

**Monthly Legal Alert**  
Issue 1, 01-29 February 2016

## **1. LEGISLATIVE DEVELOPMENTS**

### ***1.1 Law Introducing Simplified Court Procedure on Civil Status Registration***

On 19 February the President has signed the Law “*On Introducing Changes into Civil Procedural Code on Establishing Facts of Birth and Death on the Temporarily Occupied Territory of Ukraine*” (the “Law”). According to the Law, courts when establishing facts of birth/death on the temporarily occupied territory should decide on the case immediately, and issue copies of the decision the same day.

*Points of concern:*

The Law is not an entirely adequate response to the documentation issues arising in NGCA due to the following:

- (a) the law does not cover civil registration of marriages and other documentation issues such as notary deeds;
- (b) the court procedure for state registration of civil and other documentation (birth/marriage/deaths etc) could be adequate if the total number of IDPs' and people living in NGCA is not significant. The high number of potential target beneficiary may overwhelm the already overburdened courts. Statistics shows that each first instance court judge resolve over 2000 cases a year.

*Possible mitigation:*

DRC Legal Assistance Unit advises on advocating for an administrative procedure of recognizing the fact of birth/marriage/death in NGCA, instead of a court procedure. This practice was already introduced to great success in Moldova and Georgia. It does not mean that the Ukrainian authorities will have to recognize the powers of the self-proclaimed authorities in NGCA - it merely gives credibility to the people residing in those areas.

### ***1.2 Introducing Social Service Standard***

On February the Ministry of Social Policy introduced a State Standard for Social Service provided in a form of Representation. Please note that the Standard will enter into force the day it is published, and it has not been published yet.

This Standard prescribes the processes a social worker should follow while representing a social client (person with physical and/or mental incapacity, e.g handicapped and orphan).

Points of concern:

While on the whole we consider this development to be a step forward in enhancing the quality of social services, we remain concerned about the discretion provided to a social worker to refuse such service on the grounds of his/her workload.

Possible mitigation:

Once the Standard is effective, we would advise NGOs to monitor their client cases and report if there is any negative pattern observed in implementing the new Standard. No litigation possibilities are available at the moment.

## **2. POLITICAL DEVELOPMENT**

### ***2.1 Prime Minister announced 150 000 to be left without social aid payments.***

On February 21, just a couple of days after the Parliamentary hearings on IDP issues, the Cabinet of Ministers announced a virtual 'witch hunt' on all the IDPs who are receiving government financial aid. A letter (attached) from the Deputy Minister of Social Policy dated 16 February 2016 came to our attention, which ordered all regional offices of the ministry to suspend social payments for IDPs pending verification of their residence address either by the State Migration Service of Ukraine, or those individuals themselves. At the same time there is no procedure for such a verification and it is not stipulated by current legislation, which makes it impossible to comply with.

Additionally, information from open sources suggests that the same procedure will apply to pensions for IDPs. We have found a photo of an e-mail allegedly from the First Deputy Head of the Pension Fund of Donetsk Oblast bearing instructions addressed to regional offices (attached). According to those instructions the pensions for IDPs should be accrued, however not transferred to the bank accounts until the pensioners prove their residence in the government-controlled areas.

This was also verified on the official web-page of the Pension Fund of Donetsk Oblast. The news item of 02 March 2016 informs that the payment of pensions was suspended pending verification of addresses of IDPs, whose residence on the government controlled areas is under suspicion of the State Security Service. It is also mentioned that the payments will resume when the beneficiary verifies the actual residence address, however there is no mentioning of the procedure for such verification.

We find it impossible to challenge above mentioned letters through administrative justice system, as *de jure* they do not bear any legal authority and are informative in nature.

Possible mitigation:

The only two possible solutions that DRC Legal Assistance Unit may suggest in this case are:

a) invoke advocacy to withdraw the letter;

b) wait for an individual case and challenge it in court citing the decision of the social policy authorities to postpone payments as illegal and lacking in legal authority.

As for the second option, there is no possibility of a collective cancellation of benefits as such procedure does not exist. The Ministry cannot issue any decision other than for clearly defined individuals. However, the second option, involving litigation, will take a long time (minimum 2 months) and would not be effective in terms of making an impact on the society.

### **3. INTERNATIONAL LEGAL FORUM**

#### ***3.1 Notable ECHR verdict on Russia's effective control and influence over MRT***

Notable decision from the ECHR regarding extraterritorial responsibility of the occupying state was reached on 23 February 2016 in the case of *Mozer v. the Republic of Moldova and Russia* (application no. 11138/10), which concerned the detention of a man suspected of fraud, as ordered by the courts of the self-proclaimed "Moldavian Republic of Transdniestria" (the "MRT").

The European Court of Human Rights held, by a majority, that there had been no violation of Article 3, 5-1, 8, 9 13 in conjunction with 3, 8 and 9 of the European Convention on Human Rights by the Republic of Moldova, and that there had been a violation of the aforementioned articles of the Convention by the Russian Federation.

The Court held, by a majority, that the facts complained of fell within the jurisdiction of both the Republic of Moldova and of the Russian Federation. Although Moldova had no effective control over the acts of the "MRT" in Transdniestria, the fact that the region was recognized under public international law as part of Moldova's territory gave rise to an obligation for the State to use all the legal and diplomatic means available to it to continue to guarantee the enjoyments of the rights under the Convention to those living there.

At the same time, the "MRT"'s high level of dependency on Russian military, economic and political support gave a strong indication that Russia continued to exercise effective control and decisive influence over the "MRT" authorities, the Court observed. The Court maintained its conclusion in previous cases in finding that the "MRT courts", which had ordered Mr Mozer's detention, had not belonged to a judicial system operating on a constitutional and legal basis reflecting a judicial tradition compatible with the Convention during the period in question. His detention based on the orders of those courts had therefore been unlawful.

#### ***Our Notes***

The decision may have a significant bearing in the way human rights violations in NGCA and Crimea are attributed to in future litigations in international forums.

# INPUTS FOR PROTECTION CLUSTER

## KEY PROTECTION CONCERNS

- On 16 February the Ministry of Social Policy issued a letter ordering all MoSP regional offices to suspend social payments for IDPs before their residence address is verified either by the State Migration Service of Ukraine, or those individuals themselves. At the same time this verification procedure is non-existent and is not stipulated by current legislation, which makes it impossible to comply with. For more, see DRC February 2016 Legal Alert.
- On 21 February, just a couple of days after the Parliamentary hearings on IDPs, the Prime Minister made announcement on commencement of residence address verification campaign for IDPs' and subsequent suspension of social payments prior such verification. For more, see DRC February 2016 Legal Alert.
- On 2 March, Pension Fund of Donetsk Oblast informed that the payment of pensions was suspended for those IDP pensioners who are under suspicion of the State Security Service. The payments will resume after verification of addresses of IDPs, however DRC Legal Assistance Unit is concerned that there is no mentioning of the procedure for such verification.
- DRC Legal Unit found a photo (<http://informer.lg.ua/archives/146251>) of an e-mail allegedly from the first deputy head of the Pension Fund of Donetsk Oblast with instructions to regional offices. Instructions say that pensions for IDPs should be accrued however not transferred to the bank accounts until the pensioners prove their residence in GCA.
- DRC Legal Unit finds it impossible to challenge the letters through administrative justice system, as *de jure* they do not bear any legal authority and are not individual acts.
- DRC Legal Unit received information that queues for verification of residence address in Severodonetsk Department of Social Policy is over 4 weeks which makes it impossible to receive IDP social payment this month.
- According to interview with Head of Department of Social Policy in Sloviansk 16 933 IDPs should verify their residence addresses. Another source cites the Head of Department of Social Policy in Kostiantynivka who says that all kind of social payments including pensions were suspended for 26 000 registered IDPs. Department of Social Policy in Kramatorsk allegedly suspended validity of the IDP certificate to 25563 IDPs which according to DRC assessments amounts to 74% of registered IDPs.
- According to statement of the State Security Service of Ukraine made on 25 February, more than 60% of registered IDPs permanently reside in NGCA. DRC Legal Assistance Unit considers this to be a significant concern as this number of IDPs are at high risk of suspension of state social support (IDP social assistance, pensions etc.).
- In addition State Security Service accused 7500 IDPs registered under one address in Severodonetsk: 15B Novikova street which is the address of Department of Social Policy. DRC Legal Assistance Unit notes that practice of registration of IDPs

residence in Departments of Social Policy was common and stipulated by the Law “On ensuring rights and freedoms of internally displaced persons” before it was amended by draft law 2166. Thus prior to 13 January 2016 any IDP had the right to be registered at that address.

- The statement of State Security Service of 25 February mentioned that an individual was sentenced for fraud for assisting a member of armed forces to receive pension in GCA. DRC Legal Assistance Unit is concerned that humanitarian workers providing legal aid cannot check the information whether the beneficiary is a member of armed forces. The fact that the state denies the right to pension for people living in NGCA is a separate concern. Thus any humanitarian worker providing legal assistance in receiving pension or any social payment for IDP is potentially under risk of potential criminal investigation.
- As for now, DRC Legal Unit started identifying and supporting cases on suspension of social payments and pensions for IDPs. Exact number of cases in Kharkiv and Donetsk oblasts TBC. 2 cases on suspension of pensions in Vinnytsia oblast.

## **HIGHLIGHTS**

- In February 2016 DRC Legal Assistance Unit operated in 16 oblasts and provided legal aid to 2674 beneficiaries: namely 2389 legal consultations, 285 administrative, documentation and court cases. Significant part of consultations (36%) concerned social welfare issues.
- On 15 March DRC Legal Assistance Unit will host round table focusing on access to justice issues. Agenda includes: exemption from court fees for IDPs, prolongation of enforcement timeline for court decisions regarding NGCA. PC members are welcomed to attend. RSVP [kateryna.halenko@drc-ukraine.org](mailto:kateryna.halenko@drc-ukraine.org)



**МІНІСТЕРСТВО  
СОЦІАЛЬНОЇ ПОЛІТИКИ УКРАЇНИ  
(Мінсоцполітики)**

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16.02.2016 № 642/0/10-16/081

На № \_\_\_\_\_ від \_\_\_\_\_

Про посилення контролю щодо обліку  
внутрішньо переміщених осіб

Керівникам структурних  
підрозділів з питань  
соціального захисту населення  
обласних, Київської міської  
державних, Донецької і  
Луганської військово-  
цивільних адміністрацій

Останнім часом на адресу Міністерства надходить інформація про непоодинокі випадки проведення соціальних виплат з порушенням вимог урядових рішень щодо обліку внутрішньо переміщених осіб та, відповідно, необхідності вжиття додаткових заходів в системі посилення контролю такого обліку. Зазначасмо, що соціальні виплати проводяться тим особам, які переміщені на контрольовану українською владою територію та взяті на облік як внутрішньо переміщені. Факт проживання внутрішньо переміщеної особи має бути підтверджений відповідними територіальними підрозділами Державної міграційної служби.

В той же час, вже проведені перевірки свідчать про численні випадки непідтвердження даних, задекларованих під час взяття на облік внутрішньо переміщених громадян про фактичне місце їх проживання.

Зважаючи на викладене та з метою забезпечення дієвого контролю в системі обліку внутрішньо переміщених осіб та здійснення соціальних виплат, просимо забезпечити належне реагування на інформацію, яка надходить від органів МВС, Нацполіції, СБУ, Держприкордонслужби тощо.

Зокрема, зазначена інформація має надсилатися управліннями соціального захисту населення територіальним підрозділам Державної міграційної служби для проведення відповідної роботи.

З метою виконання постанови Кабінету Міністрів України від 05.11.2014 № 637 "Про здійснення соціальних виплат особам, які переміщуються з тимчасово окупованої території України та районів проведення антитерористичної операції" соціальні виплати особі щодо якої отримана інформація мають бути тимчасово призупинені, до надходження відповідних відомостей від органів Державної міграційної служби, або підтвердження особою факту проживання за місцем проведення виплат.

Заступник Міністра

В. Мушинін



ПЕНСІЙНИЙ ФОНД УКРАЇНИ  
ГОЛОВНЕ УПРАВЛІННЯ ПЕНСІЙНОГО ФОНДУ УКРАЇНИ  
В ДОНЕЦЬКІЙ ОБЛАСТІ

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02.2016 № / 03 / 34

ЕЛЕКТРОННА ПОШТА

Начальникам управлінь  
Пенсійного фонду України в  
районах, містах, районах у  
містах, а також в об'єднаних  
управліннях Донецької області

Про нарахування березня 2016

Головне управління Пенсійного фонду України в Донецькій області повідомляє, що нарахування березня 2016 року виконується поетапно згідно технології нарахування (Додаток 1) та зразків паспортів (Додаток 2):

1 етап - відібрати особові рахунки, в яких наявна особливість з кодом «94» ( п.8 технології нарахування).

2 етап - виконати фіктивне нарахування відібраних особових рахунків окремими відомостями (тип 25) ( п.9 технології нарахування).

3 етап - виконати нарахування на основну відомість (тип 1) по всіх особових рахунках, виключивши особові рахунки з кодом особливості «94», по яким виконане фіктивне нарахування.

4 етап - зафіксувати не виплату по всіх особових рахунках фіктивного нарахування типа 25 з кодом особливості «94» ( п.16 технології нарахування).

Продовження виплати та нарахування пенсій за особовими рахунками, в яких наявна особливість із кодом «94», здійснюється додатковими відомостями на березень 2016 у разі виконання перевірки обґрунтованості продовження виплати пенсії на підконтрольній Україні території.

Додаток: 2 файли \*.doc

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