

COMPENSATION FOR DAMAGE CAUSED BY RUSSIA'S ARMED AGGRESSION AGAINST UKRAINE: PROSPECTS FOR EXTRAJUDICIAL RESOLUTION^{1198 1199}

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COMPENSAÇÃO POR DANOS CAUSADOS PELA AGRESSÃO ARMADA DA RÚSSIA CONTRA A UCRÂNIA: PERSPECTIVAS DE RESOLUÇÃO EXTRAJUDICIAL

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ABSTRATO: (i) Antecedentes: O facto da invasão russa na Ucrânia, que resultou em perdas multimilionárias para o povo ucraniano, é bem conhecido. O dano foi infligido tanto ao Estado como a cada um dos seus cidadãos individualmente. Considerando o período de dez anos de agressão contínua e a sua escala, há um número obviamente grande de indivíduos dispostos a restaurar a justiça e os seus direitos violados, obtendo uma compensação adequada. Atualmente, na Ucrânia, o principal ónus da

resolução da questão da indemnização recai sobre os tribunais. Com uma década de agressões contínuas, muitos procuram justiça e compensação, colocando um fardo pesado sobre os tribunais e arriscando a ineficiência do sistema. (ii) Objectivos: Para prevenir riscos e ameaças ao poder judicial, é necessário recorrer a métodos alternativos para resolver a questão da concessão de indemnizações. Observa-se que tais métodos devem ser de natureza extrajudicial e,

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¹¹⁹⁹ O presente texto corresponde à comunicação apresentada no II Congresso Internacional de Direito Processual Civil sobre os “DESAFIOS DA DESJUDICIALIZAÇÃO DA JUSTIÇA”, realizado na Universidade Portucalense, a 15 e 16 de dezembro de 2023, organizado pelo Instituto Jurídico Portucalense, em parceria com a Universidade do Estado do Rio de Janeiro, a Universidade Estácio de Sá, a Universidade de Vigo, o Instituto Brasileiro de Direito Processual, a Associação Brasileira Elas no Processo e com a Associação dos Registradores Cíveis de Pessoas Naturais do Brasil (ARPEN BR), com o apoio do Contrato Programa UIDB/04112/2020, financiado por fundos nacionais da República Portuguesa, através da FCT I.P.

¹²⁰⁰ This article was prepared as part of the scientific project ‘Justice in the context of sustainable development’ Project No. 22BF042-01 (2022-2024).

simultaneamente, ser um meio eficaz de restaurar os direitos violados dos indivíduos afetados. A necessidade de tomar tais medidas se deve aos resultados demonstrados em nosso estudo anterior.¹²⁰¹ Verificou-se que os tribunais não tratam integralmente esta categoria de casos, as decisões judiciais não são realmente implementadas, os direitos das vítimas não são cumpridos desta forma, o que indica a necessidade de criar métodos complexos de proteção - tanto judiciais e extrajudicial. (iii) Principais resultados da investigação: O artigo explora os procedimentos extrajudiciais existentes na Ucrânia para o pagamento de indenizações, incluindo os tipos de danos a que esses procedimentos se aplicam; as entidades habilitadas a reclamar indenizações através de procedimentos especiais, bem como as indenizações a que essas entidades possam ter direito; quem é a entidade autorizada a apreciar os pedidos de atribuição de indenizações e quem deve tomar as decisões relativas à sua prestação. Uma das principais questões é também se tais mecanismos extrajudiciais devem ser diferenciados com base em determinados critérios e quais critérios especificamente. Todos estes aspectos são extremamente importantes para o desenvolvimento de mecanismos de compensação que satisfaçam plenamente as exigências da sociedade. Espera-se que através da

criação de alternativas extrajudiciais, os interesses dos cidadãos, bem como os desafios que o sistema judicial enfrenta, sejam equilibrados. (iv) Principais conclusões: A compensação extrajudicial eficaz deve considerar experiências e quadros jurídicos nacionais e internacionais. Portanto, em nosso artigo examinaremos cuidadosamente os aspectos mais importantes relacionados ao acima exposto e tentaremos avaliar as possíveis perspectivas para a implementação de uma restituição efetiva de forma extrajudicial na Ucrânia.

PALAVRAS-CHAVE: indenização por danos, agressão armada, Ucrânia, procedimento extrajudicial, desjudicialização.

ABSTRACT: (i) Background: The fact of russian invasion into Ukraine, which resulted in multi-billion losses to the Ukrainian people, is well known. The damage was inflicted both on the state and on each of its citizens individually. Considering the ten-year period of ongoing aggression and its scale, there is an obvious large number of individuals willing to restore justice and their violated rights by obtaining appropriate compensation. Currently in Ukraine, the main burden of resolving the issue of compensation falls on the courts. With a decade of ongoing aggression, many seek justice and compensation, placing

¹²⁰¹ IZAROVA, Iryna; HARTMAN, Yuliia; NATE, Silviu. War Damages Compensation: A Case Study on Ukraine [version 1; peer review: 2 approved]. In: **F1000Research**, 12:1250, 2023.

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a heavy burden on the courts and risking system inefficiency. (ii) Objectives: In order to prevent risks and threats to the judiciary, it is necessary to turn to alternative methods of resolving the issue of awarding compensation. It is noted that such methods should be extrajudicial in nature and simultaneously be an effective means of restoring the violated rights of affected individuals. The need to take such measures is due to the results demonstrated in our previous study.¹²⁰² It was found that the courts do not fully deal with this category of cases, court decisions are not really implemented, the rights of victims are not fulfilled in this way, which indicates the need to create complex methods of protection - both judicial and extrajudicial. (iii) Main results of research: The article explores existing non-judicial procedures in Ukraine for the payment of compensation, including the types of damage to which these procedures apply; the entities entitled to claim compensation through special procedures, as well as the compensation to which these entities may be entitled; who is the authorized entity to consider claims for awarding compensation and who should make decisions regarding its provision. One of the key questions is also whether such extrajudicial mechanisms should be differentiated based on certain criteria and which criteria specifically. All these

aspects are extremely important for the development of compensation mechanisms that would fully satisfy societal demands. It is expected that through the creation of extrajudicial alternatives, the interests of citizens as well as the challenges facing the judicial system will be balanced. (iv) Main conclusions: Effective extrajudicial compensation must consider national and international experiences and legal frameworks. Therefore, in our article, we will carefully examine the most important aspects related to the above and tried to assess the possible prospects for the implementation of effective restitution in an extrajudicial manner in Ukraine.

KEYWORDS: compensation for damage, armed aggression, Ukraine, extrajudicial procedure, dejudicialization.

INTRODUCTION

Fundamental principles guiding compensation for victims of war are rooted in international humanitarian law and are grounded in international human rights. These principles pertain to the protection and assistance of those affected by armed conflicts, acknowledging their right to compensation for the incurred damages.

For the purposes of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of

¹²⁰² IZAROVA, Iryna; HARTMAN, Yuliia; NATE, Silviu. War Damages Compensation: A Case Study on Ukraine [version 1; peer review: 2 approved]. In: **F1000Research**, 12:1250, 2023.

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Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, victims are defined as individuals or groups who have suffered harm. This harm includes physical or mental injury, emotional suffering, economic loss, or significant impairment of their fundamental rights. The harm is a result of acts or omissions that constitute gross violations of international human rights law or serious violations of international humanitarian law. Additionally, where applicable and in accordance with domestic law, the term "victim" extends to the immediate family or dependents of the direct victim and individuals who have suffered harm while intervening to assist victims in distress or prevent victimization.¹²⁰³

Given the fact that, according to the principles of international humanitarian law and international human rights protection, a state is obligated to ensure fair compensation for victims who have suffered from gross violations of fundamental rights, it is inappropriate in this case to speak of a dispute between the victim and the state, as well as the need for its resolution.

In accordance with international law, nations must guarantee the

alignment of their domestic legislation with their international legal commitments. This entails the adoption of suitable and effective legislative and administrative procedures, along with other relevant measures. These measures should ensure fair, effective, and timely access to justice, as well as the provision of sufficient, effective, prompt, and suitable remedies, including reparations.¹²⁰⁴

Therefore, the main task for the state should be the establishment of an effective mechanism (or, if necessary, multiple mechanisms) to enable victims to exercise their right to compensation, and the state, in turn, has the obligation to ensure it.

The concept of an extrajudicial procedure can be extracted from the practice of the Court of Justice of the European Union, notably considering the Court's recognition of extrajudicial documents.¹²⁰⁵ Therefore, the term "extrajudicial procedure" should be understood as a specialized process conducted by a governmental body or official for the purposes of exercising, proving or safeguarding a right or a claim in civil or commercial law.¹²⁰⁶

Civil procedure regulation, in addition to its conflict resolution aspect,

¹²⁰³ UNGA - United Nations General Assembly. **Resolution 60/147**, 15 December 2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>. Access: 20 June 2024.

¹²⁰⁴ *ibid.*

¹²⁰⁵ CJEU - Court of Justice of the European Union. **Case C-223/14**, Tecom Mican SL. and José Arias Domínguez, Judgment 11 November 2015. Available in: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62014CJ0223>. Access: 20 June 2024.

¹²⁰⁶ EU - European Union. European Parliament; Council of the EU. **Regulation (EC) no. 1393/2007**, 13 November 2007. On the service

emphasizes law enforcement. It extends beyond the realm of private parties regulating the procedure, resembling a private justice model. When individuals seek recourse in the courts, they are not merely seeking dispute resolution but primarily seeking the enforcement of their entitlements in accordance with EU law.¹²⁰⁷

Additionally, in this case, it is not about one of the primary goals pursued by plaintiffs when turning to the court - ensuring by the state one of the elements of the right to a fair trial, namely the enforcement of a court decision. This is also mentioned in the consistent practice of the European Court of Human Rights, which is recognized in Ukraine as a source of law.¹²⁰⁸ In particular, in the case of "Gornsbey v. Greece,"¹²⁰⁹ the European Court of Human Rights (ECtHR) noted that the enforcement of a decision by any court should be considered as an integral part of the judicial process. In the case of "Immobiliare Saffi v. Italy,"¹²¹⁰ the ECtHR emphasized that the right to access the

court would be illusory if the national legal system of a contracting party allowed a final, binding court decision to remain unenforced to the detriment of one of the parties. It is difficult to imagine a situation where Article 6(1) of the European Convention precisely describes procedural guarantees provided to the parties in civil proceedings, ensuring a fair, open, and expeditious trial, without including guarantees for the enforcement of judicial decisions.¹²¹¹

In the majority of cases in civil proceedings, one party, a private individual, in whose favor a decision has been made, relies on the support of the state through the enforcement authorities and private bailiffs for enforcement against the other party, also a private individual. When it comes to compensation, there is no such reliance on the state, as the enforcement of a decision by a special commission regarding compensation payment is already covered by the state's obligation to make such payments.

in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) no 1348/2000. Available at: <<http://data.europa.eu/eli/reg/2007/1393/oj>>. Access: 20 June 2024.

¹²⁰⁷ VERNADAKI, Zampia. Civil Procedure Harmonization in the EU: Unravelling the Policy Considerations. **Journal of Contemporary European Research**, vol. 9, no. 2, p. 297-312, 2013. DOI 10.30950/jcer.v9i2.425.

¹²⁰⁸ UKRAINE. **Law no. 3477-IV**, 23 February 2006. On the Execution of Decisions and the Application of Practices of the European Court of Human Rights. Available in:

<https://zakon.rada.gov.ua/laws/show/3477-15/conv#Text>. Access: 20 June 2024.

¹²⁰⁹ ECtHR - European Court of Human Rights. **Case of Hornsby v. Greece**, Application no. 18357/91, Judgment of 19 March 1997. Available in: <https://hudoc.echr.coe.int/eng?i=001-58020>. Access: 20 June 2024.

¹²¹⁰ ECtHR - European Court of Human Rights. **Case of Immobiliare Saffi v. Italy**, Application no. 22774/93, Judgment of 28 July 1999. Available in: <https://hudoc.echr.coe.int/eng?i=001-58292>. Access: 20 June 2024.

¹²¹¹ KHANOVA, R. F.; KRAVTSOVA, S. O. (eds.). **Enforcement Proceedings: Theory and Practice**: Monograph. Kharkiv: Pravo, 2021.

Considering the above, the logical conclusion is that, for the victim to realize their right to fair compensation, there is no need to resolve this matter through legal proceedings. In other words, the creation of special compensation mechanisms is seen not only as a way to expedite and make the compensation of damages and harm to victims more efficient but also as a necessity, especially in the current conditions in Ukraine, to reduce the burden on the courts.

The transformation of the judicial process is also driven by the necessity and opportunity for a more effective resolution of disputes through digitalization tools. The global trend and the European Union's direction, including the development of a Proposal for a Regulation on a computerized system for communication in cross-border civil and criminal proceedings (e-CODEX system), encourage Ukraine to explore ways and instruments for the digitization of access to justice. The potential of digital technologies extends to enhancing the accessibility and efficiency of justice systems. Individuals require access to information to effectively exercise their rights and fully engage with the justice process. Similarly, businesses rely on tools for accessing information and enforcing their rights through efficient justice

systems to carry out their operations. This not only ensures smoother business operations but also leads to cost reductions for all enterprises.¹²¹² This also explains the Ukrainian legislator's desire to simplify access for affected categories to the compensation mechanism. In this regard, the Government of Ukraine launched the electronic public service "eRestoration," within which, using the "Diya" application, one can receive up to 200,000 hryvnias in compensation for the restoration of damaged property due to the war. If the amount exceeds this limit, it is necessary to provide a report on the use of the funds paid through the "Diya" platform. These funds can be spent on construction materials or services from contractors participating in the program. The program started on May 10, 2023, but it can be accessed only if it meets clearly defined criteria. These criteria include property damage due to hostilities after February 24, 2022, the location of damaged housing in the unoccupied territory where active hostilities are not taking place, the unrepaired damaged housing was not self-repaired at one's own expense, and it is subject to restoration according to the assessment of a special commission.¹²¹³ The government has indicated that the program is designed for those whose housing has suffered

¹²¹² EU - European Union. Digitalisation of Justice. **European Commission**, [2020]. Available in: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/digitalisation-justice_en. Access: 20 June 2024.

¹²¹³ UKRAINE. Ministry for Communities, Territories and Infrastructure Development. Conditions for Obtaining Assistance in the Restoration of Damaged Housing. **Diya. eRecovery**, [May 2023]. Available in: <https://erecovery.diia.gov.ua/damaged.html>. Access: 20 June 2024.

minor damage and requires restoration. In other words, it addresses the needs of only a small portion of the affected individuals. It is anticipated that the next stage of the program will focus on housing that does not require restoration.

It is also essential to consider that one of the primary tasks of both the legislative and judicial branches of government, in addition to what has already been mentioned, according to the Civil Procedural Code of Ukraine (CPC), is the fair, impartial, and timely consideration and resolution of cases for the effective protection of violated rights (Article 2).¹²¹⁴ Adherence to this principle is directly linked to the ability of the courts to handle cases, which is influenced by the aforementioned caseload. This caseload should be proportional to the number of judges administering justice in a specific court and within a reasonable timeframe in which they process their assigned cases.

1. COMPENSATION LAW, ITS SCOPE, AND LIMITATIONS

As noted in other studies, the primary method to obtain the right to compensation in Ukraine has been to file

a lawsuit against the party believed by the victim to be obligated to compensate for the incurred damage in court.¹²¹⁵ However, in 2023, a new extrajudicial compensation mechanism came into operation in Ukraine, developed in response to the full-scale invasion of the Russian Federation into Ukrainian territory and the need for the rapid compensation of at least certain types of damage. This new mechanism, compared to the judicial method of protection, is faster and more efficient.

The draft law proposed in March 2022 outlined the procedure for compensating for damaged and destroyed real estate during wartime. This does not imply that other types of war-related damages will not be compensated; however, the purpose of this draft law was to establish a simplified procedure for restoring rights. Nevertheless, it cannot be stated that other options for restoring violated rights will not be implemented under similar conditions - simply and quickly. This draft law was adopted by the Verkhovna Rada of Ukraine on February 23, 2023, and it was signed by the President of Ukraine on March 17, taking effect on May 22, 2023.¹²¹⁶

This law establishes the legal and

¹²¹⁴ UKRAINE. **Law no. 1618-IV**, 18 March 2004. Civil Procedural Code of Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/1618-15/conv#Text>. Access: 20 June 2024.

¹²¹⁵ IZAROVA, Iryna; HARTMAN, Yuliia; NATE, Silviu. War Damages Compensation: A Case Study on Ukraine [version 1; peer review: 2 approved]. In: **F1000Research**, 12:1250, 2023. Available in: <https://doi.org/10.12688/f1000research.136162.1>. Access: 20 June 2024.

¹²¹⁶ UKRAINE. **Law no. 2923-IX**, 23 February 2023. On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by 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 Armed Aggression of the Russian Federation against Ukraine. Available in:

organizational principles for providing compensation for the damage and destruction of certain categories of real estate as a result of hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine, from the date of the introduction of martial law in Ukraine by the Decree of the President of Ukraine on February 24, 2022, No. 64/2022, approved by the Law of Ukraine "On approval of the Decree of the President of Ukraine on the introduction of martial law in Ukraine" dated February 24, 2022, No. 2102-IX.¹²¹⁷ It also defines the legal principles for creating and maintaining the State Register of property damaged and destroyed due to hostilities, terrorist acts, sabotage caused by the armed aggression of the Russian Federation against Ukraine.

It is crucial to note that the application of this law, regarding the provision of compensation for the damage and destruction of certain categories of real estate, does not extend to objects of real estate that were located on the temporarily occupied territory of Ukraine as of the date of the introduction of martial law by the Decree of the President of Ukraine on February 24, 2022, No. 64/2022, approved by the Law of Ukraine "On approval of the Decree of the President of Ukraine on the introduction of martial law in Ukraine"

dated February 24, 2022, No. 2102-IX, as defined by the Law of Ukraine "On ensuring the rights and freedoms of citizens and the legal regime on the temporarily occupied territory of Ukraine."¹²¹⁸ This direct indication significantly limits the scope of entities that can claim compensation under this law and does not account for the damage that occurred from the beginning of the first phase of the Russian invasion, which started in February 2014. Thus, there is a pressing need for effective ways to compensate all victims regardless of the period when the damage occurred, which will be further explored in this study.

Another unjustified limitation regarding compensation, as established by the analyzed law, is the time frame within which the affected person can claim compensation. The application for compensation for a destroyed real estate object can only be submitted to the Commission during the state of war and within one year from the date of its termination or cancellation on the territory where the destroyed real estate object is located (or was located). This provision deprives individuals who miss the specified deadline of the right to fair compensation. Additionally, the law does not provide for the possibility of extending the established deadline, which does not align with the state's

<https://zakon.rada.gov.ua/laws/show/2923-20#Text>. Access: 20 June 2024.

¹²¹⁷ UKRAINE. President. **Decree no. 64/2022**, 24 February 2022. On the Imposition of Martial Law in Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>. Access: 20 June 2024.

¹²¹⁸ UKRAINE. **Law no. 1207-VII**, 15 April 2014. On Ensuring the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/1207-18#Text>. Access: 20 June 2024.

obligation to ensure and guarantee the opportunity for everyone to receive fair compensation for gross violations of human rights, as defined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, approved by the United Nations General Assembly, as referenced in our research.

This highlights the urgent need to amend the law and improve it to comply with the aforementioned obligation, at the very least by providing the opportunity to restore the missed deadline for submitting a compensation claim. However, the law also allows for appealing the decision to deny compensation due to missing the deadline to the administrative court. Nevertheless, this will only slow down the possibility of obtaining compensation and may cause further suffering to the affected person due to prolonged waiting. Therefore, it seems more reasonable to empower the Commission with the authority to extend the deadline for applying for compensation and prevent interference in this mechanism by the judicial branch of government.

In addition to the period during which the damage occurred, the territory where the damage was inflicted, and the time frame within which a compensation claim can be submitted, the law also establishes a clear list of destroyed real estate objects that are located in Ukraine and have become unsuitable for use for their intended purpose due to armed conflicts, terrorist acts, sabotage,

caused by the armed aggression of the Russian Federation against Ukraine. The restoration of these objects is impossible through current or capital repairs, reconstruction, restoration, or economically impractical. These include:

a) Apartments, other residential premises in a building, residential houses of garden type, garden and summer cottages;

b) Construction objects (residential houses of garden type, garden and summer cottages) with load-bearing and external enclosing structures in place at the time of destruction (excluding transparent structures and door openings filling) for which the right to perform construction work has been obtained;

c) Integral parts of construction objects (apartments, other residential premises in a building) that, after being put into operation, are independent real estate objects, provided that at the time of destruction, the construction object had load-bearing and external enclosing structures in place (excluding transparent structures and door openings filling) for which the right to perform construction work has been obtained;

d) Common property of a multi-apartment building, excluding the land plot.

The law also defines what is meant by compensation that can be obtained through the procedure outlined in the law. Three main types of compensation are distinguished:

1) Performance of construction-related work on the damaged real estate

object with the aim of its restoration and/or provision of construction products for such work;

2) Providing monetary funds by transferring them to the current account of the compensation recipient with a special mode of use for the construction of a residential house of garden type, garden or summer cottage;

3) Financing the purchase of an apartment, other residential premises, a residential house of garden type, a garden or summer cottage (including financing the purchase of premises/house to be constructed in the future or investing/financing its construction) using a residential certificate.

This list is exhaustive.

Simultaneously, the UN General Assembly's Basic Principles and Guidelines emphasize that compensation, as deemed suitable and proportionate to the severity of the violation and the particulars of each case, should be granted for economically assessable damage resulting from gross violations of international human rights law and serious violations of international humanitarian law. This damage includes but is not limited to:

- (a) Physical or mental harm;
- (b) Missed opportunities, encompassing employment, education, and social benefits;

(c) Material losses and foregone earnings, including potential income loss;

(d) Moral harm;

(e) Expenses incurred for legal or expert assistance, medical treatment and services, as well as psychological and social services.¹²¹⁹

This implies that the approach to defining objects and methods of compensation in the Law is quite limited and does not take into account equally significant types of damage. This, in turn, provides grounds to expect the creation of other extrajudicial compensation mechanisms capable of addressing different types of damage.

The monetary compensation for a destroyed real estate object is determined for each compensation recipient and each destroyed real estate object separately, based on the total area of the destroyed real estate object and the cost of 1 square meter of the destroyed real estate object's area.

2. COMMISSION ON THE CONSIDERATION OF COMPENSATION ISSUES, ITS POWERS AND FEATURES

The crucial aspect is that the compensation procedure is carried out through an extrajudicial process by a specially established entity - the Commission on Consideration of Compensation Issues. This commission

¹²¹⁹ UNGA - United Nations General Assembly. **Resolution 60/147**, 15 December 2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International

Humanitarian Law. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>. Access: 20 June 2024.

reviews matters related to compensation for destroyed real estate objects and makes decisions on granting or denying compensation for destroyed real estate objects (Article 3 of the Compensation Law No. 2923-IX).¹²²⁰

When resorting to the court, the consideration of a damage compensation case should be conducted within a reasonable period, which is one of the fundamental principles of civil procedure.¹²²¹ However, there is no specific compensation mechanism for this principle, and there are no specified time constraints for the examination of claims, which may raise legitimate concerns about the speed and reasonableness of the time taken to consider compensation applications.

The formation of this Commission is authorized by the executive body of the rural, township, city, district within the city (if created), and the military administration of the locality or the military-civilian administration of the locality. In this context, the Commission is established as an advisory body and approves regulations governing its operations.

For a more comprehensive understanding of the legal nature of the Commission, it is necessary to clarify the

essence of the authorities that have the right to establish it. Military-civil administrations are temporary state bodies in villages, towns, cities, districts, and regions, operating as part of the Anti-Terrorist Center at the Security Service of Ukraine (if established to perform the tasks of relevant authorities in the area of the anti-terrorist operation) or as part of the Unified Operational Headquarters of the Armed Forces of Ukraine (if established to perform the tasks of relevant authorities in the area of ensuring national security and defense, countering and restraining armed aggression by the Russian Federation in the Donetsk and Luhansk regions). These administrations are designed to ensure the Constitution and laws of Ukraine, secure safety, normalize the population's livelihoods, maintain law and order, participate in countering acts of armed aggression, sabotage, and terrorist acts, and prevent a humanitarian catastrophe in the area of countering armed aggression by the Russian Federation, including conducting an anti-terrorist operation. Temporary state bodies, military administrations, may be formed for the same purpose and, together with military command, introduce and implement the legal regime of martial law.¹²²²

¹²²⁰ UKRAINE. **Law no. 2923-IX**, 23 February 2023. On Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by 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 Armed Aggression of the Russian

Federation against Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/2923-20#Text>. Access: 20 June 2024.

¹²²¹ UKRAINE. **Law no. 1618-IV**, 18 March 2004. Civil Procedural Code of Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/1618-15/conv#Text>. Access: 20 June 2024.

¹²²² UKRAINE. **Law no. 389-VIII**, 12 May 2015. On the Legal Regime of Martial Law. Available in:

From the analysis of the authorities empowered to create the Commission, it is evident that the Commission's activities, like the Compensation Law itself, are designed for the period of the legal regime of martial law in Ukraine. However, the need to address compensation issues does not end with the conclusion or termination of this period. Therefore, it is promising to develop changes and improvements to the proposed mechanism for its effective functioning in peacetime.

The personnel composition of the Commission is approved by the executive body of the council, military administration of the locality, or military-civilian administration of the locality. A significant drawback of this approach is the lack of clearly defined criteria and requirements set by the legislator for the composition of the Commission. This creates a risk of biased consideration of the issue of compensation and may lead to unprofessional or superficial examination of the submitted application.

If necessary, representatives of state authorities, local self-government bodies, enterprises, institutions, organizations, experts, appraisers, entities engaged in appraisal activities, and performers of specific types of work (services) related to the creation of architectural objects, as well as representatives of international

organizations and other persons, may be involved (with consent) in the Commission for the consideration of compensation issues. The list of cases requiring such involvement is undefined, which is a positive factor as it does not limit the Commission in subjectively determining the need to involve representatives from the relevant sphere.

Within the scope of its competence, the Commission provides comprehensive information and consultations on compensation matters to compensation recipients. This authority ensures the principle of free access to information and informs the affected person about what they can receive. It addresses the legitimate expectations of the affected individuals. According to the position of the Supreme Court within the composition of the collegiums of the Cassation Administrative Court, a mandatory condition for the existence of certain expectations (claims) of a person, with the presence of which the person's expectation (claim) acquires the characteristics of legitimate expectations, is that such expectation (claim) has a proper legal basis, i.e., there is a sufficient source for the relevant expectation (claim).¹²²³ Additionally, the Constitutional Court of Ukraine emphasized in its decision of June 18, 2020, No. 5-p(II)/2020, that a component of the general principle of

<https://zakon.rada.gov.ua/laws/show/389-19#Text>. Access: 20 June 2024.

¹²²³ UKRAINE. Administrative Cassation Court of the Supreme Court. **Case no. 580/1300/22**,

Decision of 18 January 2023. Available in: <https://reyestr.court.gov.ua/Review/108463659>. Access: 20 June 2024.

legal certainty as a requirement of the rule of law is the principle of legitimate expectations, which, according to the interpretation of the Venice Commission, expresses the idea that public authorities must adhere not only to the provisions of legal acts but also to their promises and aroused expectations.¹²²⁴

The main authority of the Commission is to consider issues related to providing compensation for destroyed real estate objects, including:

a) Making decisions on providing/refusing compensation for destroyed real estate objects;

b) Making decisions on the existence/absence of legal grounds for the heir to receive compensation for the destroyed real estate object.

The Commission has the right to receive documents and/or information necessary for decision-making on compensation from state authorities, local self-government bodies, enterprises, institutions, and organizations, regardless of ownership form. This includes the restoration of lost documents necessary for making decisions on compensation, a common basis when a person possesses outdated documents that are absent from the State Registers, and their destruction or damage together with the property.

If necessary, the Commission is authorized to form temporary working groups to perform its assigned tasks. The

Commission independently determines the functions and tasks of these groups in accordance with the provisions adopted by the authority that created the Commission.

The authority of the Commission is exhaustive, and it can take other measures and address issues within its competence. It can also perform other powers arising from its assigned tasks. In our opinion, this is related to the Commission's scope of activity, which involves providing compensation. The process might encounter unforeseen circumstances and situations requiring swift reactions, such as the prompt decision-making and implementation of necessary measures within reasonable timeframes.

The consideration of applications for compensation is carried out in the specified order by the Law, including the order of their receipt concerning each settlement or territory of each territorial community. Another criterion influencing the sequence of consideration is the method of providing compensation for destroyed real estate objects within the territory of the respective territorial community. In this case, the registration of the queue is mandatory and is maintained in the State Register of damaged and destroyed property. In our view, the method of providing compensation will affect the order of application review in accordance with the availability of funding sources for compensation.

¹²²⁴ UKRAINE. Constitutional Court. **Case no. 3-189/2018(1819/18)**, Decision no. 5-p(II)/2020, 18 June 2020. Available in:

<https://zakon.rada.gov.ua/laws/show/va05p710-20#Text>. Access: 20 June 2024.

It's also important to mention the priority right to receive compensation since, according to the Law, it is given first to participants in hostilities, persons with disabilities due to the war, and individuals identified by special laws on war veterans. Next in line are individuals called up for military service during mobilization, for a special period, and those not granted the status of participants in hostilities. The third category includes large families, and finally, individuals with disabilities of I and II groups. After providing compensation to the mentioned categories, the review of applications is carried out following the general rule of sequence.

Regarding the expenses for judicial and extrajudicial processes, neither of them has obvious advantages. Filing a lawsuit in connection with seeking compensation for damages caused by the armed aggression of the Russian Federation is exempt from court fees.¹²²⁵ Similarly, no administrative fee is charged for submitting an application for compensation to the Commission. Costs that victims may incur include legal aid expenses if the person decides to use the services of a professional representative (lawyer).¹²²⁶ However, in this case, the state has taken care of the victims by endowing them with the right to free secondary legal aid in these categories of cases.¹²²⁷ When submitting

an application to the Commission, consulting a lawyer under standard conditions is not necessary, and such a right can be exercised only at the discretion of the victim.

It is also crucial to identify the sources from which the awarded compensation will be financed, as it is evident that the special mechanism should have a separate budget or a special compensation fund that will be replenished from specified sources.

The funding sources for compensating damaged or destroyed real estate, as outlined in the Compensation Law No. 2923-IX, include the following:

- 1) State budget funds, encompassing allocations from entities like the Fund for the Restoration of Property and Destroyed Infrastructure, and the Fund for the Liquidation of Consequences of Armed Aggression, along with local budgets;
- 2) Contributions from international financial organizations, additional creditors, and investors;
- 3) International technical and/or financial assistance, whether repayable or non-repayable;
- 4) Reparations or other recoveries from the Russian Federation;
- 5) Other permissible sources in accordance with Ukrainian legislation.

In this context, local self-government bodies have the authority to

¹²²⁵ UKRAINE. **Law no. 3674-VI**, 8 July 2011. On Court Fees. Available in: <https://zakon.rada.gov.ua/laws/show/3674-17#Text>. Access: 20 June 2024.

¹²²⁶ UKRAINE. **Law no. 1618-IV**, 18 March 2004. Civil Procedural Code of Ukraine. Available in:

<https://zakon.rada.gov.ua/laws/show/1618-15/conv#Text>. Access: 20 June 2024.

¹²²⁷ UKRAINE. **Law no. 3460-VI**, 2 June 2011. On Free Legal Aid. Available in: <https://zakon.rada.gov.ua/laws/show/3460-17#Text>. Access: 20 June 2024.

endorse local programs and establish funds to facilitate compensation and restoration efforts for damaged or destroyed real estate.

3. THE OBLIGATION OF THE STATE TO CREATE OTHER COMPENSATION MECHANISMS

The experiences of other nations underscore the significance and immediacy of adopting a comprehensive approach to address the issue of compensating civilian losses during wartime. This approach extends beyond the mere implementation of individual procedures for compensating specific properties.

Throughout history, commissions tasked with addressing claims have played a crucial role in resolving disputes among various entities. These commissions have been responsible for settling disputes between states engaged in armed conflicts, between states involved in armed conflicts and third parties, and between states engaged in armed conflicts and the nationals of other states, regardless of their involvement in the conflict.

The complexity of these claims, both in terms of factual details and legal considerations, is a common characteristic. Such claims can arise

from conflicts on either an internal or international scale. Notable examples include the Belgium-Chile and Bolivia-Chile Commissions established after the Saltpeter War in 1884, the American-Mexican Claims Commission following the Mexican Revolution, the Iran-United States Claims Tribunal established post the Iranian revolution, and the Eritrea-Ethiopia Claims Commission formed after the war between these two states.

A more recent example is the United Nations Compensation Commission (UNCC), established in 1991 to manage claims and provide compensation for damages resulting from Iraq's invasion of Kuwait. The UNCC completed its final payment on January 13, 2022, marking a significant milestone in the history of international dispute resolution.¹²²⁸ This recent development prompts reflection on the utilization of post-conflict international claims commissions by the global community over the past three centuries.¹²²⁹

The obligation to respect, ensure respect for, and implement international human rights law and international humanitarian law, as stipulated in the respective legal frameworks, encompasses the duty to afford those claiming to be victims of human rights or humanitarian law violations equal and

¹²²⁸ UN - United Nations. Closure of the United Nations Compensation Commission: Press-Release. **United Nations Office at Geneva**, 09 Dec. 2022. Available in: <https://www.ungeneva.org/en/news-media/press-release/2022/12/closure-united-nations-compensation-commission>. Access: 20 June 2024.

¹²²⁹ WEBINAR: Post-conflict International Claim Commissions. **Volterra Fietta**, 24 Mar. 2022. Available in: <https://www.volterrafietta.com/upcoming-webinar-post-conflict-international-claims-commissions>. Access: 20 June 2024.

effective access to justice. This access should be provided irrespective of the ultimate responsibility for the violation. Additionally, the obligation involves furnishing victims with effective remedies, including reparation.¹²³⁰

Notably, the Main Legal Department of the Verkhovna Rada of Ukraine has highlighted the impracticality of confining compensation solely to damaged and destroyed real estate.¹²³¹ Furthermore, this mechanism fails to consider all objects of civil rights that have suffered damage due to the armed aggression of the Russian Federation, as outlined in the current legislation of Ukraine (Chapter 3 of the Civil Code).¹²³²

In our opinion, and we uphold this position in our research, the diversity of damages suffered by Ukrainian citizens and legal entities only encourages the search for an effective and multifaceted mechanism for compensating for the harm. This mechanism should be a special procedure within which property

rights and non-property rights violated during the war and occupation would be restored.

In contrast to the extrajudicial procedure for obtaining compensation, which is most widely used by citizens, turning to the court is the predominant option. The content of the concept is crucial, as filing a lawsuit for the protection of rights and the chosen method of protecting these rights must comply with the current legislation, including the main codified act regulating property and non-property relations—the Civil Code of Ukraine. Its advantage lies in the fact that, unlike compensation for destroyed real estate, it does not restrict the subject, to whom harm was done, in their right to compensation for specifically identified objects that can be reimbursed.¹²³³

Ukrainian government officials have been actively working on determining the types of damage inflicted. On March 20, 2022, the Cabinet of Ministers of Ukraine approved

¹²³⁰ UNGA - United Nations General Assembly. **Resolution 60/147**, 15 December 2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and-guidelines-right-remedy-and-reparation>. Access: 20 June 2024.

¹²³¹ UKRAINE. Verkhovna Rada. **Comment of the Main Legal Department no. 7198**, 24 March 2022. On the draft Law of Ukraine on Compensation for Damage and Destruction of Certain Categories of Real Estate as a Result of Hostilities, Terrorist Acts, Sabotage Caused by 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 Armed Aggression of the Russian Federation against Ukraine. Available in: <https://itd.rada.gov.ua/billInfo/Bills/pubFile/1580088>. Access: 20 June 2024.

¹²³² UKRAINE. **Law no. 435-IV**, 16 January 2001. Civil Code of Ukraine. Available in: <https://zakon.rada.gov.ua/laws/show/435-15>. Access: 20 June 2024.

¹²³³ IZAROVA, Iryna; HARTMAN, Yuliia; NATE, Silviu. War Damages Compensation: A Case Study on Ukraine [version 1; peer review: 2 approved]. In: **F1000Research**, 12:1250, 2023. Available in: <https://doi.org/10.12688/f1000research.136162.1>. Access: 20 June 2024.

the Procedure for determining the damage and losses caused to Ukraine as a result of the armed aggression of the Russian Federation.¹²³⁴ Through this Procedure, the government has broadly defined the directions in which the determination of damage and losses should take place. This list of directions is extensive, comprising 22 categories, each containing a list of key indicators that are assessed. If these directions are conditionally grouped, several generalized categories can be obtained—these include all human losses (both civilian and military); material military losses and those associated with ensuring the internal security of the state; losses of housing stock and amenities; losses of public building objects (educational, sports, social protection, healthcare, cultural, administrative buildings, etc.); losses of housing and communal services and infrastructure of transport and other networks, energy infrastructure; ecological losses encompassing damage to land resources, losses of subsoil and forest fund, damage to water resources and atmospheric air, nature reserve fund; losses of cultural heritage; economic losses of enterprises, institutions, organizations.

In summary, it can be noted that

the damage defined by the government's Procedure correlates quite clearly with the societal demand, as evidenced by the exploration of judicial practices.¹²³⁵ This demonstrates the government's real orientation towards satisfying societal demands and finding the most effective mechanisms for it, allowing for the identification of directions that need further development.

In some cases, it is advisable to utilize an alternative mechanism to the judicial one for compensating the damage to individuals affected by war. This is to ensure that the process of restoring their rights does not inflict even greater trauma. For instance, the prolonged waiting time for the execution of a compensation payment decision, which is a realistic concern in the case of judicial proceedings for compensation, is considered unacceptable.

The government should take measures to ensure that its internal laws, to the maximum extent feasible, stipulate that a victim who has experienced violence or trauma receives special consideration and care. This is intended to prevent the re-traumatization of the victim during the legal and administrative processes designed to deliver justice and reparations.¹²³⁶

¹²³⁴ UKRAINE. Cabinet of Ministers. **Resolution no. 326**, 20 March 2022. The Procedure for Determining the Damage and Losses Caused to Ukraine as a Result of the Armed Aggression of the Russian Federation. Available in: <https://zakon.rada.gov.ua/laws/show/326-2022-n#Text>. Access: 20 June 2024.

¹²³⁵ IZAROVA, Iryna; HARTMAN, Yuliia; NATE, Silviu. War Damages Compensation: A Case

Study on Ukraine [version 1; peer review: 2 approved]. In: **F1000Research**, 12:1250, 2023. Available in: <https://doi.org/10.12688/f1000research.136162.1>. Access: 20 June 2024.

¹²³⁶ UNGA - United Nations General Assembly. **Resolution 60/147**, 15 December 2005. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross

In summary, it is important for a state affected by war and military actions to make efforts towards implementing a comprehensive mechanism for compensation and reparations for the victims of war and military operations. This includes, but is not limited to, ensuring the protection of rights as outlined in national legislation. Additionally, developing a specialized legislative framework for compensating the losses of war victims is crucial. This framework should go beyond merely compensating for damaged or destroyed immovable property and should fully consider all the interests of the affected individuals, incorporating both tangible and intangible measures to meet the needs of the victims.

The remedies for gross violations of international human rights law and serious violations of international humanitarian law encompass the victim's entitlement, as outlined in international law, to the following:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to pertinent information regarding violations and mechanisms for reparation.¹²³⁷

This signifies that a victim of a gross violation of international human rights law or a serious violation of international humanitarian law is entitled to equitable access to an

effective judicial remedy in accordance with international law. Other available remedies for the victim include access to administrative and other bodies, along with mechanisms, procedures, and proceedings conducted in accordance with domestic law. International legal obligations concerning the assurance of the right to access justice and fair and impartial proceedings should find expression in domestic laws.

In addition to facilitating individual access to justice, states should strive to establish procedures that enable groups of victims to assert claims for reparation and receive such reparation as deemed appropriate.

CONCLUSION

Taking into account the specificity of the subject, the extrajudicial mechanism of protection under consideration, and the circumstances outlined above, one can conclude the complete expediency and tendency to consider issues of compensation precisely through an extrajudicial mechanism, thereby shifting the focus from the court as a general body whose task is to administer justice to a specially created entity tasked with addressing a specifically defined problem.

Thus, in addition to the efficiency of compensation proceedings, the task of reducing the burden on the judicial system and creating alternative

Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-and->

guidelines-right-remedy-and-reparation. Access: 20 June 2024.

¹²³⁷ *ibid.*

mechanisms that also serve the function of ensuring access to justice and its implementation is resolved.

Furthermore, the implementation of additional administrative extrajudicial means of protection, guaranteed by the state and accessible to affected individuals, represents the state's fulfillment of its obligation as stipulated by international law norms.

The example of an extrajudicial compensation mechanism for damages caused by the armed aggression of the Russian Federation against Ukraine, mentioned in the article and currently functioning within the legal system of Ukraine, embodies only one of the possible concepts of such mechanisms and still requires refinement and elimination of existing drawbacks. However, it generally represents the correct direction towards ensuring the swift and fair restoration of violated rights of affected individuals.

The extrajudicial compensation mechanism should complement the judicial method of protection, be combined with it, but in no case should each of the above methods be mutually exclusive. Only in the case of the coexistence of these two methods - both judicial and extrajudicial methods of compensation for harm to injured persons - will a comprehensive approach to compensation for victims of armed aggression be ensured. The example we consider in our study is promising for further imitation. It can serve as a foundation for the introduction of additional extrajudicial procedures for compensation for other, specifically defined types of damage

caused by armed aggression. There is a need to develop a separate mechanism for compensation for environmental damage, as well as damage caused to cultural heritage, which is promising for further research. In addition, the so-called vulnerable parties should be taken into account, which should include children, the elderly, internally displaced persons, etc., for which special Commissions should be created taking into account their needs, in particular, providing specialists in child psychology and preventing excessive digitalization during providing compensation to the elderly, which can become an additional stressor for this vulnerable group.

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