



LEGAL ALERT

SPECIAL ISSUE, June 2016

On 8 June 2016 the Cabinet of Ministers of Ukraine (CMU) introduced changes to Resolutions No. 509, and No. 637 and adopted two separate Instructions on granting and controlling all social payments and pensions for IDPs.

CHANGES TO RESOLUTION No. 509

1. As a result of harmonization with the Law No.921, children regardless of their age will receive a separate IDP certificate. Application for such certificate can be made by child's close relative.
2. IDP certificate do not have a termination period unless they were issued before 20th June 2016 and lost its validity.

Concern. This does not comply with the Law 921 which prescribes that IDP certificates are valid since 13 January 2016 and do not have a termination period.

3. IDPs whose certificates were issued before 20th June 2016 and whose residence was registered at local DoSPs (Departments of Social Protection) or State Migration Service addresses are obliged to obtain new IDP certificate.

Concern. This violates the principle of legal certainty as previously such registration was directly prescribed by the Law. The State cannot cite this as grounds for invalidation of an IDP certificate.

NEWLY-ADOPTED RESOLUTION No. 365

1. Special Commissions under local governments are created to decide upon renewal of social payments and pensions.

Concerns.

- a) Such Commissions cannot be created by the CMU as according to Law of Ukraine On Local State Administrations and the Law of Ukraine on Local Governments it is an exclusive power of local administrations and governments.
 - b) The powers and legal status of the Commission is not specified anywhere. According to analysis of Ministry of Justice, such Commissions are created under local governments. Such Commissions are consultative authorities and its members work on a voluntary basis. This means that decisions of the Commission cannot be challenged in court as the Commission is not a public authority and thus cannot be a defendant.
2. If social payments/pensions/certificate of an IDP was suspended/terminated, the special Commissions may initiate renewal procedures only if such IDP obtained new IDP certificate under the newly adopted Resolution No. 509.

CHANGES TO RESOLUTION No. 637

1. In addition to social benefits, Resolution No. 637 from now on regulates almost all pension-related issues for IDPs.

Concern. Right to pension cannot be restricted by a CMU Resolution as pension is a right created by law, and is not a social benefit.

2. The state-owned JSC "Oshchadbank" can terminate payments to all IDPs who did not present themselves during physical identification.

Concern.

- a) There is no procedure allowing disabled IDPs to pass physical identification without visiting the bank premises.

- b) A bank is a financial institution, not an executive authority and cannot be granted such powers.
3. **Renewal of social payments/pensions is prescribed by newly adopted Instruction On Exercising Control Over Social Payments for IDPs.**

Concern.

However, renewal of social payments/pensions is in fact prescribed *by another Instruction On Granting and Renewal of Social Payments*, adopted the same day (see analysis below).

4. **If a controlling authority decides that social welfare/pensions were received by IDP "unlawfully" such IDP shall return received sums unless s/he challenges such decision in court.**

Concerns:

- a) We are informed that controlling authorities often do not take into account IDP legislation when deciding on lawfulness of granting the social payments/pensions for IDPs.
- b) Responsibility for adoption "unlawful decisions" on granting IDP social payments/pensions cannot be shifted to IDPs as such decisions were taken by state authorities.
- c) Any decision of executive authorities is legal until the date it was recognized unlawful thus the payments cannot be demanded from the beneficiaries retrospectively.

INSTRUCTION ON GRANTING AND RENEWAL OF SOCIAL PAYMENTS

1. **Despite its name the Instruction also includes pensions to the list of "social payments"**

Concern. Procedures on granting pensions and all kinds of social benefits for IDPs shall be the same as for any other beneficiaries including non-IDP beneficiaries, otherwise such specific procedures may be regarded as discriminatory.

2. **The procedure for granting and renewal of any social payment and pension is based on the inspection of living conditions of IDPs conducted by DoSPs.**

Concern. The right to pension is stipulated by Law and is irrespective of living conditions - pensions are granted for life and may not be suspended or terminated by CMU..

3. **The Instruction clearly states that DoSPs/Pesion Funds grant social payments/pensions respectively.**

Concerns.

- a) However, in fact this power is being transferred to special Commissions and DoSP fully relies on its decisions.
- b) Ukrainian legislation does not envisage the possibility to transfer of powers of local governments to any other authorities.

4. **Instruction stipulates that a decision of the Commission may be challenged in court.**

Concerns.

- a) As the Commission cannot be a defendant in court (see analysis above) the provision on challenging its decisions in court is void.
- b) The beneficiary is not informed about the decision of the Commission which does not allow him to challenge it.
5. **When person applies for any type of social payment/pension, no safeguards are stipulated in the procedure for situations when the inspection does not find such person at home. It is implied that the person will receive rejection.**

INSTRUCTION ON EXERCISING CONTROL OVER SOCIAL PAYMENTS FOR IDPs

1. **Instruction introduces two types of control over social payments and pensions for IDPs - regular and ad hoc.**

Concerns.

- a) Exercising control over payment of pensions is not stipulated for non-IDPs thus such specific procedures may be regarded as discriminatory.

b) The right to pension is independent of living conditions - pensions are granted for life and may not be suspended or terminated.

2. **Ad hoc inspections can be conducted by working groups comprised of representatives from: Ministry of internal affairs, State Migration Service, State Security Service, National Police, State Financial Inspection, State Audit Inspection and Pension Fund of Ukraine.**

Concern. There is no law in force, which would allow any of the abovementioned authorities to conduct inspections of living conditions.

3. **Ad hoc inspection is carried out in the following cases:**

- a) **information that an IDP has changed his/her place of residence without 10-day notice to DoSP**
- b) **information that an IDP has returned to NGCA**
- c) **information that Oshchadbank terminated payments to IDP who has not passed identification**
- d) **recommendations from the Ministry of Finance based on verification procedures**

Concern. Instruction is very vague in respect of the source of provided information (including NGOs and volunteers) and unclear about recipient.

4. **If an IDP is absent at home during the inspection s/he is given three days to present him/herself for physical identification at DoSP. If an IDP does not come, DoSP sends an invitation by post with the same demand. At the same time DoSP requests information from State Border Service on whether such IDP left GCA.**

Concern. Though the request is made only to the State Border Service, DoSP, when deciding on cancellation of an IDP certificate and termination of all kind of social payments and pensions, has the power to rely on information from Ministry of internal affairs, State Migration Service, State Security Service, National Police, State Financial Inspection, State Audit Inspection and Pension Fund of Ukraine.

5. **Upon cancellation of an IDP certificate DoSP notifies all relevant state authorities who accrue social payments and Pension Fund. Upon such notification pensions are terminated.**

Concern. There is no actual challengeable decision on termination of payment. DoSP does not inform an IDP on any actions after inspection.

6. **Commission confirms termination of payments within 5 working days upon which it notifies relevant state authorities and IDP.**

Concerns.

- a) **Grounds for termination of social payments and pensions are too vague and mixed up with grounds for termination of IDP registration.**
 - b) **The decision of Commission on termination of payments cannot be challenged as the Commission is not a public authority and thus cannot be a defendant. Moreover, the Commission does not take a separate decision on the termination, but only confirms that such payments should be terminated.**
7. **Even if Commission renews IDPs rights to social payments and pensions, the actual renewal can take up to 6 months depending on the grounds for termination.**

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.