



Photo: NRC/ Stanytsia Luhanska in spring 2017 | Photographer Ivan Kochetov

People in eastern Ukraine: without housing and compensation

According to the Shelter Cluster, over 17 000 buildings have been damaged or destroyed during the conflict in eastern Ukraine.¹ With no immediate end in sight, the conflict continues to exacerbate the daily lives of thousands of people who have lost their homes and lands. The Government should undertake concrete commitments to provide appropriate remedies for the loss of rights, value, use, and/or access to housing, land and property.

Legislation overview

Currently, there are no adequate mechanisms to address the losses for the housing, land and property damaged or destroyed as a consequence of the hostilities in Ukraine's East.

Ukrainian legislation provides for criminal and civil remedies for breach of *inter alia*, rights to property, privacy and family life or home, against the perpetrators and wrongdoers, including criminal complaint to law enforcement agencies (police, prosecutors, security services, etc.), complaints to heads of state bodies/superior authority for wrongful acts/omissions of state authorities and civil suit for compensation of damages. Article 19 of the Law of Ukraine "On Combatting Terrorism" provides for compensation for damages caused by terrorist act from the State budget, in accordance with the law, with subsequent reimbursement claim by the State from the offender. No such law has yet been adopted.

According to the *Action plan for organisation of restoration of damaged (destroyed) social and transport infrastructure, housing and life support systems in Donetsk and Luhansk regions*,² Ministry of Regional Development, Ministry of Social Policy, Ministry of Economic Development, Ministry of Justice and Ministry of Finance were entrusted to develop procedure for assessment and compensation for damages to victims of antiterrorist operation in Donetsk and Luhansk regions. The Government is yet to take steps in this direction.

¹"Shelter Cluster Annual Report 2016," available at:

https://www.sheltercluster.org/sites/default/files/docs/cluster_annual_report_2016_finaledition_v2.pdf, p. 17.

²Order #1002-p the Cabinet of Ministers of Ukraine, 16 October 2014.

There are several draft laws that consider the right to compensation for damaged/destroyed housing. These legislative initiatives mainly address the interests of registered internally displaced (IDPs) and disregard the genuine concerns of those IDPs who cannot or would not register, or those conflict-affected people who would not fall into the category of displaced people, because they continue to live in their demolished houses, for lack of alternative.

Court practice

As of June 2017, there were 110 proceedings before the Ukrainian courts concerning claims for compensation for damaged (destroyed) housing. Despite somewhat inconsistent and complex court practice, the following principles can be ascertained:

- In order to institute civil proceedings for compensation for damages, the plaintiff should first file a criminal complaint with the law enforcement agencies in order to become “an injured party” and receive a certificate of injury/loss caused by terrorist act (Art. 258 of the Criminal Code of Ukraine)³
- There must be expert evidence of damage (destruction) caused to the housing. The expertise may be carried out by forensic experts, representatives of State emergency service or engineers of accredited entities; it must show that the housing was damaged due to extraordinary reasons.
- The court rules in favour of the plaintiff by virtue of Article 19 of the Law “On Combatting Terrorism”, but because there is no statutory order to implement provisions of the article, the amount of compensation is determined in accordance with Article 86 of the Code of Civil Protection of Ukraine “Provision of Housing for Emergency Victims”.

As of June 2017, all court decisions in favour of plaintiffs were challenged by the defendant, the Ukrainian authorities, on the ground of:

- there is no conviction for terrorist act, because no offenders have been identified;
- there is no statutory order of compensation for housing damaged (destroyed) due to terrorist act as prescribed by Article 19 of the Law “On Combatting Terrorism”;
- there is no voluntary transfer of ownership of damaged (destroyed) housing from owners to local authorities, which is a prerequisite for the payment of compensation in accordance with Article 86 of the Code of Civil Defense of Ukraine;
- there are no resources for this compensation's payment in the State budget of Ukraine.

The present legal uncertainty, coupled with financial burden of court proceedings, including the court fees, which in the cases at hand amount to 1% of the value of the property claim, prevents many injured parties from claiming damages through formal court proceedings.

Noticeably, the claims for compensation for damages caused during the conflict in summer 2014 will be statute barred, as the three-year prescription period conditioned by the Civil Code of Ukraine is soon to expire.

International standards

In the context of conflict and displacement, dispossession, occupation or destruction of housing, land and property, denial of access to home, property and possessions; denial of the right to return; the lack of measures to mitigate the impact of dispossessions constitute an interference with the right to home, private and family life as well as, violation of the right to property and possessions as protected by the European Convention on Human Rights.⁴ When restitution is materially impossible, states will have to provide compensation for pecuniary damage, including loss of income from

³In some cases, shelling of houses was qualified as terrorist act according to Art. 258 of the Criminal Code of Ukraine (see Petrova case, Luhansk region), in some – as premeditated destruction or damaging of property according to Art. 194 of the Criminal Code of Ukraine (see Makogon case, Donetsk region).

⁴ *Dogan and others v Turkey*, nos. 8803-8811/02, 8813/02 and 8815-8819/02), [2004], 29 June 2004; *Saghinadze and Others v. Georgia*, no. 18768/05, 27 May 2010; *Khamidov v. Russia*, no. 72118/01, 15 November 2007; *Cyprus v. Turkey*, 25781/94, 10 May 2001.

house, cultivated and arable land and the loss of livestock,⁵ as well as non-pecuniary damage for non-material harm, for example, mental or physical suffering. States must also establish mechanism at the national level to receive and address property claims through restitution or compensation⁶, which should be easily accessible and provide procedures operating with flexible evidentiary standards, allowing the applicant and others in their situation to have their property rights restored and to obtain compensation for the moral loss.

Principle 29 of the widely accepted *Guiding Principles on Internal Displacement*⁷ emphasizes that competent authorities have a duty to assist displaced people to recover their property and possessions or, when recovery is not possible, to obtain appropriate compensation or another form of just reparation. Principle 2 of the *Pinheiro Principles*⁸ stipulates that all displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for the loss, if restoration is factually impossible as determined by an independent, impartial tribunal. Principle 12 require states to establish and support equitable, timely, independent, transparent and non-discriminatory procedures, institutions and mechanisms to assess and enforce housing, land and property restitution claims.

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

United Nations, A/RES/60/147, 21 March 2006

States must ensure full and effective reparation prompt and proportional to the gravity of the losses of the victim, consisting of five principal forms:

Restitution tries to restore victims to their *ex ante* situation through, among others, the return of property; restoration of employment, identity, dignity and liberty; the recognition of the right to return to the original residence;

Compensation provides for any economically assessable damage, as appropriate and proportional to the gravity of the violation, such as physical or mental harm, material damages and losses of earnings, moral damage, and the costs of medical, legal and social services;

Rehabilitation seeks to provide the victim with medical and psychological treatment, as well as social and legal services;

Satisfaction entails truth-seeking; official and public apology; the search for the disappeared, abducted and bodies of those killed; prosecutions of perpetrators; and public commemorations for the victims;

Guarantees of non-repetition include enhanced protection of human rights, effective civilian oversight of the security sector, judicial reform, human rights training for law enforcement officers, conflict resolution and legal reform.

⁵ *Akdivar and others v. Turkey* (Article 50), [GC], no. 21893/93, 1 April 1998; *Sargsyan v. Azerbaijan*, no. 40167/06, 16 June 2015; *Loizidou v. Turkey* (Article 50), 40/1993/435/514, 23 February 1995.

⁶ *Xenides-Arestis v. Turkey*, no. 46347/99, 22 December 2005.

⁷ UN High Commissioner for Refugees (UNHCR), *Guiding Principles on Internal Displacement*, 22 July 1998, ADM 1.1,PRL 12.1, PR00/98/109.

⁸ UN Sub-Commission on the Promotion and Protection of Human Rights, *Principles on Housing and Property Restitution for Refugees and Displaced Persons*, 28 June 2005, E/CN.4/Sub.2/2005/17.

International experience

Ukraine is not alone in addressing reparation / restitution / compensation for the loss of rights, value, use, and/or access to housing, land and property. In the Overview “Foreign Experience of Housing Solutions and Compensation for Destroyed/Damaged Housing for IDPs” done by Ukrainian HLP TWG, examples range from Armenia to Azerbaijan to Bosnia & Herzegovina to Colombia to Cyprus, to Georgia to Moldova to Serbia to Turkey. The best practices and lessons learned from those contexts can be summarized as follows:

1. The process of reparation evolved over certain stages: restitution and, if not possible compensation. This approach ensures inclusion of all people affected by conflict, regardless of their qualification according to domestic law as internally displaced, civil victims of war or terror, conflict-affected people, returnees, host communities, etc.
2. Claims commissions, usually a mixture of administrative and quasi-judicial bodies, have been working along with courts. Typically, claims commissions examine claims for restitution and pay compensation for losses and damages suffered as a direct result of conflict. These claims commissions provided faster results, lower costs, relaxed standard of evidence, non-adversarial procedure and virtual certainty that accompanies the administrative nature of a reparation program.
3. Well-developed cadasters and land assessments played an important role, as they were used as evidence base by claims commissions.
4. Many positive initiatives were donor-led/supported, including granting of compensation funds.
5. Durable housing solutions approach implied not only adoption of housing legislature, but also land tenure and infrastructure development.

NRC recommendations:

- Development of procedure for restitution and compensation for the loss of rights, value, use, and/or access to housing, land and property caused by hostilities in eastern Ukraine as specified in the Law of Ukraine “On Combatting Terrorism”.
- Establishment of an *ad hoc* claims commission that will be authorised to provide in administrative procedure both formal assessment of damages and enforce restitution/compensation claims from the State budget of Ukraine.
- Development of a comprehensive reparation programme for individuals which have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights as a direct result of the conflict in eastern Ukraine in line with the UN *Basic Principles and Guidelines on the Right to a Remedy and Reparation*.

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