyi-dopomogy-tsyvilnym-osobam-yakih-zvilнено-z-polonu-27-grudnya-2017-r-ta-24-sichnya-2018-r-za-rahunok/>



3.2. Provision of medical and psychological assistance to former prisoners

Torture and other forms of ill-treatment have been used against many persons held in places of an unlawful deprivation of liberty, resulting in health problems and the need for a psychological assistance.²⁹

The Action Plan for the implementation of the National Human Rights Strategy of Ukraine till 2020 provides for the “development and adoption of a program of social and psychological rehabilitation of civilians who have become hostages/prisoners of terrorist groups “DPR” and “LPR” as a result of events in the East of Ukraine.³⁰

However, currently, medical and psychological assistance to former prisoners can only be obtained as per general procedure, upon their appeal to the hospital or to a specific specialist. The social and psychological rehabilitation programme has not been developed, and there is no specific legislation to guarantee the provision of medical and psychological assistance.

This situation leads to the fact that former prisoners often do not have information about health care facilities and professionals who have professional skills to work with this category. Therefore, former prisoners either do not receive psychological assistance at all or receive very low-quality services.

²⁹ http://amnesty.org.ua/wp-content/uploads/2015/05/Dopovid_ZLOMLENI-TILA_Torturi-ta-pozasadovi-strati-na-shodi-Ukrayini.pdf

³⁰ <http://zakon3.rada.gov.ua/laws/show/1393-2015-%D1%80>



On 27 May, 2014, I was released from the «basement», and my friends took me to the emergency hospital in Kyiv. I was there for three weeks. I had a broken rib, brain contusion, multiple bruises all over my body, short-term memory impairment. I run a lot of tests free of charge as well as received prescribed medication, some of which was given in the hospital, and some of which was brought to me by volunteers. My treatment has stopped for a few years. Although I did work with psychologists, whom I found for free through volunteers, I felt that something was wrong, I did not feel better: anxiety, insomnia, aggression attacks were constantly with me. I did not do anything for two years, because I had no information where to go, had no medical support, besides I thought that I was already getting psychological help, so nothing can be changed I was getting worse. Two years later, my wife insisted that I get help. Somehow, randomly, through friends and volunteers, I was lucky enough to stumble upon a neurologist and psychologist from public hospitals, who diagnosed me with “post-traumatic stress disorder”. Of course, my problems have not disappeared completely, but now I feel that I receive a qualified help that makes my life easier.

Vyacheslav Bondarenko, 44 y.o.

3.3. Right to work

According to Article 6 of the Covenant, States that are parties to the Covenant recognize the right to work, which includes the right of everyone to get the opportunity to earn a living by work that he/she freely chooses or accepts, and will take appropriate steps to ensure that right.

According to Article 235 of the Labor Code of Ukraine, the resumption at work and amendment of the wording of reasons for a dismissal is possible only in case of a dismissal of an employee without a legitimate reason. The Article 40 of the Labor Code defines the list of

grounds based on which an employee may be dismissed at the initiative of the employer. Such reasons may include no-show and absenteeism at the workplace for more than four months. Thus, the legislation of Ukraine does not provide grounds for the resumption of persons held in places of an unlawful deprivation of liberty.

Such situation leads to the actual impossibility for the former prisoners to be restored at a workplace, amend the wording of the reasons for a dismissal, restore the interrupted length of service.

3.4. Social guarantees for family members of persons who were held in places of an unlawful deprivation of liberty




The Action Plan for the implementation of the National Human Rights Strategy of Ukraine till 2020 provides for the creation of an active system of social, particularly psychological rehabilitation of released persons and their family members.

There are now two draft laws registered in the Verkhovna Rada of Ukraine that are aimed at regulating legal status and establishment of social guarantees to persons held in places of an unlawful deprivation of liberty. None of these draft laws contain provisions that would concern social guarantees for family members of persons who have been held in places of an unlawful deprivation of liberty.³¹

At the same time, family members of persons held in places of an unlawful deprivation of liberty often need medication and psychological assistance.

In addition, if a prisoner lived on the temporarily occupied territory and was detained there, usually, his family members also remain on the TOT in order to get information about their relative who is being held, to pass food and other necessary things to the place of an unlawful detention, etc. If relatives are recipients of social payments, the fact of their residence on the TOT considerably complicates the procedure of an obtainment of social payments, including pensions, due to CMU Resolution No. 365.

³¹ http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63748
http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63961



Suggested Questions

In light of the continued violations of the social and economic rights of the conflict-affected population in Ukraine, the Coalition hopes that the Committee will consider addressing the following questions to the state party:

1. What measures are being conducted by the Government of Ukraine to ensure that IDPs exercise their pension rights without discrimination?
2. Does the Government of Ukraine consider changing its approach regarding the assignment of a monthly targeted financial assistance to IDPs?
3. What are those valid reasons for the restrictions of IDPs in the use of services of any other bank for a receipt of pensions and social payments, except for the state bank “Oschadbank”?
4. Why is the mechanism of compensation for damaged / destroyed property as a result of the conflict still has not been developed?
5. What long-term solution does the Government sees to ensure that the TOT residents have access to higher education at the GCA?
6. What are the grounds for the introduction of an additional taxation for private entrepreneurs whose place of stay or place of registered residence is at the temporarily occupied territory?
7. Why for those persons who were kept in places of an unlawful detention and were released on 27 December 2017 and 24 January 2018 payment of financial assistance is being provided, whereas those persons who were released on other dates do not receive any type of assistance?
8. Why the programme for the social and psychological rehabilitation of persons held in places of an unlawful deprivation of liberty and their family members has not been developed yet?
9. Why the Procedure that would regulate the resumption at the workplace, amendment of the wording of reasons for a dismissal, the restoration of an interrupted work experience for persons who were held in places of an unlawful deprivation of liberty has not been developed yet?
10. Why there is no system of social guarantees for family members of persons who were held in places of an unlawful deprivation of liberty?
11. What caused the need for customs, tax and other restrictions established by the Law of Ukraine “On Creation of the Free Economic Zone “Crimea” and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine”?
12. What are the reasons for limiting the right of persons to carry personal belongings from / to the TOT?
13. Why is the procedure of allocation of pensions for Crimeans is different from the procedure of allocation of pensions for other citizens of Ukraine?



Recommendations

The Coalition respectfully requests that the Committee considers incorporating the following recommendations in its Concluding Observations to the State Party:

1. To de-link payment of pensions and social benefits from IDP registration (IDP certificate).
2. To change the policy of payment of IDPs' pensions, to terminate the policy of creation of excessive requirements and restrictions for pensioners-IDPs.
3. To develop separate non-discriminatory procedures or introduce amendments to the national mechanism for a calculation of pensions and social payments, on the allocation and control of these payments.
4. To change the approach to the allocation of monthly targeted assistance to IDPs in such a way that its assignment will be based on the socio-economic needs of IDPs in such assistance, while maintaining special approaches to a determination of the amount of targeted assistance for socially vulnerable segments of the population, such as children and persons with disabilities.
5. Provide an opportunity for IDPs to use any banking institution to receive social payments or pensions.
6. To cancel the verification of the place of residence of internally displaced persons. To introduce identity verification of a recipient of payments in a banking institution no more than once a year.
7. Not to extend a 12-month term of the appeal to authorized bodies of social protection of the population with the purpose of an obtainment of a financial assistance that is paid at the birth of a child in case a child was born on the TOT.
8. To develop a mechanism for a fixation of damage / destruction and introduce a unified approach for the unification and acceptability of an accounting of damaged or destroyed property, to create a unified methodology for a determination of the amount of damage, to develop mechanisms for assessing the damage caused.
9. The Cabinet of Ministers of Ukraine shall adopt the procedure for payment of pensions to citizens who live at the TOT of the Donetsk and Luhansk oblasts.
10. To eliminate additional requirements for the appointment or extension of pensions for Crimeans.
11. To repeal the Law of Ukraine «On Creation of the Free Economic Zone "Crimea" and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine» and develop and adopt the Law on peculiarities of an implementation of an economic activity on the temporarily occupied territory.
12. To create appropriate conditions for the realization of the right of residents of the TOT to receive higher education through the introduction of positive actions to reduce the negative impact of the armed conflict on children living at the TOT of Ukraine.
13. To unify the system of payment of financial assistance for all persons held in places of an unlawful deprivation of liberty.
14. To develop a programme for the social and psychological rehabilitation of persons held in places of an unlawful deprivation of liberty and members of their families.
15. To develop a Procedure that would regulate the issues of the resumption at the workplace, amendment of the wording of reasons for a dismissal, the restoration of an interrupted work experience for persons who were held in places of an unlawful deprivation of liberty.
16. To develop a system of social guarantees for family members of persons who were held in places of an unlawful deprivation of liberty.

