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## DRC's Legal Special Alert on Pension Provision and Social Protection: Issue #105

### 1. Some pension access barriers were removed

**Background information:** The Office of the Ukrainian Parliament Commissioner for Human Rights has stated that pensions have not been granted to people displaced from Crimea for almost nine years.<sup>1</sup> Back in November 2014, the government decided to suspend the provision of social benefits in the settlements of Donetsk and Luhansk oblasts, until the said territory is returned to the control of the state authorities.<sup>2</sup> As a result of this, a new practice has emerged, known as 'pension tourism', where people from areas occupied by the Russian Federation were registered as IDPs and travelled to Ukrainian Government-controlled areas to receive their pensions there.<sup>3</sup> On top of that, some bureaucratic obstacles were reported, e.g. The Pension Fund of Ukraine requested people to provide an IDP certificate or paper documents from the Pension Fund of the Russian Federation. In 2019, Ukraine's ombudswoman reported<sup>4</sup> that more than 450,000 out of the 1.2 million pensioners, living in areas of Donetsk and Luhansk oblasts not under the control of the Government of Ukraine since 2014, do not receive their pensions.

In 2022, the government changed its approach and introduced digital tools that allow people from areas occupied by the Russian Federation and Crimea to access pensions online. However, the challenges persisted. People who reached pension age in areas occupied by the Russian Federation often did not have enough insurance contributions<sup>5</sup>, and their work period in areas occupied by the Russian Federation is not recognised by the Government of Ukraine. Moreover, the Government of Ukraine denounced the Agreement on Guarantees of the Rights of Citizens of the CIS Member States in the Sphere of Pensions (the Agreement)<sup>6</sup>, leading to uncertainty about how to calculate insurance periods for Ukrainians who worked in the Soviet Union (USSR) and the Russian Federation.<sup>7</sup>

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<sup>1</sup>Pension payment for persons who worked <sup>1</sup> Link to the source of information: <https://www.ombudsman.gov.ua/report-2022/sotsialna-derzhava>

<sup>2</sup> Cabinet of Ministers, *Decree №595*, 2014, Link: <https://zakon.rada.gov.ua/laws/show/595-2014-%D0%BF>

<sup>3</sup> HRW, Ukraine: People with Limited Mobility Can't Access Pensions, 2020, Link:

<https://www.hrw.org/news/2020/01/24/ukraine-people-limited-mobility-cant-access-pensions>

<sup>4</sup> Link to the source: <https://www.ukrinform.ua/rubric-politics/2818208-ludmila-denisova-upovnovazhenij-vr-ukraini-z-prav-ludini.html>

<sup>5</sup> Insurance experience is a period during which the employer paid insurance contributions to the Pension Fund of Ukraine for the employee. In 2024, the minimum insurance period for women and men is 31 years.

<sup>6</sup> Cabinet of Ministers, *Decree №1328*, 2022, Link: <https://zakon.rada.gov.ua/laws/show/1328-2022-%D0%BF#Text>

<sup>7</sup> The Agreement was used to calculate period of employment for persons who have been working in CIS Member States. The Agreement, after denunciation, remains in force for persons who was already entitled to pension. At the same time, persons who reached pension age after denunciation of the Agreement were left behind.

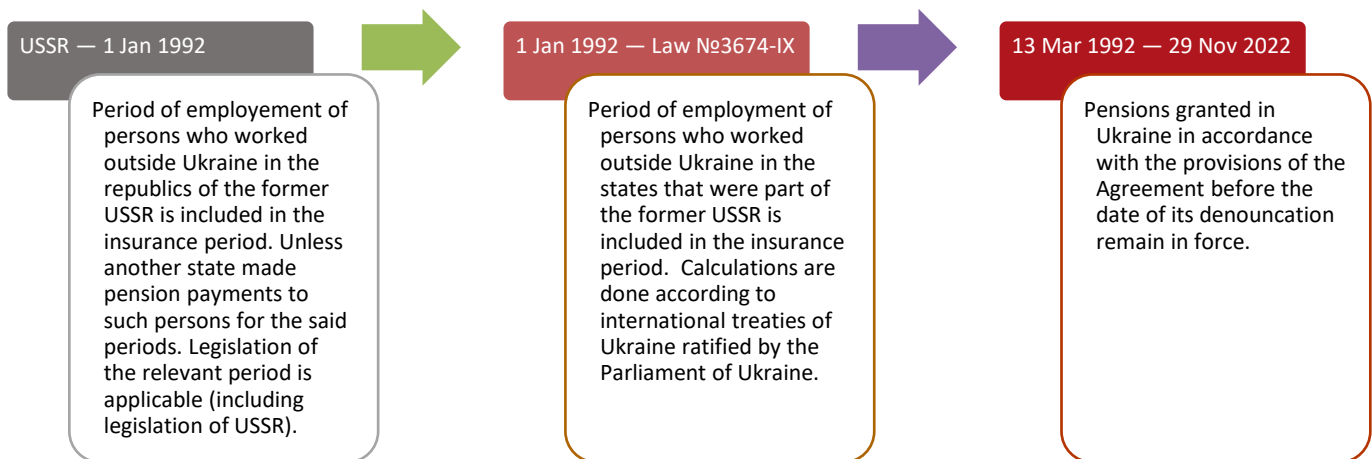
However, in April 2024, the Parliament adopted a new law that regulates how the contribution period for work abroad is calculated. This covers contributions made during the Soviet Union era until now.<sup>8</sup>

**NB:** The recalculation of the contribution period requires relevant application through administrative or court procedure. It is important to increase the level of legal awareness so that individuals can apply for a pension as well as for pension recalculation.

**Recent developments:** In April 2024<sup>9</sup> the Verkhovna Rada adopted [Law №3674-IX](#), outlining the inclusion of periods of employment outside Ukraine in the insurance period. As a rule, periods of employment outside Ukraine shall be included in the insurance period for persons officially residing in Ukraine, if provided for by this Law or international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine.

Ukrainian legislation on pension provision envisages that pensions should be paid by one State only. This means that person can not be subject of pension provision in two different States simultaneously. If there is no official information exchange, e.g. between Ukraine and the Russian Federation, it is impossible to get documentary confirmation of pension payments from another state. In such case, latest amendments prescribed a possibility of simple written notification. Thus a person notifies the Pension Fund authorities that no pension is received from another state. Such a notification is signed. The provision of incorrect or fraud will lead to subsequent legal consequences. The notification is provided while person is applying for appointment, renewal or extension of pension payment.

- Calculation and pension payment criteria for persons residing in Ukraine, but having a period of employment in the USSR or in foreign states that were part of the former USSR:



- Pension provision to persons with a period of employment in areas occupied by the Russian Federation after 19 February 2014 includes the following criteria:
  - not receiving a pension from pension authorities of the Russian Federation;
  - not being employed in specific professions;
  - having sufficient work/insurance experience.

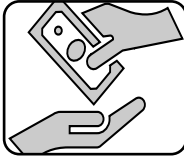
<sup>8</sup> Verkhovna Rada of Ukraine, *Law №3674-IX*, 2024, Link: <https://zakon.rada.gov.ua/laws/show/3674-IX#Text>

<sup>9</sup> The Law has been signed only in June.



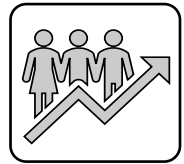
**For some categories of persons the periods of employment are not counted as insurance periods, including for persons who:**

- performed military service in the armed forces, internal affairs bodies, state security bodies, police, other military formations of the Russian Federation;
- held civil service positions, positions in local self-government bodies in the relevant bodies of the Russian Federation;
- voluntarily held positions related to the performance of organisational and administrative functions, etc. in occupied territories.



**In the absence of information exchange between the pension authorities of Ukraine and the Russian Federation:**

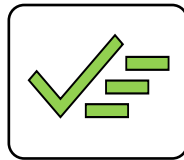
- Person should confirmation of non-receipt of a pension from the pension authorities of the Russian Federation;
- Person can confirm the non-receipt of a pension by providing relevant notification to the Pension Fund of Ukraine.



**Pension is calculated considering period of employment and insurance contributions of person:**

- Insurance contributions are directly related to the payment of Unified Social Contribution (USC), data on this can be extracted from relevant state databases (e.g. State Register of Insured Persons);
- If there is no data on person in the register of Pension Fund of Ukraine, concerned person may be asked to provide additional documents, confirming period of employment and contribution of USC.

Ukrainians who due to the war or other reasons moved abroad and reached retirement age can apply for a pension remotely, through the Pension Fund's web portal. Three principal criteria should be fulfilled for effective application for a pension:



**Physical identification:**

- Person should undergo annual physical identification. This is possible to do online via video identification or to provide the Pension Fund with document, confirming that person is alive and residing temporarily abroad. Such document is possible to receive at the consular offices of Ukraine abroad.



**Ukrainian bank account:**

- Person should have an active bank account open in Ukrainian bank. Pension payments are only transferred to Ukrainian bank accounts. It is impossible to receive pension to the account open in foreign bank.



**Period of employment abroad:**

- If person has official period of employment abroad, the inclusion of such periods for the purpose of calculation of pension eligibility is provided based on bilateral treaties between Ukraine and relevant states.

## **2. Application processes to certain social assistance programmes have been clarified**

On 13 June 2024, the Cabinet adopted [Decree №683](#), reducing some obstacles to accessing certain types of State social assistance. Amendments are aimed at unification and facilitation of the existing application process, i.e.:

Type of assistance	Amendment	Possible outcome
Social assistance to children of the deceased breadwinner	List of the obligatory documents was expanded for the employment record book (if any) of the deceased breadwinner — for granting benefits	Previous formulation included an “employment record book” not specifying whose book that made the situation unclear for this specific type of pension.
Eligibility criteria:		

<p>children of the deceased breadwinner who, on the day of death, did not have the insurance experience required for a pension for a person with a group III disability</p>	<p>to the child of the deceased breadwinner</p>	<p>Considering the fact that this type of social assistance is provided only when the deceased breadwinner did not have the insurance experience required for a pension for a person with a group III disability, a requirement to provide the employment record book was an additional access barrier. Currently, the document is required only if it is available. Absence of the document will not be the reason for refusal.</p>
<p>State social assistance to persons not entitled to a pension and persons with disabilities</p>	<p>Documents (or their copies) containing data (information) available in state electronic information resources are not required to be submitted. The specified information necessary for the provision of social assistance can be submitted to the social protection authority via:</p> <ul style="list-style-type: none"> <li>• "Trembita"<sup>10</sup>;</li> <li>• Information systems /databases;</li> <li>• Requests to data holders.</li> </ul>	<p>Thus, persons may experience significant bureaucratic relief as they will no longer need to provide numerous paper documents. The process of analysis of submitted documents may also be much faster.</p>
<p>The burial allowance</p>	<p>For the first time burial allowance for persons who died abroad has been regulated.</p> <p>To apply for allowance, the family member or the person who carried out the burial submits a foreign death certificate or other document issued by the competent authority of a foreign state confirming the fact of death. Documents are submitted (in person) to the social protection authority.</p> <p><b>NB:</b> foreign documents should be duly legalised and translated into Ukrainian.</p>	<p>The issue becomes even more relevant, because almost 20% of Ukrainians<sup>11</sup> are currently abroad.</p>

<sup>10</sup> The system of electronic interaction of state electronic information resources.

<sup>11</sup> The Ministry of Foreign Affairs in response to the request from the Civil Network OPORA, reported that as of June 2023, 8,177 mln Ukrainians were staying abroad. Link to the source: <https://www.oporaua.org/viyana/kilkist-ukrayintsiv-ta-yikh-migratsiia-za-kordon-cherez-viinu-doslidzhennia-gromadianskoyi-merezhi-opora-24791> . Please, note, that this statistic is referring to all Ukrainians staying abroad, while Centre of Economic Strategy reports on 4,9 million Ukrainians being abroad due to war as of January 2024, link: <https://ces.org.ua/ukrainian-refugees-third-wave-research/>

### **3. The Ministry facilitates a personal data-sharing process for receiving assistance**

**Background information:** The Law of Ukraine "On Personal Data Protection" was adopted in 2012 and since that time has not been significantly revised. The central legal requirement in personal data protection is the lawfulness of processing. Each data processing process is carried out based on specific grounds, and the most common grounds is the consent of the individual. Each organisation, including UN agencies and International Non-governmental Organisations (INGOs), should assess the applicability of a particular basis when processing any kind of personal data. In practice, personal data of people of concern is needed for humanitarian actors when it comes to the provision of humanitarian aid. Moreover, such data are required to mitigate the risk of duplication in the provision of humanitarian aid and social assistance. Currently, the government, as a data holder, can share some personal data that are stored in the State registers, but legal basis is needed to authorize this, e.g. memoranda on data sharing and a request on data sharing. The process is not automatized and may take a lot of time.

**Recent developments:** On 6 May 2024 the Ministry of Social Policy signed [Order №230-H](#), amending Application forms for all types of social assistance and compensation<sup>12</sup>. The application form is also aimed at collecting some personal data, necessary for further consideration of the eligibility of applicants for the assistance they applied.

The amendments are aimed at facilitating the process of data sharing with humanitarian actors, providing financial assistance to the recipients of social protection programmes. The Ministry reached its aim by adding one paragraph on data sharing consent. When the applicants sign the application form, they automatically give their consent on sharing personal data with humanitarian actors for the purpose of receiving assistance. No additional personal data collection from people of concern will be required:

**NB:** Data sharing is still possible only with those agencies that signed relevant memoranda with the Ministry of Social Policy.

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*"I give my consent to share (if necessary) of my personal data and confirm the consent of the persons indicated in this application to share of their personal data to foreign governments, international organisations, donor agencies in order to receive assistance (if any) at their expense in accordance with the procedure established by law."*

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### **4. The Ministry regulates the approach to calculating means-tested eligibility criteria**

**Background information:** The majority of social assistance programmes in Ukraine are means-tested. For means-testing generally used average monthly income, which is calculated per family member<sup>13</sup>. Such calculations are necessary for determining the right of a person to receive social services at the expense of budgetary funds.

**Recent developments:** On 15 April 2024 the Ministry of Social Policy signed [Order №181-H](#), approving amendments to the Methodology of calculation of average monthly income. Amendments clarified the procedure of calculation, by clearly stating which incomes are not included in average monthly income. This will potentially allow persons at

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<sup>12</sup> To unify application process, Ministry of Social Policy adopted unified Application form, that person should sign when applying for different types of social assistance and compensation. The documents are used to apply for more than 40 different assistances, including, assistance to families with children, low-income families, assistance to persons with disability, etc. The document is the same for different competent institutions, including the Pension Fund, Administrative Service Centre, Department of Social Protection, etc.

<sup>13</sup> The family includes persons who live together, have a common life, have mutual rights and obligations and are united based on marriage, blood kinship, adoption, or other grounds.

particular risk to access and apply for means-tested social assistance programmes, such as assistance to low-income families, assistance to single parents, housing and utilities subsidies, etc.

$$\text{Average monthly income} = \frac{\left( \frac{\text{Sum of incomes of each family member}}{3} \right) \times 3 \text{ month}^{14}}{\text{number of family members}}$$

Issue	Before	After
Calculation of monthly income of persons providing social services and their family members	In the absence of official data on the income it was presumed, that the average monthly total income is equal to 0.1 of the minimum salary <sup>15</sup>	In the absence of official data on the income it is assumed, that: <ul style="list-style-type: none"> <li>• The average income of a person providing social services is equal to 0.1 of the minimum salary.</li> </ul> <b>NB:</b> State compensation for persons providing social services on non-professional basis is not considered as income. <ul style="list-style-type: none"> <li>• Average income of working-able family members of a person providing social services is equal to one minimum salary.<sup>16</sup></li> </ul>
Incomes that are excluded from the average monthly total income of the family	Assistance received from NGOs <sup>17</sup> and charitable organisations was excluded. At the same time, persons of concern were afraid to apply for humanitarian aid scared to lose their eligibility as low-income.	The paragraph has been expanded with clarification that assistance from international NGOs and charitable organisations are also excluded from calculation of average monthly income.
		The article has been further expanded with 4 types of incomes that are not considered for the calculation of average monthly income: <ul style="list-style-type: none"> <li>• payment/assistance to Ukrainians who are under temporary protection abroad;</li> <li>• remuneration for the military equipment of the Russian Federation voluntarily transferred to the Armed Forces of Ukraine that is suitable for use;</li> <li>• monthly financial compensation for the provision of social services;</li> <li>• annual health improvement allowance and one-time compensation to persons with disabilities caused by explosive ordnance.</li> </ul>

<sup>14</sup> 1 quarter period before the month of application for social assistance.

<sup>15</sup> Minimum salary as of 1 April 2024 is UAH 8,000

<sup>16</sup> This is not applicable to family members who are: in places of deprivation or restriction of liberty, under house arrest, who are subject to measures to ensure criminal proceedings, persons with mental and behavioural disorders, persons who are registered as unemployed and do not receive unemployment benefits, mothers and other persons on unpaid leave, military servants, etc.

<sup>17</sup> Non-governmental organisations

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