

COMPENSATION FOR CONFLICT-DAMAGED/DESTROYED PROPERTIES IN UKRAINE

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Courts in Ukraine are left out in a dilemma due to serious lacuna in national legal system in addressing grievances with regard to the conflict-affected peoples' housing, land and property (HLP) rights. Courts, despite some efforts to fill the void by applying analogous legal norms and principles, are yet to provide any formula for protecting HLP rights of conflict-affected people. The situation further strengthens the call for a comprehensive HLP legal and policy framework in line with international standards.

Legal Framework for HLP Compensation	Legal Remedies & Limitations	Extra-Legal Remedies & Limitations
<ul style="list-style-type: none"> no comprehensive mechanism yet inadequacy of statutory law to address the peculiar situation rights and principles can be found in the constitution and the civil code ECHR strongly affirms the right to compensation Pinheiro provides guiding principles and good practices 	<p><i>EctHR</i></p> <ul style="list-style-type: none"> efficiency and effectiveness subjected to national context requirement for exhaustion of national remedies very lengthy process vague possibility for individualized solutions <p><i>National Courts</i></p> <ul style="list-style-type: none"> inadequate legislation on property compensation in conflict context current norms and principles focus on establishing the actual cause of the damage and identifying the perpetrator 	<p><i>Humanitarian Actors</i></p> <ul style="list-style-type: none"> on-going repair programs since 2015 only meaningful contribution so far useful when complementary to national government remedies <p><i>Local Authority Initiatives</i></p> <ul style="list-style-type: none"> very limited in scale rely heavily on good will as opposed to the rights of the affected budgetary restrictions <p><i>Foreign Missions and Other Actors</i></p> <ul style="list-style-type: none"> as means for exerting pressure on authorities non-sustainable method

Algorithm Followed by National Courts in HLP Compensation Cases



I. Anyone who has suffered damage to private property is entitled to compensation (Art. 22)

- damage has to be assessed
- needs to be done by accredited technical person/body
- court is willing to accept findings of such body

II. Compensation has to be recovered from the guilty party (Art. 1166)

- guilty party has to be identified
- establishment of guilt in the context of shelling is a highly politically sensitive issue
- too much responsibility for the first instance court standing at the lowest tier of judicial hierarchy

First instance courts are routinely rejecting HLP compensation cases on ground of evidence insufficiency without specifying what presents sufficient evidence



APPEAL COURTS POSITION

- not too many decisions of the first instance courts are appealed
- judicial activism at the appellate courts demonstrates signs of relying on policy of curing defects in law
- three appellate court judgments are analyzed on the next page

Comparative Analysis of Three Appeal Court Cases

	Case 1	Case 2	Case 3
Facts	<ul style="list-style-type: none"> All three cases related to private houses located in Slovyansk Damages caused by anti-terrorist operation in the city (12 Apr 2014 - 05 Jul 2014) Damage assessment done by Special <i>ad hoc</i> Commission for housing inspections under the auspices of the city council All three assessments found 3rd degree destruction, uninhabitable and non-recoverable damage All three assessments found destruction as the result of shelling At three claimants referred to the same respondent (state treasury) and cited the same legislation 		
First Instance Court	Slovyansk City Court		
Evidence Adduced	Inspection Report, Title Documents		
Court Decision	Denied - all three		
Grounds for Denial	Lack of evidence, no guilty party established, no procedure for compensation		
Appeal	Donetsk Oblast Court of Appeals		
Judge (in appellate court)	Different Judge		
Appeal Decisions	Entitled to compensation	Denied: lack of evidence	Denied: not paid court fees
Comments on Appeal Court Decision	The judge overturned negative decision of the first instance court relying on relevant articles of the Constitution and the European Convention on Human Rights	Appeal court recognized the harm being suffered, but found that the claimant could not prove the amount of damage he claimed was appropriate	Court fee for land property case is 1% of the subject matter value with a maximum cap of 6890 UAH
Limitation of Appeal Court Decision	Court cited that the State has not provided a special legislation on compensation for damages	It is interesting why the appeal court could not provide a way for determination of an appropriate damage amount	Seems unlikely that claimants will pay non-refundable fees where there is no evidence that anyone has recovered money for damaged property

Curing defects in existing law

While the Appeal Court's decision in *Case 1* is a welcome development, such initiatives can only be successful when underpinned by essential legislative support. In general Ukrainian laws provide favorable frameworks for claiming compensation. Apart from two articles of Civil Code (Art 22 and 1166) referred to in the aforementioned cases, there are two more Articles that shape compensation frameworks. Article 1173 provides compensation right against wrongful act of the state, and Article 1177 grants compensation right to victims of crime. Interestingly, Article 1177 gives the right to recover compensation from state fund where the perpetrator of crime cannot be found or is insolvent.

In the absence of a comprehensive HLP law, DRC highlights the following areas for legislative development:

- ✓ In the spirit of Articles 22, 1166, 1173 and 1177, introduce legislative provision to ensure eligibility of state sponsored HLP compensation regardless of the damage being caused by actions of government or non-government actors
- ✓ Waive court fees in HLP compensation cases
- ✓ Provide free legal aid in HLP compensation cases
- ✓ Clarify ambiguity relating to fact-finding and damage assessment in HLP cases
- ✓ Elaborate procedure for damaged/destroyed property reconstruction or compensation
- ✓ Conduct training for judges on HLP compensation
- ✓ Mobilize sufficient resources to make timely payment of compensation

On principle, DRC favors comprehensive HLP legislation encompassing international law standards and humanitarian good practices as have been seen in some conflict and natural disasters affected countries in the last two decades. Alternatively, a less favored approach would be to cure defects in existing law on a case-by-case basis and to elevate existing law to the international best standards on guaranteeing HLP restitution right.