

About the violation of the right to social security and education in Ukraine

the right to social security, including social insurance

the right of everyone to education

prepared by the human rights organization "Uspishna Varta", Kyiv, Ukraine
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1. The purpose of the report is to draw attention to violations of human rights in Ukraine in specific instances where the government has failed to comply with its international legal obligations. This report was prepared by the human rights organization "Uspishna Varta" on the basis of legal analysis by the organization's lawyers open sources and.

2. The report includes examples of the facts of discrimination against certain social groups in Ukraine. The main reasons for discrimination and the violation of certain provisions of the International Covenant on Economic, Social and Cultural Rights remain the armed conflict in the East of Ukraine and the unbalanced policy of Ukraine's state institutions (the Verkhovna Rada, the Cabinet of Ministers, the President).

3. The report identifies the following groups of people whose rights are being violated:

- Internally displaced persons - pensioners;
- National minorities;
- Citizens residing not in the place where they are officially registered.

4. Below is detailed analysis of each of the social groups for which a violation of the rights guaranteed by the International Covenant on Economic, Social and Cultural Rights¹ has been recorded.

I. THE RIGHT TO SOCIAL SECURITY

5. One of the most important problems in the implementation of the International Covenant on Economic, Social and Cultural Rights in Ukraine remains the discriminatory policy of the government of the country towards pensioners who remain in the temporarily uncontrolled territories of the Donetsk and Lugansk regions, as well as the elderly people who are registered on the territory controlled by the government of Ukraine with the status of "temporarily displaced persons" (hereinafter - IDPs).

¹ http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

A. The illegality of the termination of social payments for persons residing in the uncontrolled territories of the Donetsk and Lugansk regions.

1. Chronology of events

6. On November 7, 2014, the Cabinet of Ministers of Ukraine (hereinafter - the government) adopted Resolution No. 595 "On Aspects of State Funding of Public Institutions, Social Payments to Population and Support to Some Enterprises and Organizations of Donetsk and Lugansk Regions." It approved the Temporary procedure for financing budget institutions, implementing social payments to the population, and providing financial support to individual enterprises and organizations in the Donetsk and Lugansk Regions (hereinafter the Procedure²).

7. Point 2 of the Procedure establishes that in the settlements of Donetsk and Lugansk regions where the state authorities temporarily do not exercise or do not fully exercise their powers (temporarily uncontrolled territory), expenditures from the state budget, the budget of the Pension Fund of Ukraine, and the budgets of other funds of general obligatory state social insurance are carried out only after the said territory returns under the control of the state authorities.

8. Acting from the moment of its adoption, point 2 of the Temporary procedure for financing budget institutions, implementing social payments to the population, and providing financial support to individual enterprises and organizations in the Donetsk and Lugansk Regions approved by the order of the government of 07.11.2014 No. 595³ was recognised as illegal by the ruling of the district administrative court of the city of Kiev (hereon in – the administrative court) on February 11th, 2015⁴.

9. On 8 June, 2016 the government adopted resolution No. 3655, which defines a mechanism of appointment (recovery) for pension payments to internally displaced persons (monthly perpetual monetary pay), lifelong state grants, all types of the public assistance and compensations, material security, provision of social services, subsidies and privileges (further - social payments) at the expense of means of the government budget and funds of obligatory national social insurance.

10. On 14 December, 2017 the administrative court in its ruling⁶ partially overturned the resolutions of the government No. 365 and No. 637 (the court ruling is being challenged in the Supreme Court). In particular, the court noted that the procedure and grounds for the appointment (recovery) of social payments to all pensioners or certain categories should be provided directly in the law, and may not be introduced by sub-legislative normative legal acts.

² <http://zakon5.rada.gov.ua/laws/show/595-2014-%D0%BF>

³ <http://zakon5.rada.gov.ua/laws/show/595-2014-%D0%BF>

⁴ <http://reyestr.court.gov.ua/Review/42748919>

⁵ <http://zakon0.rada.gov.ua/laws/show/365-2016-%D0%BF>

⁶ <http://reyestr.court.gov.ua/Review/67481245>

2. Legal characteristic

11. Paragraphs 7, 8, 9, and 13 of the mentioned Procedure, approved by government resolution No. 365⁷, restrict persons belonging to IDPs in exercising their rights, in particular their rights to a pension and social security, which leads to indirect discrimination on the basis of their place of residence and stay on the IDP register, and also violates the principle of equality provided for in article 24 of the Constitution of Ukraine and guarantees of free movement on the territory of Ukraine provided for in article 33 of the Constitution of Ukraine⁸.

12. The law "On the principles of prevention and combating discrimination in Ukraine"⁹ of September 6, 2012 stipulates that the legislation of Ukraine is based on the principle of non-discrimination, which provides for, regardless of particular attributes: equality of rights and freedoms of individuals or groups of persons; equality before the law of individuals or group of persons; respect for the dignity of every human being; equal opportunities to individuals or groups of persons.

13. This also implies a violation by the government of Ukraine of article 9 of the International Covenant on Economic, Social and Cultural Rights¹⁰, which recognizes the right of everyone to social security, including social insurance, and also a violation of article 12 of the European Social Charter.

14. It should not be forgotten that the principle of proportionality of decisions is the observance of a fair balance between the interests of society and the duty to ensure human rights. Consequently, the human right can be limited only to the extent required by the interests of society.

15. Ukraine is declared a social and legal state in which the principle of the rule of law is recognized and operates; the Constitution of Ukraine has the highest legal force; laws and other normative legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it; state authorities and bodies of local self-governance, as well as their officials are obliged to act only on the basis, within the powers, and in the manner provided for by the Constitution and laws of Ukraine.

16. Laws and other legal acts are adopted on the basis of the Constitution of Ukraine and must comply with it. The government cannot change or improve the law by adopting a normative legal act.

17. Part 3 of article 22 of the Constitution of Ukraine¹¹ stipulates that the content and scope of existing rights and freedoms shall not be diminished in the adoption of new laws or in the amendment of laws that are in force. In particular, according to part 1 of article 49 of the Law of Ukraine "On compulsory state

⁷ <http://zakon0.rada.gov.ua/laws/show/365-2016-%D0%BF>

⁸ <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

⁹ <http://zakon5.rada.gov.ua/laws/show/5207-17>

¹⁰ http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

¹¹ <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

pension insurance"¹², the payment of pensions by the ruling of the territorial bodies of the Pension Fund or the ruling of the court is terminated:

- If the pension is granted on the basis of documents containing false information;
- In case of the death of a pensioner;
- In case of the non-receipt of the granted pension for 6 consecutive months;
- In other cases provided by law.

18. According to part 2 of Article 49 of this Law, the resumption of pension payments is carried out by the ruling of the territorial body of the Pension Fund within 10 days after the clarification of the circumstances and the availability of conditions for the resumption of its payment. Payment of the pension shall be resumed in the manner prescribed by part 3 of article 35 and article 46 of this Law¹³.

B. The violation of the rights of the temporarily displaced persons while receiving social benefits

19. From 2014 to 2018, the government has changed the procedure of paying social benefits (including pension payments) to temporarily displaced persons several times. Every subsequent change toughened the order of payments and, consequently, deprived a part of the IDP population of their livelihood.

20. As was noted earlier, on 8 June 2016 the government adopted Resolution No. 365 "Some issues of social benefits for internally displaced persons". This resolution has complicated the stable receipt of pension payments for IDPs, and **it is still in force, despite the court's decision¹⁴ on its partial abolition.**

21. The most discriminatory point of the resolution is mandatory inspections of the place of residence of IDPs, which must be held every 6 months for the appointment, restoration, and receipt of all payments.

22. Checks at the actual place of residence of IDPs can be carried out by both representatives of structural divisions concerning the social protection of the population and working groups consisting of employees of territorial divisions of the Ministry of Internal Affairs, State Migration Service, SBU, National Police, the State Financial Inspection, the State Audit Service, and the Pension Fund of Ukraine.

23. Thus, IDPs who receive pensions were held hostages by their place of residence, *which in turn violates the human right to privacy guaranteed by article 32 of the Constitution of Ukraine, article 301 of the Civil Code of Ukraine¹⁵, and*

¹² <http://zakon5.rada.gov.ua/laws/show/1058-15>

¹³ <http://zakon5.rada.gov.ua/laws/show/1058-15>

¹⁴ <http://reyestr.court.gov.ua/Review/67481245>

¹⁵ <http://zakon0.rada.gov.ua/laws/show/435-15>

*article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms*¹⁶.

24. In addition, the practice of mandatory inspections of IDPs violates the right to freedom of movement (article 313 of the Civil Code of Ukraine¹⁷; article 13 of the Universal Declaration of Human Rights)¹⁸ and the right to the inviolability of housing (article 30 of the Constitution, article 12 of the Universal Declaration of Human Rights¹⁹, article 8 of the Convention on Human Rights and Fundamental Freedoms²⁰, and article 17 of the International Covenant on Civil and Political Rights).

25. Also, IDP pensioners are deprived of the right to choose a financial institution through which they will receive their pension. In May 2018, the Ministry of Finance of Ukraine determined a list of 34 banking institutions for the payment of pensions, cash assistance, and wages to employees of budgetary institutions.

26. Meanwhile, IDP pensioners should be served exclusively in the state "Oschadbank", which is discrimination on the basis of belonging to a certain social group.

27. In addition, sub-paragraph 10 of paragraph 1 of the government resolution No. 637²¹, which gives "Oschadbank" the right in case of failure to identify a pensioner to suspend expenditure operations on their account and to inform the Ministry of Finance and Social Policy. The court also cancelled this norm, but in practice it is still valid.

28. The aforementioned examples lead to the conclusion that the government of Ukraine has violated the following articles of the International Covenant on Economic, Social and Cultural Rights²²:

Part 2 of article 2, which guarantees that "the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

¹⁶ http://zakon5.rada.gov.ua/laws/show/995_004

¹⁷ <http://zakon0.rada.gov.ua/laws/show/435-15>

¹⁸ http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml

¹⁹ http://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml

²⁰ http://zakon5.rada.gov.ua/laws/show/995_004

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

²² http://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml

Part 3 of article 9, which guarantees that “the States Parties to the present Covenant recognize the right of everyone to social security, including social insurance”.

II. THE RIGHT TO EDUCATION

A. Violation of the right to use the languages of national minorities

29. According to part 3 of article 13 of the International Covenant on Economic, Social and Cultural Rights²³, the States parties to the Covenant agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall **strengthen the respect for human rights and fundamental freedoms**.

30. On September 5, 2017, the Parliament adopted the law "On education"²⁴. Article 7 of this law states that the only language of education in educational institutions will be the state language. Languages of national minorities, including Russian, will be studied only until the fifth class, but this rule will be valid only until 2020.

31. The adopted law does not comply with the European Charter for regional or minority languages²⁵, which Ukraine ratified in 2003, and the law “On national minorities in Ukraine”²⁶.

32. Thus, article 7 of the law "On education"²⁷ violates the guaranteed free development, use, and protection of Russian and other languages of national minorities of Ukraine, which are provided for in article 10 of the Constitution of Ukraine²⁸. This is confirmed by article 53 of the Constitution, which States that citizens belonging to national minorities are guaranteed the right to study in their native language or to study their native language in state and municipal educational institutions or through national cultural societies, in accordance with the law.

33. The Hague recommendations on the rights of national minorities and education of 1996 note that, ideally, primary school subjects should be taught in a minority language. In secondary schools, a large part of the teaching material should be taught in a minority language.

34. As of 2017 in Ukraine, about 400,000 children in 735 educational institutions received school education in the languages of national minorities.

²³ http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

²⁴ <http://zakon3.rada.gov.ua/laws/show/2145-19>

²⁵ <http://hrlibrary.umn.edu/euro/Rets148.html>

²⁶ <http://zakon3.rada.gov.ua/laws/show/2494-12>

²⁷ <http://zakon3.rada.gov.ua/laws/show/2145-19>

²⁸ <http://zakon3.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80>

B. Violations of the rights of students when enrolling in the first class

35. On May 5, 2018 the Ministry of Justice of Ukraine ordered enrolment in the first class of primary school. According to the approved document, primary school children are enrolled on the basis of their territorial accessibility. The educational institution has no right to refuse admission to children from its territory of service, as well as to siblings of children who are already studying in this institution and the children of employees of this institution (i.e., a child whose mother works at the school, for example, as a teacher or a nurse, also has the right to priority entry). Also, schools (including gymnasiums and lyceums) are deprived of the right to conduct any entrance examinations. Enrolment is carried out until May 31 (the first wave). Pupils of kindergartens at educational institutions have no advantages over other children.

36. This order of enrolment became discriminatory against citizens who do not have official registration at their place of residence, as well as against temporarily displaced persons from the combat zone in Donbass.

37. In addition, according to Ukrainian law (Constitution of Ukraine, law of Ukraine "On education"²⁹), every child has the right to education. In turn, the Law "On freedom of movement and free choice of place of residence in Ukraine" stipulates that registration cannot be a condition for the realisation of rights and freedoms.

38. School enrolment on a territorial basis is a violation of part 3 of article 13 (paragraph 3) of the International Covenant on Economic, Social and Cultural Rights³⁰, whereby the States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

39. The aforementioned examples lead to the conclusion that the government of Ukraine has violated the following articles of the International Covenant on Economic, Social and Cultural Rights³¹:

Part 3 of article 13 (paragraph 1), which guarantees that "the States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding,

²⁹ <http://zakon3.rada.gov.ua/laws/show/2145-19>

³⁰ http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

³¹ http://www.un.org/ru/documents/decl_conv/conventions/pactecon.shtml

tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace."

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The All-Ukrainian Association "Uspishna Varta" is a human rights platform that brings together lawyers, public figures, and volunteers to protect political and civil rights and freedoms of citizens of Ukraine, as well as to support people and organizations that are persecuted for their political beliefs.

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