



## LEGAL ALERT

August 2016

Due to the Parliamentary holiday and low season in political life, there are fewer legal issues to report on for August.

### 1. IDP registry should be open for public since 10 August

The talks about the Unified Electronic IDP registry (the Registry) started since the onset of the conflict in Spring 2014 and it was considered the baseline task for the Ministry of Social Policy (MoSP). On 01 October 2014 the Cabinet of Ministers' (CMU) Resolution No. 509 obliged MoSP to create the Registry. On 01 August 2016 MoSP has informed that it has launched the Registry and access to it was provided to all the regional Departments of Social Policy (DoSP).

According to the press statement, the Registry would help avoid faulty information on the numbers of IDPs in the country. The Ministry also informed that regional DoSPs will begin to fill in the data into the Registry and updated information on the IDPs number will be available by December 2016.

According to local NGOs and broadcast by the media, NGOs should have been provided with the access to non-personified data from the Registry starting with 10 August.

As of the date this Alert is sent out, no NGO, to our knowledge, has received such access. Moreover, DRC lawyers and partner lawyers monitoring the situation have identified several implications arising from using the Registry, namely:

- Non-adequate functioning of the Registry - many workplaces in regional DoSPs do not have access to it;
- Registry is not accessible during all working hours;
- Information has to be included manually into the Registry by DoSP workers, thus leaving them almost no time to perform other day-to-day duties related to IDPs, in particular re/registration and social benefits assignment.

Relevant statements may be found here: [http://www.mlsp.gov.ua/labour/control/uk/public/article?art\\_id=191761&cat\\_id=107177](http://www.mlsp.gov.ua/labour/control/uk/public/article?art_id=191761&cat_id=107177); <http://hromadske.ua/posts/pravozakhysnyka-m-nadadut-dostup-do-novoho-reiestru-pereselentsiv>

### 2. Significant court case win setting quasi-precedent on IDP access to pension.

**National first instance courts acknowledge that obligation to receive pension only through Oshchad Bank is discriminatory and unlawful**

DRC partner lawyers in Vinnytsya, Chernihiv and Ivano-Frankivsk oblasts have counseled and assisted IDPs to successfully litigate against the CMU Resolution 637/2014. First instance courts reinstated their right to claim pension through non-Oshchad bank accounts.

**Background:** amendments to CMU 637/2014 of March 2016 had introduced the following

- Oshchad bank becomes the only institution to transfer all types of social payments and pensions to beneficiaries registered as IDPs
- Effective from 01 May, anybody receiving IDP benefits or pension payment for the first

time (newly-assigned payments and pensions), should get it through Oshchad bank

- Effective from 01 July, all IDPs with any existing social and/or pension entitlements (including maternity payments, disability pensions etc.) shall receive them only through Oshchad bank. They will have to open an account with Oshchad bank if they have not already got one by that time
- IDP pensioners should obtain an Oshchad bank card which will also serve as Pension ID
- Starting with 01 July all new Oshchad bank beneficiaries will receive this card
- Starting with 01 August all previously registered IDP Oshchad bank pensioners will exchange their standard bank cards for these Pension ID bank cards

These changes led to great disapproval both from the human rights watchdogs and IDPs themselves, who were forced to face long queues and unreasonable steps to receive their pensions.

As we mentioned, some IDP pensioners who have not transferred their accounts and faced suspension of pension payments successfully litigated against regional Pension Funds.

Attached is link to one of the most recent cases <http://reyestr.court.gov.ua/Review/59482207>

The courts underlined that amendments into the CMU Resolution 637/2014 are discriminatory towards IDPs, as pension installments have to be processed through single designated bank. The courts noted that pension-related issues in question are envisaged exclusively in the Law of Ukraine On Obligatory State Pension Insurance, including the right to choose bank for receiving pension. Thus CMU Resolutions cannot restrict such right.

Such positive court decisions are being used as quasi-precedents for other DRC legal aid beneficiaries. Lawyers and IDPs successfully use these decisions to change the position of pension funds without going to court. As a result, pension funds agree to pay pension directly to IDPs non-Oshchad bank accounts, disregarding the discriminatory scheme introduced by CMU Resolution 637/2014.

We will be glad to provide any further details on those cases.

### **3. Draft law On Exemption from Court Fees for IDPs and Conflict-Affected was registered with the Parliament**

In March 2015 DRC has initiated monthly round table meetings which later adopted the format of a working group, focused on the issues of access to justice. During last months Working Group has fully developed three draft laws with all the supporting documents to tackle three burning issues, including lack of access to court and non-enforcement of court decisions.

On 27 July 2016 a group of MPs has registered one of the draft laws which envisages an automatic exemption from court fees for the whole vulnerable group of population, who gained their vulnerability due to armed conflict and internal displacement. Such exemption only concerns the rights that are specific pertaining IDPs – and defined in the special Law on Rights and Freedoms of IDPs and the procedure for court registration of births and deaths in NGCA, which is otherwise discriminatory for people born or deceased in non-government controlled areas.

Attached is link to the DRC-designed draft law and explanatory note: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=59850](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=59850)

You can also find the position paper on the situation attached to the email which may be helpful in your advocacy efforts. We will keep you informed on any progress.

*This analysis is made possible by the generous support of the American people through the United States Agency for International Development (USAID). The contents are the responsibility of Danish Refugee Council and do not necessarily reflect the views of the USAID or the United States Government.*