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## Reparations and compensation for damage caused by the war (The case of Ukraine)

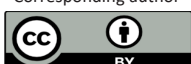
**Abstract.** The study of reparations and compensation for war-related damage is of utmost relevance in the context of modern armed conflicts, where the restoration of the rights and freedoms of victims is becoming an urgent need. A review of Ukraine's initiatives in this area and an analysis of the results achieved is an important contribution to understanding effective compensation mechanisms in the context of hostilities and can serve as an example for other countries facing similar challenges. The purpose of this paper was to provide a comprehensive study of the national strategy for compensation and redress for war-related damage, taking into account the need to fully restore the rights of individuals and legal entities. In the course of this research, the following methods were used: deductive, analysis of monographic studies, theoretical generalisation, abstract and logical generalisation and comparative legal analysis. The paper highlighted Ukraine's initiatives in the field of compensation for damage caused by Russia's aggressive war against Ukraine and focuses on the positive results achieved, in particular, analyses the developed legal framework and system of the compensation mechanism aimed at restoring certain real estate objects (including housing) and housing rights of the affected persons. The analysis revealed inconsistencies in the legal regulation that need to be improved, in particular, by expanding the scope of compensation by including some other types of property (e.g., vehicles and household items) in the list of destroyed or damaged objects of compensation. It is determined that the effectiveness of the system depends on an accurate definition of damage and losses. Changes are proposed to improve the compensation mechanism, including expanding the scope of compensation and taking into account different categories of victims. The author suggests that the solution to the problems of compensation for destroyed and damaged property should be based not only on the compensation mechanism, but also contribute to the full restoration of the rights and freedoms of the affected persons. The practical significance of this study lies in the fact that it not only analyses the national strategy of compensation and reparation for war-related damage, but also develops recommendations for improving the compensation mechanism in order to fully restore the rights and freedoms of the affected persons. The experience gained by Ukraine can serve as a valuable example for other countries facing similar challenges in the context of armed conflicts

**Keywords:** compensation mechanism; reparation procedure; court; justice; damages; real estate; housing; housing rights; destroyed property; damaged property; martial law

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## INTRODUCTION

The issue of studying the compensation for war-related damage is closely intertwined with the recognition of full sovereignty of states. Despite the fact that the existing wars and peace treaties created the basis for modern international relations, they did not have a proper legal mechanism for restoring the situation of victims. Even the adoption of the Hague and Geneva Conventions, which established the rules of warfare to minimise harm to civilians and provided for the legal basis for their protection, did not resolve the issue of establishing the obligation to compensate for the damage caused by war. Therefore, the protection of the rights and restoration of property losses of affected persons becomes a matter of paramount importance in the context of hostilities. The need to develop effective mechanisms for compensation is becoming more urgent as armed conflicts spread, and civilians become the main victims.

Establishing legal and international instruments for war-related reparations is an important step in ensuring justice and a humane approach to victims. The absence of an effective mechanism for reparations may lead to further violations of the rights and deterioration of the situation of victims. Therefore, the initiatives of individual countries, including Ukraine, on the issue of reparation and compensation for war-related damage are important for setting an example of effective reparation and recognition of the rights of victims in international practice. In the context of Russia's current war against Ukraine, the issue of reparations is becoming relevant not only at the national level, but also in the context of international law and interstate relations, as the experience gained and mechanisms developed can serve as an example for other countries facing similar challenges, contributing to the creation of more effective and fair reparations systems.

Nevertheless, the rule on the obligation of the defeated to pay reparations in favour of the victorious state remained a well-established rule in the matter of reparations. However, this method of making reparations after an international military conflict was based solely on the parties' own discretion, when in the process of concluding agreements the parties tried to look for other ways than solely satisfying the desire to receive full compensation for the damage caused by the war (Moffett, 2022b). As the experience of Germany's reparations payments to former Soviet citizens imprisoned in concentration camps and taken for forced labour shows, the decision to grant reparations was made by the German authorities themselves.

In fact, the issue of liability for damages has only developed since most countries have introduced criminal liability for war crimes and implemented a mechanism

of compensation through civil lawsuits (Valendiuk, 2023). In addition, with the adoption of the Declaration of Human Rights and the creation of the European Court of Human Rights (ECHR), legal international mechanisms for defending human rights in disputes with the state have also emerged. However, it is quite obvious that most of the implemented mechanisms for compensation for war-related damage can be used after the war against the defeated state. In view of this, it is urgent to establish both national and international mechanisms of reparation to ensure the restoration of the rights (including property rights) of those affected by Russia's aggressive war against Ukraine. The study of the issue of reparation and compensation for damage caused by the war is complex not only in terms of theory, but also in terms of law enforcement practice (as evidenced by the numerous changes to the legal mechanism of compensation established by law in such a short period of time since its adoption). Nevertheless, there are some developments aimed at finding and developing an effective legal mechanism for redress and compensation. Thus, the authors L. Moffett (2022a), O. Kuznietsov (2023), L. Mamchur & M. Tulchevska (2021) focused their research on analysing the mechanisms of compensation for war-related damage in Ukraine, taking into account the experience of compensation in existing military conflicts and tried to adapt it to Ukrainian realities. In particular, the authors examine the mechanism of compensation for damage and suggest ways to adapt it to the realities of Ukraine. The authors consider the possibility of protecting violated rights as a result of hostilities in court, and outline the advantages and disadvantages of the judicial form of protection of violated rights in times of war.

A. Serbina (2023) analysed the mechanisms of compensation for damage caused by the armed aggression of the Russian Federation in view of existing legislative initiatives in Ukraine. E.T. Jensen (2005) and E.V. Koppe (2012) conducted a study of the impact of armed conflicts on the environment, which is also important for Ukraine given the significant damage to the environment and the need to ensure its restoration. A. Anisimova (2020), N. Filatova-Bilous (2022) and M. Batenchuk (2023) examined the peculiarities of compensation for damage caused by the destruction and damage to housing, as well as other numerous violations of housing rights in connection with Russia's military aggression. In particular, the authors analysed the peculiarities of compensation for lost housing, considered different approaches to analysing the compensation mechanism based on the characteristics of different types of housing.

The issues of studying the national strategy of compensation and redress for the damage caused by the war

as a complex problem that concerns both redress and compensation for the damage caused and full restoration of the rights of individuals and legal entities remain insufficiently developed. The purpose of this paper was to provide an in-depth analysis of the national strategy for compensation for damage caused by the war and to study the effectiveness of the judicial form of protection of the violated rights of victims of the conflict, taking into account the need for full restoration of the rights of individuals and legal entities.

## MATERIALS AND METHODS

When considering the factual material of the study of compensation and reparation for damage caused by Russia's war against Ukraine, it should be noted that this concept includes various aspects. First of all, the factual material includes the results of the analysis of national legal norms and international agreements on compensation for war-related damage. The factual material also includes data on the experience of other countries in dealing with similar issues, which can provide important conclusions for Ukraine in developing its own national compensation and reparation mechanism. It also includes information on initiatives and programmes developed by the Government of Ukraine to compensate and reimburse victims. The factual material also includes data obtained from the analysis of scientific research and expert assessments on the effectiveness of various approaches to addressing this issue. It also includes information on the losses and damages suffered by Ukraine as a result of the hostilities, such as human losses, destruction of infrastructure, destruction of residential properties and other material damage.

The methodology of this study was based on both general scientific and special legal methods of scientific knowledge. The deductive method was used in writing this article. In exploring the outlined scientific issues, the author presents the views of various scholars who have studied the issue of compensation and redress for damage caused by war, and on the basis of this, the author substantiates the most rational approach to the formation of a national strategy for compensation and redress for damage. In particular, the author examines the procedures for redress and compensation for war-related damage in the course of judicial proceedings (national judicial mechanism and international, in particular, the ECHR) and through the use of the administrative and legal mechanism of compensation. This made it possible to identify the positive and negative aspects of each of the analysed mechanisms and to develop proposals for their improvement and enhancement of their effectiveness in the context of the war in Ukraine. This method is informed by the scientific works of such

scholars as: M. Tulchevska (2021), L. Moffett (2022b), O. Kuznietsov (2023), & L. Mamchur.

The method of analysing monographic studies made it possible to identify the range of problematic issues related to improving the mechanism of compensation for damage to and destruction of real property, which is currently implemented in Ukraine based on the study of theoretical developments of scholars and practicing lawyers. Using the method of theoretical generalisation, the author examines the elements of the legal regulation mechanism for the procedure for compensation and reimbursement of damage caused by the war in Ukraine. The author also used the method of abstract and logical generalisation to identify the definitions of "compensation" and "reparation", and to formulate the elements of the concept of "damage".

The article used the method of comparative legal analysis to substantiate the effectiveness of the national compensation mechanism and emphasize the expediency of improving its individual elements. In particular, based on the study of the views of scholars on the formation of subjects of the right to compensation, it is proposed to expand this list to include tenants of the State housing stock. This method is based on the following scientific works A. Anisimova (2020), N. Filatova-Bilous (2022) and M. Batenchuk (2023). Using the method of generalisation, the author argues that the approach to compensation and redress for war-related damage established by current legislation and developed within the framework of the national reparations strategy requires improvement of its individual elements in order to better ensure protection of the violated rights of individuals and legal entities with a focus on their fullest possible restoration.

## RESULTS AND DISCUSSION

### **Peculiarities of forming a national strategy for reparation and compensation for damage caused by the war.**

Despite the fact that wars in their various manifestations and scales have continued throughout human history, international law has not developed a historically effective mechanism for compensation for war-related damage. Numerous human rights violations, destruction and damage to property of individuals and legal entities, significant damage to the state and the environment require effective mechanisms to address the issue of redress and compensation for victims (Walker, 2014). In this sense, the development of an effective compensation procedure is the responsibility not only of Ukraine, but also of the entire international community, since without proper legal regulation, there will be no restoration of the violated rights of the victims. Law enforcement practitioners and scholars have different opinions on the development of a reparations strategy, but most

proposals focus on the fact that war victims should be actively involved in the development, implementation and monitoring of the reparations mechanism. Therefore, it is obvious that any mechanism, strategy, or plan for compensation for damages caused during the war in Ukraine, despite the involvement of the international community in their development, must first and foremost be implemented at the local level.

According to L. Moffett (2022a), there are various options for implementing and enforcing approaches to compensation for damages, which should take into account the real state of affairs and challenges facing the justice system in Ukraine, given the significant scale of damages. In particular, the author proposes four different approaches to the formation of a mechanism for compensation: 1) a special United Nations (UN) commission to consider claims from individuals and legal entities for compensation for damage caused as a result of the war in Ukraine; 2) a strategy of internal reparation, which would include the development of a national programme of compensation for victims, including the creation of an appropriate legal framework, an administrative body with a register of losses and an interagency coordination body; 3) a Ukrainian-Russian arbitration commission established by agreement of both parties on the basis of a bilateral agreement to settle disputes; 4) a hybrid mechanism created jointly by Ukraine and international partners to implement reparations through the implementation of an independent investigation mechanism, the creation of a register of damages and a trust fund for Ukraine. Critically assessing the opinion of L. Moffett, it should be noted that while his proposals have potential, they may also face certain practical limitations in practice. For example, the establishment of a special UN commission to review claims could delay the reparations process and require significant resources, especially in times of war. In addition, the question of Russia's participation in arbitration commissions or hybrid mechanisms may be difficult given the controversial nature of international relations and the political context. It is worth considering that the effectiveness of the proposed approaches may depend on the political will of the parties and their ability to cooperate, which can be

unpredictable in military conflicts. It seems that the idea of developing internal reparations is the most logical, but it requires significant material resources, which are not enough in the context of the war in Ukraine.

The issue of compensation and reparations for the damage caused by the war is also complicated by the fact that the justification of reparations by a violation of the UN Charter and aggression concerns the victim of such a violation: it is only the affected state or all individuals and legal entities affected by the war. As noted by F. Rosenfeld (2012), International law does not provide for a personalised right to compensation for violations of *jus ad bellum*, as the state is the primary victim of violations of sovereignty and territorial integrity. There is no precedent in court practice that would give grounds to recognise an individual as an injured party and create a legal basis for recognising their right to claim damages for aggression (Darcy, 2021). However, this position may be questionable, as the crime of aggression is included in the competence of the International Criminal Court (ICC). This leads to individualisation of criminal liability for violation of the territorial integrity of another state. In turn, the existence of a court conviction would enable victims to obtain the right to compensation for damages. However, this scenario is complicated and obviously unlikely.

Authors of this article agree with the opinion of P. Gaeta (2011) unclear understanding of the issue of identification of the perpetrator (according to the Geneva Conventions and Additional Protocol I, states are responsible for unlawful violations, not for individual soldiers who are subject to identification)<sup>1,2,3,4,5</sup>, blurring the approach to individualising the right to reparations for violations of International Humanitarian Law (IHL). Experience shows that most war compensation programmes focus on the harm suffered by victims of hostilities rather than on establishing the legal aspects of the details of such violations, reflecting the discrepancy between international law and the law enforcement practices of individual states (Ferstman, 2018). Nevertheless, certain legal uncertainties at the level of international law do not exclude (but rather ensure) the possibility for war victims to seek protection of their rights even despite the legality of the harm from the point of view of IHL (Muleefu, 2014).

<sup>1</sup> Convention "On the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field". (1955, January). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_151#Text](https://zakon.rada.gov.ua/laws/show/995_151#Text).

<sup>2</sup> Convention "On the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea". (1955, January). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_152#Text](https://zakon.rada.gov.ua/laws/show/995_152#Text).

<sup>3</sup> Convention "On Relative to the Treatment of Prisoners of War". (1955, January). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_153#Text](https://zakon.rada.gov.ua/laws/show/995_153#Text).

<sup>4</sup> Convention "On Relative to the Protection of Civilian Persons in Time of War". (1955, January). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_154#Text](https://zakon.rada.gov.ua/laws/show/995_154#Text).

<sup>5</sup> Protocol Additional to the Geneva Conventions of 12 August 1949 "On Protection of Victims of International Armed Conflicts (Protocol I)". (1977, July). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_199#Text](https://zakon.rada.gov.ua/laws/show/995_199#Text).

Nevertheless, based on paragraph 153 of the Advisory Opinion of the International Court of Justice (ICJ) on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, even if restitution is not possible, the state is 'under an obligation to compensate for the damage caused', which 'reflects the damage suffered by individuals and communities'<sup>1</sup>. The actual absence of a foreseen right to reparations for war victims and IHL norms has led to a model of reparations that involves recourse to national mechanisms of reparations. Therefore, a national programme of compensation for war-related damage, with international cooperation in recording and assessing evidence, and confiscation of Russia's assets to finance such a programme, remains the most realistic scenario, especially given the ongoing hostilities. Obviously, this is the option that Ukraine has chosen to speed up the process of compensation for war-related damage.

When analysing the existing legal framework, you should first of all pay attention to Law of Ukraine No. 2923-IX<sup>2</sup>, which actually laid down the legal and organisational basis for compensation for damaged and destroyed real estate of individuals. This Law refers, in particular, to certain categories of real estate. However, the consequences of the war are quite different and differ in form and manner of manifestation and scale, which clearly has an impact on the formation of the legal framework as a basis for compensation. Therefore, the Cabinet of Ministers of Ukraine by Resolution No. 326 of 20 March 2022<sup>3</sup> year approved the procedure for determining the damage and losses caused to Ukraine by Russia's aggression, according to which the damage is determined in the following areas: 1) human losses (death or injury of civilians); 2) economic losses resulting from a decrease in the population and economic indicators of the country; 3) losses of human and material potential caused by hostilities, which illustrate the losses and costs that are a direct result of hostilities, etc. The most obvious losses include human losses and damage to human health, damage or destruction of property of various forms of ownership, damage to the environment and the environment, etc. (Jensen, 2005; Koppe, 2012, Serbina, 2023).

Russia is violating a number of rights guaranteed by international law, including the right to life, the right to property, the right to a court of law, the right to education, the right to free choice of residence, the right to housing, the right to a safe environment and many other rights, the exercise of which has become virtually impossible or complicated as a result of armed aggression. In this context, we should agree with the opinion of B. Dickson (2012) that it is advisable to formulate a solution to the problem of compensation as a reparations programme, and not solely as a compensation commission, as the negative effects of war on individuals and society in all its manifestations cannot be eliminated by compensation alone, as it would look more like a payoff than a guarantee of non-recurrence of such violations. Therefore, it is clear that reparations must go beyond mere compensation and reflect the serious and lasting harm suffered by victims due to numerous violations of human rights and IHL (Sandoval, 2018). This suggests that building a comprehensive approach to the development of a legal framework for reparations should be based not only on the idea of compensation for damages, but also on the idea of creating a framework for alleviating the suffering of victims and affirming their dignity. Effective mechanisms should be developed not only at the national but also at the international level to create a public consciousness intolerant of war in order to prevent the possibility of recurrence of such human rights violations in the future.

It is worth noting that under martial law, Ukraine is trying to fulfil its international obligations enshrined in the norms of the conventions to which Ukraine is a party and to create effective procedures and mechanisms for the protection and restoration of violated rights. In particular, such obligations arise from the Preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, which states that the contracting parties are obliged to guarantee respect for human rights by fulfilling positive and negative obligations<sup>4</sup>. When examining this provision, the Grand Chamber of the Supreme Court identified the following state obligations under Article 2 of the European Convention: a negative duty, a substantive positive duty and a procedural

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<sup>1</sup>Jurisdiction of the Court of Justice No. 131 "On Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory". (2004, July). Retrieved from <https://unispal.un.org/pdfs/B59ECB7F4C73BDBC85256EEB004F6D20.pdf>.

<sup>2</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>3</sup>Resolution of the Cabinet of Ministers of Ukraine No. 326 "On the Procedure for Determining Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/326-2022-%D0%BF#Text>.

<sup>4</sup>Convention "On the Protection of Human Rights and Fundamental Freedoms". (1997, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

positive duty<sup>1</sup>. In a general sense, a (substantive) positive obligation implies the obligation of the state to establish legislative provisions that would protect human rights and provide for legal liability for their violation in connection with criminal acts of third parties (Dakhova & Kovtun, 2023). In addition, based on the provisions of Article 13 of the Convention, everyone whose rights and freedoms have been violated has the right to an effective remedy by a national authority, even if the violation was committed by persons acting in their official capacity<sup>2</sup>. Such protection measures should be as effective as possible, which is also confirmed by legal conclusions contained in national court practice. In other words, the procedural positive obligation implies the state's obligation to ensure an objective investigation of human rights violations by an independent body. The purpose of this obligation is to identify and bring to justice those responsible for human rights violations<sup>3</sup>. Moreover, such obligations arise from national court practice<sup>4,5</sup>. As practice shows, the most effective mechanism for compensation is usually to go to court (Mamchur & Tulchevska, 2021). In this context, it is worth paying attention to the conclusion of the Supreme Court (SC) set out in its ruling of 14 April 2022 in case No. 308/9708/19, which states that "the court of Ukraine has the right to ignore Russia's immunity and consider cases on compensation for damage caused to an individual as a result of Russia's armed aggression in a lawsuit filed against this particular foreign person"<sup>6</sup>. Justifying the positivity of this decision, even though it is somewhat revolutionary and controversial, B. Karnaukh (2022) draws attention to the fact that, based on the analysis of the ECHR case law, the purpose of the principle of judicial immunity of the state is to preserve "polite and good neighbourly relations" between countries. However, during an ongoing armed conflict initiated by the aggressor, it is only fair to provide for exceptions to the principle of judicial immunity to encourage the aggressor state to stop violating rights and conclude

agreements with the state subject to armed aggression on the payment of compensation and reparations. Without questioning the importance of this legal position of the Supreme Court of Ukraine, it is worth emphasising that in order to ensure that the issue of limiting the jurisdictional immunity of a foreign country that carries out aggression against another country is properly resolved in the legal field, the Verkhovna Rada of Ukraine should adopt a relevant law. This will help to protect the rights of individuals and legal entities in disputes with the aggressor country at the proper legal level.

Interestingly, the United Nations Convention on Jurisdictional Immunities of States and Their Property of 2004 contains a separate provision that allows ignoring the immunity of another country, which gives grounds to assert a certain freedom in the matter of filing a claim. However, given the content of Article 18 of the said UN Convention, enforcement of a court decision may be possible only with the prior consent of such country<sup>7</sup>. Taking into account the legal positions of the Supreme Court, Ukrainian courts accept cases of individuals' claims for damages against Russia, and there is even a relevant court practice<sup>8</sup>. The register of court decisions contains many decisions in favour of victims, and the number of positive court decisions in such cases is increasing. However, there are difficulties with the enforcement of such decisions.

In general, there are several promising ways to enforce Ukrainian court decisions to recover compensation from Russia: activation of the procedure for recognition and enforcement of a Ukrainian court decision in a foreign country where the property of the aggressor country or individuals and legal entities supporting military aggression is present; general domestic enforcement procedures can be used to enforce court decisions in Ukraine, which are carried out within the framework of a joint enforcement proceeding coordinated by the Ministry of Justice (Pohribnyi, 2023). Nevertheless, there is no

<sup>1</sup> Resolution of the Grand Chamber of the Supreme Court No. 635/6172/17 "On Compensation for Damage Caused by the Death of an Individual". (2022, May). Retrieved from [https://verdictum.ligazakon.net/document/104728593?utm\\_source=jurliga.ligazakon.ua&utm\\_medium=news&utm\\_content=jl03](https://verdictum.ligazakon.net/document/104728593?utm_source=jurliga.ligazakon.ua&utm_medium=news&utm_content=jl03).

<sup>2</sup> Convention "On the Protection of Human Rights and Fundamental Freedoms". (1997, September). Retrieved from [https://zakon.rada.gov.ua/laws/show/995\\_004#Text](https://zakon.rada.gov.ua/laws/show/995_004#Text).

<sup>3</sup> Judgment of the European Court of Human Right No. 158/1996/777/978 "On Case of Kaya v. Turkey". (1998, February). Retrieved from <https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-581388%20filename=001-58138.pdf>.

<sup>4</sup> Resolution of the Grand Chamber of the Supreme Court No. 265/6582/16-ts "On Compensation for Property Damage". (2019, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/86310215>.

<sup>5</sup> Resolution of the Supreme Court No. 242/68/19 "On Compensation for Material and non-Pecuniary Damage". (2021, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/95767645>.

<sup>6</sup> Resolution of the Supreme Court No. 308/9708/19 "On Compensation for Non-Pecuniary Damage Caused by Russia's Armed Aggression Against Ukraine". (2022, April). Retrieved from <https://reyestr.court.gov.ua/Review/104086064>.

<sup>7</sup> United Nations Convention "On Jurisdictional Immunities of States and Their Property". (2004, December). Retrieved from <https://ips.ligazakon.net/document/MU04277>.

<sup>8</sup> Resolution of the Supreme Court No. 308/9708/19 "On Compensation for Non-Pecuniary Damage Caused by Russia's Armed Aggression Against Ukraine". (2022, April). Retrieved from <https://reyestr.court.gov.ua/Review/104086064>.

effective mechanism for the enforcement of a Ukrainian court decision on compensation by Russia, so at this stage, a court or arbitral award will rather certify the fact, amount of damage, circumstances of the damage, and the link between the armed aggression and the occurrence of damage than guarantee the payment of compensation.

Individuals and legal entities that have suffered losses as a result of military aggression have the opportunity to apply to the ECHR. However, on 15 March 2022, the Russian Federation withdrew from the Council of Europe<sup>1</sup>, therefore, the applicants could file applications for offences committed by Russia until 16 September 2022 inclusive. In addition, the ECHR judgment cannot be enforced, which gives rise to doubts as to the voluntariness of Russia's compliance with the compensation award. Nevertheless, there are several aspects of the importance of obtaining a judgment of the ECHR: it should be regarded as proper proof of fixing the amount of damages, which will not require re-proving; the implementation of such judgments will obviously become a condition for Russia's reintegration into the international community; the possibility of Ukraine paying compensation on the basis of the ECHR judgments (Kuznietsov, 2023). Therefore, ECHR judgments, along with decisions of national courts and arbitration tribunals, are also an important element of the mechanism of compensation for war-related damage.

It should be acknowledged that in the context of the war in Ukraine, international courts and tribunals also have limited competence and do not offer an effective enforcement mechanism. Therefore, the introduction of an effective national mechanism for the implementation of the right to compensation for war-related damage is the best idea. The relevance of developing an effective legal framework for compensation is also related to the fact that Article 92, paragraph 22 of the Constitution of Ukraine expressly provides that the basis of civil liability is determined exclusively by the laws of Ukraine<sup>2</sup>. Such an approach to the legal regulation of relations related to compensation for damage caused by war actually makes it impossible to apply analogy and provides for the possibility of legal regulation exclusively at the level of law. That is, it is the law that should provide for the grounds, procedure and subjects of responsibility for human rights violations by armed aggression. Analogy of law and analogy of law are not allowed in this type of legal relationship, based on the provisions of the Constitution of Ukraine. This position additionally justifies the need to adopt special legislation

that would guarantee the right to social protection and take into account the peculiarities of compensation for damages as a result of armed conflict (Anisimova, 2020). On this basis, it is the domestic (national) reparations programme through the implementation of an administrative (non-judicial) compensation mechanism that can best meet the needs of war victims for reparations.

As a result of the analysis, it should be noted that the development of a national strategy for compensation for damage caused by Russia's war against Ukraine is based on several key ideas: the formation of an appropriate legal framework (development of legislation to define legal mechanisms for compensation for damage that would take into account international norms and standards and create the basis for making claims and filing lawsuits in international courts); legal and economic assessment of losses, including maintaining the Register of Losses (recording the losses incurred, assessing the amount of economic damage); close international cooperation (interaction with international partners to jointly address compensation issues (for example, engaging international experts to objectively assess the economic and social consequences of war) and creating support to address the consequences of military aggression); social rehabilitation (creation of programmes and mechanisms to compensate for the loss of property, health and other social losses, ensuring access to adequate medical, psychological and social services for victims); ensuring the right to judicial protection (ensuring legal protection of individuals and legal entities and support for their rights in international courts, introduction of effective judicial procedures for consideration of cases for compensation). **Analysis of the mechanism of compensation for damage caused by the war in Ukraine.** First of all, it is important to emphasise the importance of distinguishing between such legal procedures as compensation and reimbursement, especially given the administrative procedure for compensation for damage caused by Russian aggression established by the current legislation. Compensation for damage involves the recovery of an amount of compensation from the guilty party that will allow the injured person to fully compensate for the losses incurred and/or restore the original situation that existed before the violation. In other words, in this case, the damage is compensated in full, taking into account actual losses and lost income. As a rule, property damage is compensated in civil proceedings by filing a lawsuit against the guilty party (which in the case of military aggression is extremely difficult or even impossible to

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<sup>1</sup>Resolution of the Committee of Ministers No. CM/Res (2022)2 "On the Cessation of the Membership of the Russian Federation to the Council of Europe". (2022, March). Retrieved from <https://rm.coe.int/0900001680a5da51>.

<sup>2</sup>Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text>.

identify). Compensation for property damage can also be made in criminal proceedings, when, during criminal proceedings, before the trial begins, the victim may file a civil claim, and the court, when rendering a guilty verdict, satisfies the civil claim in full or in part or dismisses it. However, as discussed above in this article, such a procedure for compensation for property damage is not an effective way of protection and does not contribute to the proper restoration of the victim's rights.

In turn, compensation is one of the types of state social assistance, which provides for the obligation of the state to pay a certain category of affected persons at its own expense in the amount and on the terms determined by the state itself, taking into account the current situation. Given the content of these categories, compensation for damage would guarantee the most complete restoration of the violated rights of individuals and legal entities, but the absence of special laws in the current legislation regulating the procedure for compensation for damage caused by hostilities is one of the important reasons for the introduction of a compensation mechanism to restore the rights of persons affected by war.

Adoption Law of Ukraine No. 2923-IX<sup>1</sup> actually gave impetus to the formation of a national mechanism for compensation for damaged and destroyed real estate as a result of Russia's armed aggression. Given the dynamism of the conditions for the implementation of the law and the complex nature of legal relations, this law is constantly undergoing systemic changes aimed at improving the mechanism of legal regulation of the issue of compensation for damage. Analysing the legal mechanism of compensation for damaged and destroyed real estate, the proposed Law of Ukraine No. 2923-IX<sup>2</sup>, attention should be paid to the following fundamental provisions. The study of the law gives grounds for the formation of a scheme of the compensation mechanism in the following form: subjects of the right to compensation, objects of compensation, location of the damaged property, condition of the property (damaged or destroyed), creation of a commission to assess the cost of compensation, terms of compensation, method of compensation, search for sources of funding, etc.

First of all, it should be noted that the entities that, according to the Law of Ukraine No. 2923-IX<sup>3</sup> entitled to compensation are: individuals (citizens of Ukraine) who own property and their heirs; construction customers

and their heirs; owners of property rights to residential properties under construction, future residential properties or persons who have paid a share of the price of such property; persons who have invested in the construction of housing and their heirs; members of housing cooperatives who have purchased an apartment or other residential premises in a building but have not registered their ownership. Certain categories of legal entities may also receive compensation, including the following: Associations of co-owners of apartment buildings (condominiums); managers of apartment buildings; housing cooperatives; persons authorised by co-owners of apartment buildings. Interestingly, the subjects of the right to compensation do not include individuals who are legally residing in Ukraine but are not its citizens (including foreigners and stateless persons). There is no provision for compensation for legal entities that own housing infrastructure and have acquired the right to such property (and therefore the right to compensation for its loss or damage) as a result of fulfilling their loan obligations.

Authors agree with the opinion of N. Filatova-Bilous (2022), that such an approach to determining the range of subjects to apply for compensation for damage caused by violations of housing rights does not contribute to the protection of the housing rights of all affected persons. For example, persons who lived in residential premises under a social rental agreement and whose housing was destroyed or damaged should also have the right to restore their property rights. The same opinion is shared by M. Batenchuk (2023), which indicates the shortcomings of this legislative approach, especially given that the tenants of residential premises and apartments in the state housing stock are often families with children, including families of military personnel of the Armed Forces of Ukraine. As can be seen, the law relates to the property of individuals, while the multibillion-dollar losses of legal entities have been left without a proper legislatively regulated compensation procedure. Therefore, to a certain extent, the operation of the established State Register of Damaged and Destroyed Property suggests that its function is perceived as mostly statistical, rather than actually fully compensatory.

In accordance with the provisions of the Law of Ukraine No. 2923-IX<sup>4</sup> "compensation shall be provided for damaged and destroyed housing infrastructure objects from 24 February 2022, among which the exhaustive

<sup>1</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>2</sup>Ibidem, 2023.

<sup>3</sup>Ibidem, 2023.

<sup>4</sup>Ibidem, 2023.

list of objects includes apartments, other residential premises in a building, manor houses, garden and country houses, as well as construction objects (manor houses, garden and country houses), components of construction objects (apartments, other residential premises in a building), which, after commissioning, are independent real estate objects" (Analysis of the compensation mechanism..., 2023)). Damaged housing infrastructure may be considered to be that which has suffered damage that can be repaired. Destroyed housing infrastructure objects are those that have become uninhabitable and cannot be restored (Anisimova, 2020). An analysis of the law also suggests that it contains provisions that relate to compensation only for destroyed real estate, while various types of movable property are left out. In fact, the compensation rules do not apply to non-residential property, vehicles and household items. In addition, international law provides for an obligation to compensate only direct losses based on the status quo ante principle, which provides for the restoration of the injured person's position before the offence through the implementation of a compensation mechanism (the limited nature of the compensation mechanism is due to the fact that the compensation payment will not restore the subject's position to the state before the offence) (Moiseev & Uralova, 2022).

Based on the content Law of Ukraine No. 2923-IX<sup>1</sup>, Another condition for compensation is the location of the damaged or destroyed property. The provisions of this law do not apply to real estate that was located within the temporarily occupied territory until 24 February 2022, the legal regime of which is determined in accordance with the provisions of Law of Ukraine No. 1207-VII<sup>2</sup> (for the Autonomous Republic of Crimea and the city of Sevastopol) and Law of Ukraine No. 2268-VII<sup>3</sup> (for Donetsk and Luhansk regions). Therefore, compensation is provided if the damaged or destroyed housing was not located within the temporarily occupied territory of Ukraine on the date of the full-scale invasion.

It should be noted that an effective mechanism for compensation for damages caused by the war in Ukraine

has not been developed since 2014. A report by the Norwegian Refugee Council (NRC) states that as of 2018, Ukrainian legislation provides for various legal remedies to protect violated property rights, covering both civil and criminal law aspects. However, no special procedure for compensation for damages has been developed so far. Ukrainian law provides for a sequence of actions, including filing a criminal complaint with law enforcement agencies, filing a complaint with the heads of state bodies or higher authorities against unlawful actions or omissions, and filing civil actions in court to recover damages. This approach, while providing a possibility of protection, is not always optimal in cases where quick and effective measures to compensate for property losses are required (Report of the Norwegian Refugee Council, 2018). One of the few legislative provisions that could regulate these legal relations, taking into account the damage caused during the Anti-Terrorist Operation (ATO), is Article 19 Law of Ukraine No. 638-IV<sup>4</sup>. This article provides for compensation for damage caused by a terrorist act from the state budget in accordance with the law, followed by a claim for compensation from the state to the offender<sup>5</sup>. However, the absence of a legally provided mechanism for compensation for damage caused by a terrorist act has actually prevented the provisions of this law from being applied at the proper level.

Nevertheless, even the absence in the legislation of Ukraine of relevant provisions on compensation to the owner of damage caused to his non-residential property by a terrorist act does not prevent a person who believes that a certain positive obligation was not fulfilled by the state in relation to his ownership of such property, from demanding compensation from the state for this failure to fulfil the positive obligation<sup>6</sup>.

The specifics of choosing the method of compensation will be influenced by whether the property or facility is damaged or destroyed. For example, for damaged real estate, compensation is provided in the form of: repair work, development of construction project documentation, its examination, construction work; provision of construction materials for such work. Real estate that

<sup>1</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>2</sup>Law of Ukraine No. 1207-VII "On Ensuring the Rights and Freedoms of Citizens and the Legal Regime in the Temporarily Occupied Territory of Ukraine". (2014, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/1207-18#Text>.

<sup>3</sup>Law of Ukraine No. 2268-VII "On the Peculiarities of State Policy to Ensure State Sovereignty of Ukraine in the Temporarily Occupied Territories of Donetsk and Luhansk Regions". (2018, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/2268-19#Text>.

<sup>4</sup>Law of Ukraine No. 638-IV "On the Fight Against Terrorism". (2003, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/638-15#Text>.

<sup>5</sup>Ibidem, 2003.

<sup>6</sup>Resolution of the Great Chamber of the Supreme Court No. 265/6582/16-ts "On Compensation for Property Damage". (2019, September). Retrieved from <https://zakononline.com.ua/court-decisions/show/86310215>.

has been destroyed will be compensated by providing cash or by financing the purchase of a housing certificate. Law of Ukraine No. 2923-IX<sup>1</sup> clearly defines the conditions for granting each type of compensation. For example: the funds are provided to finance the construction of a house of the appropriate type (manor, garden, dacha); the funds are transferred to a bank account with a special regime of use; the intended use is to finance construction. The law prohibits foreclosure and seizure of such property. Despite this, the law also does not set a time limit for their use, so it is not entirely clear what the timeframe for the realisation of these funds and possible verification of their intended use is.

As for the housing certificate, it is an instrument that allows persons to purchase a residential property, such as an apartment, a manor house, a garden or a country house, including financing their construction. This certificate can be in electronic format, which is sent via the Diia portal or to an electronic mailbox, or in paper form, which is delivered to a postal address if the application was submitted in paper form or there is no electronic communication. It can be used by contacting a legal entity clearly defined by the Government, which is authorised to implement it. Unlike the use of cash, the law sets a time limit for its use of 5 years from the date of issue, and the real estate acquired under the certificate cannot be alienated within five years. Interestingly, the certificate can only be used by its owner or his or her heir. This decision also partially influenced the amendments to the legislation on property inheritance, especially with regard to the inheritance of minors (children of the testator), who are now able to inherit regardless of their place of residence (stay), the last place of residence of the testator, the location of immovable property or the main part of movable property (Barankevych, 2023). Thus, to use a housing certificate Law of Ukraine No. 2923-IX<sup>2</sup> sets stricter requirements than monetary compensation.

It is worth noting that even despite martial law, the issue of exercising and protecting inheritance rights has received the necessary legislative solution in view of the challenges. The compensation mechanism is put into effect through the establishment of the Commission for Consideration of Compensation for Destroyed Objects, which is empowered to make decisions on compensation. The relevant Commission is formed as an advisory body by the executive body of the council, the military

administration of the settlement or the military-civilian administration of the settlement. The Commission has the right to make decisions on granting or refusing to grant compensation for destroyed or damaged objects. As for the timeframe within which compensation will be provided, the Law does not specify it. The same applies to the amount of compensation, as there is no clear understanding of the exact amount of compensation (its range) that can be set for damaged or destroyed property. Based on this, the amount of compensation is calculated individually in each case, taking into account the total area and the cost per square metre of space. Given that the issue of compensation funding is complex, the law also clearly defines the sources of funding for compensation payments. In particular, they include: funds from the state and local budgets; funds from international creditors and investors; all possible types of international financial assistance; reparations and other penalties from Russia, etc.

In addition, one of the sources of compensation for the damage could be Russia's property located on the territory of Ukraine or the aggressor country's assets frozen abroad. The creation of a legal mechanism would allow Ukraine to transfer \$300 billion of Russia's gold and foreign exchange reserves as compensation for the damage caused by the war. To this end, Ukraine proposes to conclude a multilateral agreement between the countries where Russia's frozen assets are stored. However, based on sovereign immunity, such actions require changes in the legislation of the countries where these funds are kept, or the relevant rules should be set out in international agreements. In turn, the Verkhovna Rada of Ukraine adopted Law of Ukraine No. 2116-IX<sup>3</sup>. It must be acknowledged that without the support of foreign partners, the implementation of this law may be difficult.

Despite the enormous efforts of Ukraine to provide compensation to all victims, it is worth agreeing with the opinion of S. Pohribnyi (2023), a judge of the Civil Court of Cassation of the Supreme Court, who in his report at the conference on reparation and compensation for war damage, emphasised that the path to compensation is long and may not always have a positive outcome. Therefore, the development of a high-quality legal mechanism for compensation for damage caused by the aggression of the Russian Federation requires a proper approach to addressing the issue of compensation and restoration of violated rights of individuals and legal entities not only

<sup>1</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>2</sup>Ibidem, 2023.

<sup>3</sup>Law of Ukraine No. 2116-IX "On the Basic Principles of Forcible Expropriation in Ukraine of Objects of Property Rights of the Russian Federation and Its Residents". (2022, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2116-20#Text>.

in terms of improving national legal regulation mechanisms, but also in terms of the expediency of improving international law in general.

**Procedure for obtaining compensation for damage caused by armed conflict in Ukraine.** As already mentioned, compensation should be understood as one of the types of state social assistance, which provides for the payment of funds to a certain category of victims, in the amounts and on the conditions determined by the state (Compensation for damage..., 2023). In addition to Law of Ukraine No. 2923-IX<sup>1</sup> Ukrainian legislation also contains certain provisions on the basis of which compensation may be paid to persons who have lost their housing as a result of emergency situations (and according to Article 5 of the Civil Protection Code of Ukraine, situations of a military nature are considered to be emergency situations), and according to Articles 84, 85, 86 Civil Protection Code of Ukraine<sup>2</sup> are entitled to receive assistance from the state in the form of compensation. However, the existence of a specially developed procedure for compensation for damage creates a special mechanism that should be applied to compensate for damage caused as a result of the war.

Analysis of the content of Law of Ukraine No. 2923-IX<sup>3</sup> gives grounds to distinguish four main stages in the procedure for obtaining compensation. The first stage is related to reporting the damaged property for subsequent entry of data on the damaged object into the State Register of Damaged and Destroyed Property. In order to receive compensation, the requirement to enter information about the destroyed or damaged object is key. In order to establish certain temporal limits, the legislator has provided for the possibility of filing applications for compensation during the martial law period, as well as within one year after its termination. In addition, given the extensive mining of the territory of Ukraine, and the possibility of destruction or damage to property after the end of martial law due to mining or demining, an additional period of three years from the end of martial law has been established for filing an application for compensation. A positive aspect is the possibility of

filing an application without reference to the applicant's place of registration or the location of the destroyed or damaged object. This practice is considered positive in view of the internal migration of the population from the combat zone to safer regions of Ukraine. It is stipulated that an application may be submitted in electronic and paper form (in electronic form - through the services of the Diia online portal, in paper form - through Administrative Service Centres, social protection authorities or notaries). It is worth noting that the possibility of submitting an application through the Diia portal creates favourable conditions for ensuring compensation for the widest possible range of people, given the significant level of population displacement due to the war.

The electronic public service "eVidnovlennia" is a compensation service provided on the basis of an application submitted to the Register of Damaged and Destroyed Property, through the means of the Unified State Web Portal of Electronic Services Diia, in particular using the mobile application of the Diia Portal (Diia), or in another way provided for by law<sup>4</sup>. The algorithm for filing an application with Diia is as follows: 1. Go to the Services section - eVidnovlennia; 2. Report the damaged property in the Diia application; 3. Open a specialised eVidnovlennia account in one of the banks participating in the programme (this can be done immediately when submitting an application in Diia); 4. Fill out an application for financial assistance for the repair of damaged housing or compensation for destroyed property through the Diia application; 5. Diia will automatically generate an application that should be checked and sent for processing. After processing the application, a special commission will record the damage and determine the amount of assistance. If the house is completely destroyed and cannot be restored, Diia will generate a housing certificate that can be exchanged for a new home.

Thus, at the first stage, you should submit an application that clearly describes the list of property and the extent of its damage, provide evidence to confirm ownership, and take photos or videos. The second stage involves consideration of the application. To optimise the

<sup>1</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>2</sup>Civil Protection Code of Ukraine No. 5403-VI. (2012, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/5403-17#Text>.

<sup>3</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

<sup>4</sup>Resolution of the Cabinet of Ministers of Ukraine No. 381 "On the Approval of the Procedure for Providing Compensation for the Restoration of Certain Categories of Real Estate Objects Damaged as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation, Using the Electronic Public Service "eVidnovlennia"". (2023, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/381-2023-%D0%BF#Text>.

review process, the law sets a time limit of no more than thirty calendar days from the date of submission of the application. If the destroyed or damaged object is located in the temporarily occupied territory or in the area of hostilities, the statutory period may be extended for another thirty days. The application is reviewed by the Commission for consideration of compensation issues established in each community as an advisory body. The Commission is formed by the executive body of a village, town, city, district council, military administration of a settlement or military-civilian administration of a settlement. The rule on the mandatory establishment of the relevant Commission in each settlement corresponds to the right of citizens who have the right to file an application to exercise this right regardless of the registered place of residence or stay of the person entitled to compensation or the location of the destroyed or damaged real estate. The Commission operates on the basis of a regulation adopted by the relevant village or city council. Model Regulation on the organisation of the work of the commission for consideration of issues related to the provision of compensation, developed by the Cabinet of Ministers of Ukraine and presented in Resolution No. 516 of 19 May 2023<sup>1</sup>.

In order to enable the Commission to properly exercise its statutory powers, the Commission may include not only officials of state and local governments, but also representatives of enterprises, institutions, organisations, experts, appraisers, valuation entities, performers of certain types of works (services) related to the creation of architectural objects, representatives of international organisations and other persons whose knowledge and experience will be useful in the work of the Commission. The Law also provides for the operation of on-site application acceptance points, the organisation of which is entrusted to the Centres for the Provision of Administrative Services and social protection authorities.

The local self-government body is obliged to ensure proper inspection of the damaged or destroyed property and to enter the relevant documents and information into the Register of Damaged and Destroyed Property. Fulfilment of this obligation is excluded if such documents/information are subject to entry or are created using other state-owned information and communication systems. It should be noted that at the stage of

consideration of the application, the Commission has the right to suspend consideration of the application if the required documents/information are not submitted in the required amount or information about the suspicion of a crime against the foundations of national security of Ukraine by the recipient of compensation or his/her heir is confirmed.

The law also establishes the order of consideration of applications for compensation for destroyed real estate and defines the list of persons who have a priority right to receive compensation for destroyed real estate (articles 5 and 9 Law of Ukraine No. 2923-IX)<sup>2</sup>. If the application was submitted using the Diia portal (through the Diia mobile application), the compensation recipient will be notified of the decision made by the commission and the amount of compensation by means of a message no later than the next business day after the date the decision is entered into the Register of Destroyed and Damaged Property. If the application was submitted in paper form, the compensation recipient will be notified of the decision in writing by the commission/authorised body that made the decision no later than the next business day after the date of the relevant decision (Dudchenko, 2023). The logical conclusion of the second stage will be the receipt of an inspection report drawn up by the commission of the local self-government body, which will be the legal basis for the payment of compensation for destroyed or damaged property or for refusal to pay. The third stage is related to decision-making, which involves the Commission making a decision and approving this decision with the executive body of the relevant council within five calendar days. In fact, after the Commission enters the information on the results of the survey into the Register, a person may (or may not) be included in the list of persons who must receive compensation.

The main tasks of the Commission specified in the law include: reviewing applications for compensation; providing consultations to compensation recipients; establishing the presence/absence of grounds for compensation based on the verification of submitted documents and information; ensuring that an investigation of an unfinished construction project or destroyed real estate object is conducted to establish whether repair work was carried out at the expense of other sources of funding; assisting in the renewal or obtaining documents for

<sup>1</sup>Resolution of the Cabinet of Ministers of Ukraine No. 516 "On Some Issues of Organizing the Work of the Commission for Consideration of Issues Regarding the Provision of Compensation for Destroyed Real Estate Objects as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/516-2023-%D0%BF#Text>.

<sup>2</sup>Law of Ukraine No. 2923-IX "On Compensation for Damage to and Destruction of Certain Categories of Real Property as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine and the State Register of Property Damaged and Destroyed as a Result of Hostilities, Terrorist Acts, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/2923-20#Text>.

the destroyed object; ensuring preparation of the Commission's decisions for their approval by the authorised body; issuance of a housing certificate in electronic and/or paper form (if the Commission's decision is positive) by the Register and sending it to the applicant.

Based on these tasks, the Commission has the right to involve officials of government and local authorities, enterprises, institutions, organisations, experts, appraisers, architects, representatives of international organisations, etc. in meetings and discussions; to request the original documents from the compensation recipient; to submit the necessary requests and receive documents and/or information; to form working groups, if necessary, etc. The list of these rights is not exhaustive and may be expanded based on the tasks assigned to the Commission. Based on the results of consideration of the application, the Commission may decide on: the presence/absence of legal grounds for the testator to receive compensation (provided within 30 days from the date of receipt of the request from the heir or the notary who initiated the inheritance case); suspension/resumption of consideration of the application; granting/refusal to grant compensation, indicating the method and amount of compensation.

The fourth stage is not mandatory, as it is associated with the possibility of appealing the decision in court if the applicant does not agree with the Commission's decision. At the same time, the allocation of this stage has a positive side, given the importance of ensuring transparency, fairness and guarantees of a fair trial in the implementation of the compensation mechanism. This approach opens up the possibility for individuals or legal entities to go to court to review a decision of a public authority that may affect their rights and interests in connection with receiving compensation, which is a key element of the rule of law. It is the guarantee of the right to judicial review at a separate stage that promotes transparency in the activities of the authorities, as it allows the public and stakeholders to monitor and analyse the dispute resolution process. In addition, ensuring the right to appeal helps to avoid possible abuse of power, as the decision can be reviewed and assessed by an independent court. Therefore, in general, such an approach not only contributes to the development of

the legal system, as judicial practice can form new legal standards and precedents that improve the protection of citizens' rights, but also contributes to ensuring fair, transparent and effective judicial protection of the rights and interests of citizens and organisations. In addition, the decision of the commission to grant/refuse to grant compensation for destroyed real estate may be appealed to the body that established it<sup>1</sup>.

Despite the importance of establishing commissions at the national level, the idea of creating an effective international compensation mechanism should not be dismissed. In particular, the idea of establishing a Compensation Commission to award payments for damaged and destroyed property caused by Russian aggression, similar to the UN Compensation Commission in 1991-2022, which considered complaints and provided compensation for damages caused by Iraq's illegal invasion of Kuwait in 1990-1991, is worthy of attention. The UN Compensation Commission faced a number of challenges, which resulted in the completion of compensation payments in February 2022, where \$52 billion of the \$350 billion of claims were approved due to the lack of adequate evidence and insufficient resources of the Commission to consider a significant number of individual claims (Buryachenko, 2022). Therefore, given the experience of the UN Compensation Commission, it is very important to legally record the damage caused to create a proper evidence base.

In November 2022, the UN General Assembly adopted a resolution<sup>2</sup> on legal protection in connection with the aggression against Ukraine, in which states recognised the need to establish an international mechanism of reparation in cooperation with Ukraine. Subsequently, on 12 May 2023, the Council of Europe adopted a resolution<sup>3</sup> on the establishment of the International Register of Damage Caused by Russia's Aggression against Ukraine, and about fifty states and the European Union have joined the Register, which will provide for documentary records of claims for losses and damage. This lays the foundation for the future international compensation mechanism, which is planned to be established under separate cooperation agreements with Ukraine. In fact, international law provides the necessary legal basis for Russia to pay reparations for its aggression

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<sup>1</sup>Resolution of the Cabinet of Ministers of Ukraine No. 516 "On Some Issues of Organizing the Work of the Commission for Consideration of Issues Regarding the Provision of Compensation for Destroyed Real Estate Objects as a Result of Hostilities, Acts of Terrorism, Sabotage Caused by the Armed Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/516-2023-%D0%BF#Text>.

<sup>2</sup>Resolution of the United Nations General Assembly No. S/2014/136 "On Furtherance of Remedy and Reparation for Aggression Against Ukraine". (2022, November). Retrieved from [https://digitallibrary.un.org/record/3993657/files/A\\_ES-11\\_L.6-EN.pdf?ln=en](https://digitallibrary.un.org/record/3993657/files/A_ES-11_L.6-EN.pdf?ln=en).

<sup>3</sup>Resolution of the Committee of Ministers No. CM/Res(2023)3 "On Establishing the Enlarged Partial Agreement on the Register of Damage Caused by the Aggression of the Russian Federation Against Ukraine". (2023, May). Retrieved from <https://rm.coe.int/0900001680ab2595>.

and violations of Ukraine's territorial sovereignty, human rights and IHL. The restoration of violated rights through reparations should include the right to compensation not only for Ukraine, but also for individuals and legal entities. The political will and decisions of Ukraine's partners give millions of Ukrainians hope for justice through compensation for the damage caused by Russia and bringing the perpetrators to justice.

## CONCLUSIONS

The provision of reparation and compensation for the damage caused by the war is becoming an integral part of the legal protection of persons whose rights and property have been affected by military events. Despite the fact that there are no analogues of the war damage compensation model in the world, Ukraine is making significant efforts to address the issue of compensation and has already achieved a number of positive results. For this purpose, a special legal regulation on compensation for destroyed and damaged individual real estate objects has been developed, which takes into account the specifics of hostilities and martial law to provide adequate remedies and compensation.

The developed and implemented system of compensation mechanisms is primarily aimed at restoring certain real estate objects and ensuring the housing rights of affected persons. An analysis of the damage caused by the war allows us to determine the scope and nature of compensation, taking into account the destruction of certain types of real estate (including housing) and violations of a number of human rights. The developed national compensation programme pays special attention to the restoration of real estate, provision of housing and restoration of housing rights of affected persons. At the same time, the effectiveness of the compensation mechanism directly depends on determining the value of destroyed and damaged property, taking into account the actual losses suffered by the affected persons.

However, a detailed analysis of the proposed compensation system also reveals a number of inconsistencies and gaps at the level of legal regulation that need to be addressed promptly. The study has shown that the national compensation mechanism in the administrative procedure, although the most effective compared to the judicial method of compensation for damage, is not as effective as society would expect due to certain shortcomings. The issue of expanding the compensation mechanism for destroyed or damaged property due to Russia's aggression can be improved by amending the following key problematic aspects of the legal regulation of compensation. Firstly, the compensation mechanism should be extended to cover the facts of damage caused as a result of the war since 2014, given the homogeneity

of these relations and the equality of the right to compensation of all affected citizens. Secondly, it is advisable to expand the list of entities entitled to compensation for destroyed or damaged housing to include tenants of housing in the state and municipal housing stock. Thirdly, it would be fair to compensate for the loss of other property, such as household items or vehicles that were destroyed or damaged as a result of the war.

The determination of property damage has become a key issue in the development of compensation mechanisms to ensure fair and adequate compensation for losses. However, it must be admitted that there is a difficult path ahead to restore not only property damage, but also the irreversible losses of physical destruction of a part of society, negative impact on the nation's mental health, environmental damage, etc. The complexity and depth of the problem of compensation for damage caused by Russia's aggressive war against Ukraine and the Ukrainian people is impressive. Therefore, the development of a national strategy for compensation and reparation should be based not only on the idea of implementing a compensation mechanism, but also on the restoration of human and civil rights and freedoms to the fullest extent possible. Therefore, the general conclusion of this study is that the development and implementation of effective compensation mechanisms is a necessity to address the problems associated with war-related harm in Ukraine, but will also be an important experience for determining effective ways to implement a strategy for compensation and redress for war-related harm in the case of any other armed conflicts in the world.

The issue of compensation and reparation for war-related damage is of particular importance, as it is becoming not only a pressing problem for law enforcement, but also an integral part of the process of restoring the rights of persons affected by military events in the world in general. Despite the positive results achieved in addressing this issue, further research should focus on the development of a comprehensive compensation mechanism for all facts of damage caused by war and for all affected persons. It is extremely important to take measures to eliminate gaps and inconsistencies at the level of legal regulation in national and international law that impede the effective functioning of the compensation mechanism. Such actions will be an important step towards improving the future strategy of reparation and compensation for damage in other armed conflicts in the world.

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## CONFLICT OF INTEREST

None.

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## Відшкодування та компенсація шкоди, завданої війною (кейс України)

**Анотація.** Дослідження відшкодування та компенсації шкоди, завданої війною, набуває надзвичайної актуальності в контексті сучасних збройних конфліктів, де відновлення прав та свобод постраждалих осіб стає нагальною потребою. Розгляд ініціатив України у цьому напрямку та аналіз досягнутих результатів є важливим внеском у розуміння ефективних компенсаційних механізмів у контексті воєнних дій та може послужити прикладом для інших країн, що стикаються з подібними викликами. Метою даної роботи стало комплексне дослідження національної стратегії відшкодування та компенсації шкоди, завданої війною, з огляду на необхідність повного відновлення прав фізичних та юридичних осіб. В процесі даного наукового дослідження застосовано такі методи: дедуктивний, аналізу монографічних досліджень, теоретичного узагальнення, абстрактно-логічного узагальнення та порівняльно-правового аналізу. У роботі висвітлено ініціативи України у сфері компенсації завданої шкоди від агресивної війни росії проти України та зосереджено увагу на досягнутих позитивних результатах, зокрема проаналізовано розроблену нормативно-правову базу та систему компенсаційного механізму, спрямованого на відновлення окремих об'єктів нерухомого майна (зокрема, житла) та житлових прав потерпілих осіб. Аналіз показав неузгодженості в правовому регулюванні, які потребують вдосконалення, зокрема щодо розширення сфери відшкодування шляхом включення в перелік знищених чи пошкоджених об'єктів компенсації деяких інших видів майна (наприклад, транспортні засоби та побутові речі). Визначено, що ефективність системи залежить від точного визначення збитків та втрат. Запропоновано зміни для покращення компенсаційного механізму, зокрема розширення сфери компенсації та врахування різних категорій постраждалих. Висловлено думку, що розв'язання проблем компенсації за знищене та пошкоджене майно повинно ґрунтуватися не лише на компенсаційному механізмі, а й сприяти повному відновленню прав та свобод постраждалих осіб. Практичне значення даного дослідження полягає у тому, що воно не лише аналізує національну стратегію компенсації та відшкодування шкоди внаслідок війни, але й розробляє рекомендації щодо удосконалення компенсаційного механізму з метою повного відновлення прав та свобод постраждалих осіб. Набутий досвід України може послужити цінним прикладом для інших країн, що стикаються з подібними викликами в умовах збройних конфліктів

**Ключові слова:** механізм компенсації; порядок відшкодування; суд; правосуддя; збитки; нерухоме майно; житло; пошкоджене майно; воєнний стан