

**JUSTICE FOR PEACE
IN DONBAS**

*Coalition of Human Rights
Organizations*



**CHARITABLE FOUNDATION
"EAST SOS"**

SOCIAL RIGHTS IN DONBAS



**HDIM
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AUTHORS

ВОСТОК SOS

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"JUSTICE FOR PEACE IN DONBAS" COALITION

The Coalition was established in December 2014 and includes 17 NGOs, mainly from the Ukrainian regions of Donetsk and Luhansk.

The Coalition members are:

Alchevsk Human Rights Analytical Centre, Centre for Civil Liberties
/ Euromaidan SOS, Civic Organization "Kharkiv Human Rights Protection Group," Donbas SOS,
Donetsk "Memorial," Eastern-Ukrainian Centre for Civic Initiatives, Ecological and Cultural Centre
"Bakhmat," Human Rights Centre "Postup" / Vostok SOS, Luhansk Regional Human Rights Centre
"Alternative," Luhansk Rights Defence Group, Public Committee for Protection of Constitutional Rights
and Freedoms of Citizens, Public Movement "Ochyshchennya," Public Organization "Mirny bereg,"
"Social Action" Centre NGO, Starobilsk District Public Human Rights Women's Organization "Victoria,"
Starobilsk Public Organization

CONTEXT

The right to social welfare is one of the fundamental rights guaranteed by both international law and the national legislation of Ukraine. For objective reasons, in 2014 at the very beginning of the military conflict in the east of Ukraine, the social welfare system in the Lugansk and Donetsk regions was virtually paralysed. It was impossible to ensure cash flows and distribution of benefits among social security beneficiaries, as well as the distribution of other payments in areas which were not under the control of the Ukrainian authorities.

In addition, Ukraine was faced with a phenomenon new at the time, i.e. massive internal displacement of people who needed urgent direct assistance (accommodation, food, health care) and social support. These people also needed the resumption of their welfare benefits at new place of residence. However, the restoration processes were greatly hampered, as there was no unified database of recipients of social benefits.

After more than two years, the public policy of Ukraine has not become more socially oriented or humane towards residents of the non-government controlled areas (NGCA), nor with respect to displaced persons who were forced to flee their homes due to war. Moreover, when exercising their social rights, both those groups face discrimination which, in some cases, is laid down in law. The state continues its systematic social policies involving a "crackdown" on the war-affected population.

MONITORING METHODOLOGY

The implementation of the right to social protection of internally displaced persons ("IDPs") and residents of the temporarily occupied territories of Ukraine was monitored by the Charitable Foundation "East SOS" in the period from 1 June to 31 August 2016. The main methods of monitoring are as follows:

- Analysis of the calls received by the legal assistance hotline operated by "East SOS" (1,652 inquiries);
- Analysis of applications filed by IDPs at legal assistance organisations in Kiev, Luhansk region (Severodonetsk, Starobelsk, Rubezhnoye) and Donetsk region (Bakhmut, Mariupol, Kravtorsk) (637 applications);
- Analysis of responses to requests for information filed with the Ministry of Social Policy and its structural divisions, the Pension Fund of Ukraine and others.

A separate module of the study monitors the implementation of the internally displaced persons' right to social welfare following the adoption of amendments to the legislation related to social benefits for IDPs.¹

The monitoring was conducted by "East SOS" in cooperation with the international organisation "Stabilisation Support Services" (SSS) –Advisors on IDPs in the period from 18 to 31 August 2016 in 17 regions of Ukraine (Vinnitskaya, Dnieprovskaya, Donetskaya, Zaporozhskaya, Ivano-Frankovskaya, Kyivskaya, Luhanskaya, Odesskaya, Poltavskaya, Rovenskaya, Sumskaya, Cherkasskaya, Chernigovskaya, Chernovitskaya, Kharkovskaya, Khersonskaya, Khmel'nitskaya) and the city of Kyiv.

During the monitoring period, a total of 242 Departments for Labour and Social Protection of the Population were visited. Monitoring data were collected through direct observation (both external and participant observation), and interviews with IDPs persons as well as employees of departments providing welfare services to IDPs.

¹ This is a reference to the Decision of the Cabinet of Ministers No. 365, adopted on 8 June 2016, entitled "On some issues of social benefits payable to internally displaced persons".

MONITORING RESULTS

1 | The inhabitants of the temporarily occupied territories are deprived of the possibility to exercise their right to social security until they receive the status of IDPs or until these territories return under the control of Ukraine.

In other words, no social benefits, including pensions, are paid to those residents of the Donetsk and Lugansk regions who have not left those regions and have not duly registered as IDPs. Only after receiving the IDP status do the inhabitants of the occupied territories receive an opportunity to restore their social benefits or to apply for them. This contradicts the UN Guiding Principles on Internal Displacement which prohibit forced displacement. The current situation stimulates people to leave their homes only because the state has ceased to pay pensions and other benefits which may be the only source of subsistence for the elderly or for persons with disabilities residing in the temporarily occupied territories

2 | Internally displaced persons have no possibility to exercise their essential rights due to non-adoption of relevant laws and secondary legislation.

As early as on 14 May 2015, the President of Ukraine signed the law on support for internally displaced children when receiving vocational, technical and higher education. In particular, the law provided for full or partial tuition paid from the central and local budget, preferential long-term loans for education, social grants, and free-of-charge accommodation in dormitories. However, until today, the Cabinet of Ministers of Ukraine has not adopted a targeted programme that would enable those legal provisions to be operational, and no funding for this programme has been allocated for 2016.

A similar situation, i.e. when protection of social rights is declared but not accompanied by a real mechanism for their implementation, also exists with regard to the provision of housing to the IDPs, and the compensation for their housing (which was either lost or damaged as a result of anti-terrorist operations), preferential housing credit for displaced persons etc.

3 | Termination of all kinds of social assistance payments to IDPs is a mass-scale phenomenon.

Since February 2016, the Ukrainian Ministry of Social Policy has pursued a policy of reducing the number of IDPs receiving social assistance. Those payments were terminated for various reasons, for example:

- Due to the fact that the IDPs were recorded in the so-called "SSU lists" (those lists contained approx. 500,000 citizens who allegedly either never left the temporarily occupied territory or returned there and, therefore, had to be excluded from all kinds of social assistance).
- Due to the absence of a State Migration Service stamp on IDP's certificates (such mandatory stamps were annulled in January 2016, nevertheless the labour and social protection authorities demanded them until mid-June 2016 and discontinued all kinds of social benefits when such stamp was not present).
- Due to the expiry of the certificate etc. In this case, the reinstatement of payments is a very complicated procedure, whereby the case must be examined by a commission after the IDP's place of residence has been checked by the social workers, possibly accompanied by the police, territorial bodies of the Pension Fund of Ukraine, the State Migration Service and other services. The official purpose of those inspections is to confirm that the IDP actually resides at the address given during the registration. IDPs are not notified of the inspections in advance in almost all regions (76.4%).

After a review, documents are sent to local commissions, which are authorised to decide on awarding, extending or reinstating welfare benefits to IDPs. However, the number of applications for the reinstatement of welfare benefits in some regions is many times higher than the number of cases actually reviewed by the commissions. For example, out of 2,351 applications for the reinstatement of welfare benefits in Kremennaya (Luhansk region) only 450 were reviewed by the commission in the course of three sessions, and a positive decision was adopted

only in 247 cases. In one district of Kherson only 170 cases out of 4,517 were processed.

And even after the commission adopts a positive decision, it may happen that payments are not reinstated after their termination, and in some cases (for example, if the IDP's certificate was revoked) social payments can be awarded again only six months after the cessation of payments on condition that all the required procedures have been followed.

4 | The control over IDPs by means of regular inspections at their places of residence, restricting their freedom of movement, possible access to data on bank accounts and transactions, as well as restrictions on the choice of bank to be used to receive social benefits (only the state-owned bank is permitted).

These measures of the so-called "verification", applied only to IDPs, are discriminatory and deliberately put IDPs in a position that is worse versus other citizens of Ukraine who have not been displaced. Moreover, inspections at places of residence restrict the freedom of movement of IDPs, since if IDPs are absent in their place of residence at the time of inspection, all kinds of welfare benefits may be withdrawn. But, importantly, IDPs are not notified of the date and time of such inspection beforehand.

What is more, IDPs can receive all kinds of social benefits solely to accounts opened in the state-owned 'Oschadbank'. Moreover, a special tariff plan called 'Eastern' was created for IDPs (later renamed into 'My Country'), which, for instance, does not offer the functionality of online payments or transfers from one card to another. On the other hand, it is required that a bank card for an IDP should contain graphic and electronic information as well as a digital signature of its holder. In addition, IDPs are obliged to undergo physical identification in the Oschadbank offices twice a year, otherwise the cards are blocked.

RECOMMENDATIONS

In the course of two and a half years of armed conflict that caused a mass movement of people within the country, the state has not developed policies to provide comprehensive assistance to displaced persons. To this day, a major role in assisting the affected populations is played by non-governmental organisations, volunteer initiatives and humanitarian funds. However, they are not able to, and should not, replace the public authorities, which have a positive obligation to provide assistance and to protect citizen's rights, including the right to social welfare for those who had to flee from the war.

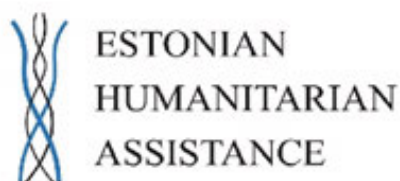
The following key recommendations can be given with the aim to change the existing situation in respect of the right to social welfare in the case of IDPs and residents of temporarily occupied territories:

- Develop a mechanism—in cooperation with non-governmental organisations—to implement the right to social welfare, including the payment of all types of social assistance, to the residents of temporarily occupied territory of Ukraine.
- Adopt relevant laws and secondary legislation which will allow IDPs to exercise their rights and, in particular, the rights to housing and education, etc.
- Restore, with immediate effect, all kinds of social benefits to IDPs.
- Abolish the practice of regular inspections of places where displaced persons live as a condition for awarding or restoring social benefits to IDPs.
- Ensure immediate processing of all applications for the restoration of social benefits filed by IDPs with social welfare departments.

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