

## The need to introduce an alternative system of allocation and control of social payments and pensions for IDPs after the partial repeal of provisions of the Resolution No. 365

On June 8th, 2016, the Cabinet of Ministers of Ukraine adopted the resolution No. 365 «Some issues of social payments to internally displaced persons» (hereinafter – Resolution No. 365), which approved new procedures for the allocation and monitoring of social payments and pensions to internally displaced persons (hereinafter-IDPs). This resolution provides that Departments of social protection of the population carry out verifications of the place of residence of IDPs and make the act of inspection of material conditions of a family of IDPs. Only after such a verification, the Commission on the allocation of social payments can make decisions on payment of pensions, social payments, subsidies and benefits to IDPs. And can refuse – if a displaced persons is not present at home.

### Appeals to the Donbas-SOS hotline<sup>1</sup>

6 months of 2018

**13 074**

Total number of calls

May

**3 134**

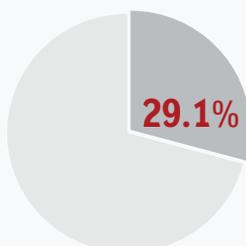
Total number of calls

June

**2 438**

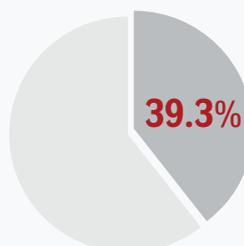
Total number of calls

### CALLS REFERRING TO RESOLUTIONS 365 AND 335



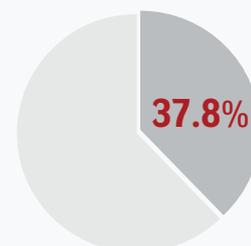
**3 791**

Calls



**1 231**

Calls



**921**

Calls

<sup>1</sup> – This data was received in the framework of the project «Legal support of the population affected by the conflict in the East of Ukraine» implemented with the support of the Swiss Agency for Development and Cooperation

For the six months of 2018, issues related to the problems of citizens' access to the information on their pension and social payments as a result of the implementation of the Resolution No. 365 are on leading positions from the total number of calls. In addition, its percentage increased significantly in May-April with the adoption of the Resolution of [the Cabinet of Ministers of Ukraine № 335](#) «On amendments to the Resolution of the Cabinet of Ministers of Ukraine № 365 as of June 8th, 2016» – now the amount of social payments (and pensions) that have not been paid for the past period have to be paid according to a separate procedure. However, this procedure has not yet been approved.

*An elderly woman is 80 years old. She applied for her pension in Volnovakha, then went to the hospital. Her pension was suspended because she was absent at her home at the time of verification.*

*In an IDP family, a person with the first degree of disability (mental illness) has stopped receiving pension again. In May and June, there was no pension. On June 4th there was a Commission, his family was investigated, but still, there was no pension. In May, an IDP wrote a statement requesting his pension. He has received a written answer: your application is being reviewed, we are dealing with your case, if you are not satisfied – please file a lawsuit. The answers were received from the Pension Fund of Ukraine (hereinafter – PF) and the Department of social protection of population (hereinafter – DoSP). What to do now? There are plans for the summer, however, it is unclear whether I can leave and actually go somewhere? I am ready to give up everything and come to Kiev to deal with the issue and apply to the President, to the Embasys, etc. Should I come to Kiev?*

*A man with the second-degree of disability (cirrhosis of the liver). We moved from Obolon to Solomensky district of Kyiv. The social worker called and said he left a note and payments were terminated. There was no message at all.*

**The Resolution No. 365** provides that in case of termination of payments based on the results of verification, and then their renewal, the first payment after the termination a person receives only two months after the decision of the Commission on the appointment (renewal) of social payments. In cases, when social payments were generally dismissed on the basis of cancellation of an IDP certificate, reallocation is possible only after six months.

*A pension was blocked for six months, because border guards sent to the DoSP a partial schedule of moving, missing the return to the governmentally controlled territory.*

*There was a six-day delay in payment of pension in May. It is still absent for the 5th of May. The PF reported that the pension payment was suspended because I crossed the checkpoints. I applied for the restoration of payments. Then there was the verification visit. Today at the PF it was said that I will receive my pension payment for July only.*

*My mother-in-law stopped receiving pension payments in May. At the PF they showed a list of 87 names of people to whom payments were suspended because of an IDP certificate (as a result of being absent at home during verification visits for more than 60 days). There is no signature or a seal. It is a lie-I have never violated any rules, no checks were conducted. What do I do?*

## COURT'S DECISIONS AGAINST THE RESOLUTION NO. 365

The Resolution No. 365 is discriminatory and contradicts the Constitution of Ukraine and a number of international treaties. It can be proved by the fact that when applying to the court the vast majority of cases submitted by IDPs are positive (the requirements are satisfied in full or in part in terms of the restoration of pensions and recognizing the illegality of actions of the PF). The Resolution No. 365 restricts the right of citizens to freedom of movement and freedom of choice of place of residence, deprives of the right to property (pension) and means of livelihood, as well as the opportunity to feel as a rightful citizen of Ukraine. **Detailed information on judicial practice can be found in the Annex.**

On July 4, 2018, the decision of the Kyiv Administrative Court of Appeal in the case No. 826/123/16 came into force. By this decision the appeal of the Cabinet of Ministers of Ukraine was recognized as unsatisfactory, and the decision of the District Administrative Court of Kyiv as of June 29th, 2017 – remains unchanged. The decision of the District Administrative Court of the city of Kiev as of June 29th, 2017 states the following:

*«Articles 7, 8, 9, 13 of the Procedure on the allocation (renewal) of social payments to internally displaced persons approved by the Resolution of the Cabinet of Ministers of Ukraine No. 365 as of 08.06.2016 are recognized as invalid.»*

*The Procedure of the control over social payments to internally displaced persons at the place of their actual residence/stay, approved by the Resolution of the Cabinet of Ministers of Ukraine No. 365 as of 08.06.2016 are recognized as invalid.*

*Paragraph 10 of the Article of the Resolution of the Cabinet of Ministers of Ukraine № 637 as of November 5th, 2014 «On social payments to internally displaced persons» are recognized as invalid.*

*The court's decision of July 4th, 2018 comes into force from the date of its adoption and can be appealed by filing a cassation appeal directly to the Supreme Court within thirty days from the date of the full court's decision. The Cabinet of Ministers of Ukraine filed a cassation appeal to the Administrative Court of Cassation (the composition of the court was appointed on July 26th, 2018)*

This is one of the court's cases ruled against the Resolution No. 365, which challenges separate provisions, but not the entire Resolution No. 365. At present, the Supreme Court opened the proceedings in the case No. 826/13784/16 – regarding the recognition of illegality and as a result cancellation of the Resolution No. 365 completely, where the plaintiff's interests are represented by the NGO Donbass-SOS, and the District Administrative Court of Kyiv is currently hearing the case № 826/12402/16 – regarding the invalidity of the Resolution of the Cabinet of Ministers of Ukraine No. 365 as of 8 June 2016. № 365.

## HALF A SOLUTION

Recognition of invalidness of separate provisions of the Resolution No. 365 led to the emergence [of the explanation provided by the Ministry of Social Policy of Ukraine «About the execution of judgment»](#), in particular, according to which for the allocation (renewal) of social payments to IDPs such issue shall be put for the consideration of the Commission for decision-making on the allocation (renewal) of social payments with the submission of the act of inspection of material and living conditions of an IDP family, despite the lack of the specific procedure and deadlines for the preparation of such an act. Accordingly, the DoSP has to prepare an act of examination of household conditions of an IDP family, even in the absence of the specific procedure for its preparation. Therefore, in practice, there are situations when an act is being prepared directly at the DoSP and at the actual place of residence of a person. Some DoSPs still consider the preparation of an act on the actual place of residence of a person as a verification and are guided by the norms that have become invalid in accordance with the court 's decision.

The lack of deadlines has led to the fact that, in practice, inspections, which previously had to be carried out within 15 working days from the date of a receipt of the application for the allocation (renewal) of payments can now be delayed indefinitely. Such uncertainty will exist until changes are implemented to the Resolution No. 365 or the Cabinet of Ministers of Ukraine adopts a new system of payments for IDPs: where pension payments will be separated from an IDP certificate, the appointment and control of social payments will comply with the laws and will not be discriminatory.

## RECOMMENDATIONS

1. The Cabinet of Ministers of Ukraine and the Ministry of Social Policy of Ukraine should urgently approve an alternative system of allocation and control of social payments and pensions. Civil society organizations that deal with the rights of IDPs appealed to [the Prime Minister of Ukraine](#) with the request to include the following principles when developing a new procedure
    - an obtainment of a pension should not depend on the availability or absence of an IDP certificate;
    - verification of the place of residence of IDPs should be abolished. For an identification of a person-recipient of payments, conduction of a visit to a banking institution no more than once a year should be enough;
    - restored pensions and social payments should be allocated immediately after an IDP applies for it, as well as the debt payment should be conducted based on the general order;
    - refusal to register as an IDP should not lead to the cancellation of pensions or social payments that are unrelated to internal displacement;
    - IDPs should be able to choose a banking institution where they want to open an account and receive social payments and pensions.
  2. The Cabinet of Ministers of Ukraine, the Ministry of Social Policy of Ukraine should change the approach to the implementation of payments to IDPs by separating the payment of social payments and pensions, as well as to refrain from the approval of the procedure on payment of unreceived aid for the past period as long as these provisions are discriminatory and contradictory to the law.
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## JUDICIAL PRACTICE-RESOLUTION NO. 365

In June 2016, the Cabinet of Ministers of Ukraine adopted the Resolution No. 365 «Some issues of social payments to internally displaced persons» and as a result approved new legally unregulated conditions for the exercise of the right to social and/or pension payments by internally displaced person that are considered as discriminatory by human rights defenders.

### Government position

The Resolution is adopted within the competence established by the Constitution of Ukraine and Law of Ukraine «On the Cabinet of Ministers of Ukraine».

Adopted to implement the Law of Ukraine «On ensuring the rights and freedoms of internally displaced persons».

It is accepted without violation of the acceptance procedure and does not require specific consultations with the public.

It is not a normative legal act that is subject to a mandatory anti-discrimination expertise in accordance with the Law of Ukraine «On principles of prevention and combating discrimination in Ukraine».

### Human rights defenders position

The basics of social protection, forms and types of pensions are NOT within the competence of the Cabinet of Ministers of Ukraine. It is a sphere of a legislative regulation.

The law does not provide for such a requirement.

A discussion should have been mandatory in the form of public discussion and/or electronic consultations.

The introduced procedures create obstacles in the exercise of the right to receive pensions and social payments of IDPs and therefore discriminate the latter.

## The position of the judiciary in respect of the Resolution No. 365

**3888 cases** reviewed in the first instance, including **3841 decision on non-payment of pension**<sup>1</sup>.

**Analysis of 515 court decisions**<sup>2</sup> shows that **90% of courts of the first and second instance state that:**

- *The Cabinet of Ministers according to the Constitution of Ukraine does not have the right to limit the constitutional rights of citizens.*
- *Resolution No. 365 is a limitation of the constitutional right of citizens to social protection.*

<sup>1</sup> – Search criteria: 1) search by context – Resolution No. 365, pension, internally displaced persons; 2) the period of decision (ruling) – from 08.06.2016 to 20.08.2018; 3) the form of the judgment – decision, ruling; 4) the form of proceedings – administrative; 4) category of cases – administrative; 5) the status of the parties to the trial – an individual/state body, enterprise, institution, organization.

<sup>2</sup> – Sample for the period from 08.06.2016 to 15.08.2017 of decisions of the court of the first instance that entered into force (taking into account appeal and cassation instances).

## An analysis of the Supreme Court decisions, **74 of which are positive and 0 are negative**, shows:

- *The law of Ukraine «On compulsory state pension insurance» has higher legal force than the Resolution № 365.*
- *The norms of the Law should be a priority.*

## The Supreme Court drew attention to the following:

- The list of grounds for a termination of pension payment (Article 49 of the Law of Ukraine «On compulsory state pension insurance») is exhaustive and cannot have a broader definition.
- The registration of a place of residence/stay or its absence cannot be a condition for the exercise of rights and freedoms or become a basis for its restriction.
- The Cabinet of Ministers of Ukraine does not have the right to deal with issues that fall within the exclusive competence of the Verkhovna Rada of Ukraine.
- Termination of pension payments on the grounds provided for in the Resolution No. 365 is a violation of the Article 1 of the Protocol to the Convention for the Protection of human rights and fundamental freedoms N1.
- The termination of pension payments on the grounds provided for by the Resolution No. 365 is discriminatory.

*The Government's position with regard to the Resolution No. 365 is not consistent with the provisions of the Constitution of Ukraine, the Laws of Ukraine, does not comply with the Convention on human rights and fundamental freedoms and the practice of the European Court of human rights, and is highly discriminatory. By adopting the Resolution No. 365, the Cabinet of Ministers of Ukraine went beyond its powers under the current legislation of Ukraine.*



**TRANSITION**  
Ministry of Foreign Affairs of the Czech Republic