



DRC-DDG LEGAL ALERT: Issue 42 July 2019

1. Cabinet Provides Limited Financial Remedies For Housing Damaged or Destroyed During the Conflict

On 10 July 2019, the Cabinet adopted Resolution [No. 623](#) which provides a mechanism for compensation and financial aid to a specific group of individuals whose housing have been damaged or destroyed as a result of the conflict.

The mechanism falls far short of the international law standards encapsulated in the Guiding Principles on Internal Displacement and the Pinheiro Principles. However, it is a welcome development as it is the first legal instrument of its kind reflecting Ukraine's recognition of certain components of the housing, land, and property (HLP) restitution and compensation rights of the conflict-affected people. DRC-DDG has issued a special Briefing Note in light of the significance of this legal development. For details on the mechanism, please refer to the Briefing Note No. 21 attached herewith.

2. Cabinet Approves State Budget Funds Allocation to Local Councils for IDP Housing

On 5 July 2019, the Cabinet approved Order [No. 488-p](#) allocating around 19 million UAH from the state budget to selected local councils to support conflict-affected settlements in Eastern Ukraine. The fund is earmarked for addressing housing needs of the internally displaced persons (IDPs) and purchase of equipment and software for the local administrative centers. The fund is allocated as follows:

Local Councils Receiving Funds	Amount (UAH)
Donetsk Region	
Kostyantynivka	150 000
Kurahovo	225 000
Mariupol	11 104 315
Sloviansk	1 712 000
Zvanivska territorial community	150 000
Luhansk Region	
Severodonetsk	102 000
Zaporizhya Region	
Berdyansk	525 000
Prymorsk territorial community	270 000
Kharkiv Region	
Efremivka	4 601 684

3. Cabinet Modifies Rules on Movement of Persons and Goods Through the Contact Line

As [reported](#) on the official website of MinTOT, on 17 July 2019, the Cabinet adopted a new Order of Movement of Persons and Goods Through The Contact Line. As of 13 August 2019, the order is not publicly available. The information available on government websites indicates some qualitative improvements in the current rules on movement of persons and goods through the contact line.

On movement of goods: Current rules on movement of goods are provided in Cabinet [Resolution No. 99](#) and [Order No. 39](#) of the Ministry of temporary occupied territories and internal displacement (MinTOT)¹ which allows only a prescribed list of items to be transported through the contact line. Items not included in the permitted list are considered as prohibited for transportation. The new rule is said to have reversed the order. Accordingly, the government will provide a list of prohibited items; any item not falling within the prohibited list will be allowed for transport.

Previous Approach	New Approach
All items are prohibited for transportation except for the items listed in MinTOT Order No. 39	All items are allowed for transportation except for the items specified in MinTOT’s order to be developed by the Ministry

On movement of persons: The new order is also believed to have modified the procedure for obtaining a permit to cross the contact line. No further details are available as the Order is yet to be made public.

4. Increase in Living Wage and Minimal Pension Become Effective from 1 July 2019

[State budget 2019](#) prescribed a periodic increase of minimal living wages for different social groups. Accordingly, the second living wage increase, out of the three planned for year 2019, came into effect on 1 July. The state budget also provides an increase in the minimum pension.

Living Wage Type	Former (UAH)	Current (UAH)
General Living Wage	1 853	1 936
Living Wage for Children under 6 y.o.	1626	1699
Living Wage for Children from 6 to 18 y.o.	2027	2118
Living Wage for Able-Bodied Persons	1 921	2 007
Living Wage for Persons Who Lost Their Ability to Work ²	1 497	1 564
Minimal Pension	1 497	1 564

¹ For more information please see DRC-DDG [Legal Alert](#) Issue 12: March 2017, Section 2; DRC-DDG [Legal Alert](#) Issue 13: April 2017, Sections 3 and 4.

² Under Ukrainian regulation ‘persons who have lost their ability to work’ group includes individuals eligible for age-based pension and differently-abled persons.

5. Nobody to Receive Pension Lower Than 2 000 UAH

Background: Starting from 1 March 2019, an automatic annual recalculation of pension entitlements based on certain macro-economic indicators takes place in Ukraine as a part of a pension reform initiated by the government in 2017.³ Despite the safeguards introduced by the reform, there have been concerns that some pensioners will fall out of the reform's scope.

Recent developments: On 26 June 2019, the Cabinet adopted Resolution [No. 543](#) providing supplementary payments to retirees whose final pension size (including existing premiums and monetary assistances) is lower than 2,000 UAH. Beginning from 1 July 2019, such persons are automatically entitled to a rounded-up minimal payment of 2 000 UAH.

Some terminology used in this issue of the Alert are taken from the draft laws or current legislation and do not necessarily reflect the position of DRC-DDG.

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³ For more information please see DRC-DDG [Legal Alert](#) Issue 37: February 2019, Section 3.

REMEDIES FOR PROPERTY DAMAGED AND DESTROYED BY THE CONFLICT



More than 50,000 housing units have been damaged or destroyed as a result of the conflict.¹ A large number of civilian housing units are believed to be occupied for military use. Humanitarian actors have for long been advocating for a comprehensive legislative framework for housing, land, and property (HLP) restitution and compensation. In July, the Cabinet of Ministers has introduced a mechanism which creates a limited opportunity for financial remedies for HLP rights violations for a particular section of the conflict-affected people.

SALIENT FEATURES OF THE MECHANISM

- » Remedies under this mechanism are divided into financial aid and compensation;
- » The mechanism applies only to housing properties which are damaged or destroyed in Donetsk and Luhansk regions as a result of the conflict.² Movable property and non-housing immovable property are not covered;
- » The mechanism is available only to persons who have not changed their place of residence after the emergency. The language, thus, excludes IDPs;
- » These remedies are for one-time use only. Person receiving remedies (financial aid or compensation) through this mechanism will lose the opportunity for any other claims for state-sponsored housing;
- » Since the Resolution is founded on the Code of Civil Protection, compensation for a destroyed property shall be paid on condition of voluntary transfer of ownership of the property to the government. Thus a person applying for the compensation for a destroyed house is required to transfer ownership of the land to the government.

REMEDIES FOR DAMAGED OR DESTROYED IMMOVABLE PROPERTIES

Property was partly **damaged**



financial aid

from 5,808 UAH to 29,040 UAH³

allocated from local council budget

Property was **destroyed**



compensation

up to 300,000 UAH

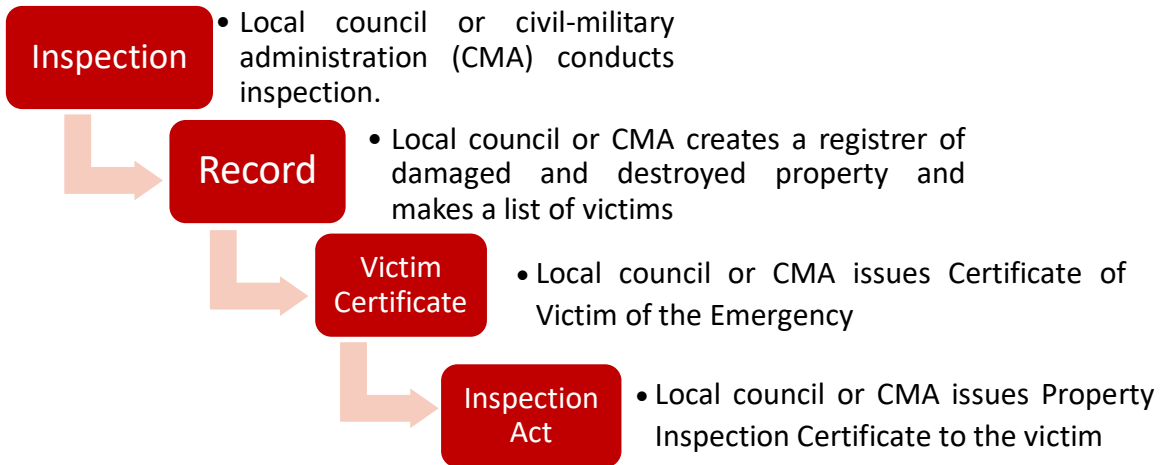
allocated from central governmental budget

¹ As of 15 February 2019 according to Report on the human rights situation in Ukraine 16 November 2018 to 15 February 2019 prepared by OHCHR.

² Apart from the conflict-based emergencies the Resolution also provides scope for financial aid for damages caused to housing as a result of non-conflict based emergency. This Briefing Note, however, focuses on conflict-related scope of the Resolution.

³ As of 16 August 2019.

PROCESSES TO BE UNDERTAKEN BY PUBLIC AUTHORITIES



NOTES ON FOLLOW UP PROCESS BY THE VICTIM

- *Victim of Emergency Certificate provides information on the emergency that caused harm to the victim;*
- *Property Inspection Certificate provides information on the severity of the damages;*
- *Victim of Emergency Certificate and Inspection Act provide the foundation for the claim for financial aid or compensation.*

	Financial aid	Compensation
Who can apply	Owner\Tenant	Owner\Co-Owner
Where to apply	Local council \ Council of Ministers of the Autonomous Republic of Crimea	Compensation commission within the oblast administration
What documents to provide	<ul style="list-style-type: none"> • Written request; • Certificate of Victim of the Emergency; • Copy of the national passport or other ID document; • Copy of the tax certificate. 	<ul style="list-style-type: none"> • Written request; • Certificate of Victim of the Emergency; • Copy of the national passport or other ID document; • Copy of the tax certificate; • House\apartment ownership documents; • Property Inspection Certificate.
Length of decision-making	Decision on the payment should be taken no later than <u>5 days</u> after the submission of the application	
When victim will receive the money	The money should be transmitted to the victim no later than <u>1-month</u> after the decision was taken.	

- **N.B.** *If a victim does not agree with the decision made by a local council or compensation commission, s/he can appeal the decision to the court.*

AREAS OF CONCERN AND CORRESPONDING INTERNATIONAL STANDARDS

Gaps	Pinheiro Principles ⁴ (PP), IDP Guiding Principles (IGP), European Court of Human Rights (ECHR) Practice	Comments
Exclusion of IDPs from the mechanism	<p>Principle 1.2 of PP Principle 1 of IGP</p> <hr style="border-top: 1px dashed black;"/> <p>According to PP and IGP, IDPs shall enjoy the same right for compensation as any other conflict-affected person in the country of beyond its borders with non-discriminatory nature.</p>	The Resolution excludes all conflict affected people, who moved and registered in another location.
Exclusion of movable property and non-housing immovable property	<p>Principle 2 of PP Principle 29 of IGP <i>Dogan and others v. Turkey</i></p> <hr style="border-top: 1px dashed black;"/> <p>The PP, IGP and ECHR practice provide that restitution or compensation shall cover all possessions and property (including immovable) of the conflict-affected people.</p>	The Resolution does not cover any other movable or immovable properties except for victim's housing.
Exclusion of restitution from the mechanism	<p>Principle 2.2 of PP Principle 29 of IGP <i>Demopoulos and Others v. Turkey</i></p> <hr style="border-top: 1px dashed black;"/> <p>The PP, IGP and ECHR practice provides that the right to restitution should be prioritized and compensation should be used only in cases, when it is factually impossible to restore the housing and property.</p>	<p>Many civilian residential properties in the buffer zone are currently occupied for military use.</p> <p>The Resolution does not provide any option for the restitution.</p>
Damage assessment criteria not prescribed	<p>Principle 12.3 of PP Principle 29.2 of IGP</p> <hr style="border-top: 1px dashed black;"/> <p>The PP and IDP provide that reparations should be just and appropriate considering the level of damage caused.</p>	The Resolution does not provide any mechanism for adequate damage assessment. Respective ministries are expected to elaborate Property Inspection Certificate, where the damage assessment criteria should be included.

⁴ Pinheiro Principles - United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons.

Gaps	Related International Law Standards	Comments
<p>Inadequacy of financial aid and compensation</p>	<p>Principle 12.3 of PP Principle 29.2 of IGP <i>Saghinadze and others v. Georgia</i></p> <hr/> <p>The EHCR practice reaffirms that the compensation should be equal to the loss suffered. For instance, in the case mention above the court ruled to transfer to the applicant the full ownership of an apartment of a similar size of the one previously occupied, and in the same city.</p>	<p>The maximum reparation for partial damage according to the Resolution is up to 29,040 UAH.</p> <p>The maximum reparation for destruction is 300 000 UAH, which according to legislative standards, can cover only 24 sq. m of housing. In many cases these amounts will prove to be inadequate.</p>
<p>No assistance on obtaining ownership document</p>	<p>Principle 12.4 of PP Principle 29.2 of IGP</p> <hr/> <p>Clear mechanisms should be launched in order to facilitate conflict-affected people in having an access to the restitution/compensation for damaged properties (including the property ownership verification mechanism)</p>	<p>Experience of shelter operators working in the buffer zone shows that an overwhelming majority of the buffer zone residents still do not possess formal legal title to the land on which their houses are built or for the houses themselves. Proof of property title is a pre-condition for obtaining compensation under the Resolution.</p>
<p>No direction as to when and how the inspection process will be initiated</p>		<p>The Resolution does not provide information on how and by whom the compensation process shall be initiated. This issue needs to be clarified by the respective ministry.</p>
<p>Precondition of transfer of destroyed property to the government.</p>	<p>Principle 13 of PP Principle 29.2 of IGP</p> <hr/> <p>State should by all means facilitate the restitution and compensation provision to the conflict-affected persons. States should not establish any preconditions for filling such claims.</p>	<p>The Resolution is founded on the Code of Civil Protection. As such, all relevant provisions of the Code are applicable for the functioning of the mechanism. According to Article 86 of the Code compensation for a destroyed property can only be made on condition of voluntary transfer of ownership of the property to the government.</p>