



Photo: Sergey Artanov/NRC

Pursuing compensation for properties damaged or destroyed as a result of hostilities in the armed conflict in eastern Ukraine: Gaps and opportunities March-October 2018

Background

Context

On 14 April 2018, the armed conflict in eastern Ukraine entered its fifth year. Continued fighting in both Luhansk and Donetsk regions, including the use of heavy weapons near populated areas, has led to extensive conflict-related damage to private residences on both sides of the contact line.¹ More than 40,000 objects of private property were damaged or destroyed due to shelling.²

Since the beginning of military activity in Donbas, the region has suffered over \$463.6 million in losses according to an official inquiry into damaged and destroyed objects and overall losses in the Donetsk and Luhansk regions. As of 1 October 2017, 7,672 objects have been damaged in Luhansk region. The overall losses amount to \$320 million. Housing in Donetsk region has also suffered significant damage. As of 1 October 2017, 7,402 objects are deemed ruined or damaged with losses estimated at \$142.6 million.³

Ukrainian legislation

Ukrainian legislation provides some remedies under criminal and civil law for addressing violations of such rights as, *inter alia*: a right to property, a right to privacy and to the family life or home. This includes submitting complaints under criminal law to law enforcement agencies (police, prosecutor's offices, Security Service, etc.); submitting complaints to heads of State bodies/superior authority for the wrongful acts or omissions of State authorities; and submitting civil law suits to courts in pursuit of compensation for damage. Nevertheless, there are no specific mechanisms to adequately address

¹ [Organisation for Security and Co-operation in Europe \(OSCE\). Thematic report "Hardship for conflict-affected civilians in eastern Ukraine". February 2017.](#)

² OHCHR, "Report on situation with human rights in Ukraine 16 May-15 August 2018".

³ Housing, Land and Property (HLP TWG) Strategy for 2018.

claims regarding housing, land and property, which has been damaged or destroyed during the course of hostilities in eastern Ukraine. The only legislative provision, which could potentially address this legal relationship – taking into account that damage was caused during the Anti-Terrorist Operation (ATO)⁴ – is Article 19 of the Law of Ukraine “On Combatting Terrorism”, which provides for compensation for damage, caused by a terrorist act⁵, from the State budget in accordance with law, with a subsequent reimbursement claim by the State from the offender. However, no corresponding law, which would provide a mechanism for compensation for damage caused by a terrorist act, has yet been adopted.

Strategic litigation in pursuit of policy change

Since its operation began in Ukraine in 2014, the Norwegian Refugee Council (NRC) has repeatedly underlined the importance of addressing Housing, Land and Property (HLP) issues, including the necessity to establish a proper mechanism to address claims for restitution/compensation for private property which was damaged or destroyed in the course of hostilities.⁶ NRC recommends that the Government of Ukraine takes concrete steps to provide appropriate remedies for the loss of rights, value, use of and/or access to housing, land and property. Specifically, it is recommended that the Government of Ukraine develops and introduces – in line with international standards – a mechanism (possibly an *ad hoc* mass claims commission) that would be authorised to make formal assessments of damages, and to enforce compensation claims from the State budget of Ukraine. Having analysed the experience of other States in similar circumstances, NRC has observed that one of the effective mechanisms by which to effect a policy change is to engage in mass claims for compensation. The experience of Turkey, for example, shows that the sheer number of cases instituted before the courts, as well as some positive court decisions, prompted the State to engage in finding a solution to a systemic issue.

Domestic proceedings

In December 2017, the Ministry of Justice of Ukraine issued an internal letter outlining the Ministry’s representation of the State in **90 domestic compensation cases** (*for moral harm and material damage in relation to damaged or destroyed property as well as for harm caused to health in relation to the ATO*) for a total amount of UAH 90,715,235.

As of October 2018, NRC has identified **146 civil cases** concerning the issue of compensation for damaged or destroyed property pending before domestic courts. NRC’s partner, Ukrainian Helsinki Human Rights Union (UHHRU) represents **38** of those cases.

International proceedings

As of August 2018, the Ukrainian Government has **filed five interstate applications** against the Russian Federation to the European Court of Human Rights (ECtHR or the Court) on violations related to the conflict in eastern Ukraine. In addition, there are approximately over **4,000⁷ individual applications** related to the events in Crimea or to the hostilities in eastern Ukraine currently pending before the ECtHR. They have been lodged against both Ukraine and the Russian Federation, or exclusively against

⁴ According to the Presidential Decree No. 405/2014, dated 14 April 2014; such Anti-Terrorist Operation began on 13 April 2018. According to Presidential Decree No. 116/2018, dated 30 April 2018; a large-scale anti-terrorist operation in the Donetsk and Luhansk oblasts began.

⁵ The notion of a terrorist act is defined in Article 258 of the Criminal Code of Ukraine and refers to “the use of weapons, the commission of an explosion, arson, or other actions that created a danger to human life or health or causing significant property damage or other grave consequences if such actions were committed in order for violation of public safety, intimidation of the population, provocation of an armed conflict, international dispute, or in order to influence decision-making or committing or not taking action by State authorities or local self-government bodies, officials of these bodies, associations of citizens, legal entities, or attracting public attention to certain political, religious or other views of the perpetrator (terrorist), as well as the threat of committing these actions for the same purpose”.

⁶ NRC Report “Housing, Land and Property Rights of Displaced and Conflict-Affected Communities in eastern Ukraine,” January 2016; “Voices from the east: Challenges in Registration, Documentation, Property and Housing Rights of People affected by the conflict in eastern Ukraine”, December 2016; Briefing Note “People in eastern Ukraine: without housing and compensation”, July 2017; Report “Addressing loss of housing, land and property rights of internally displaced and conflict-affected people in eastern Ukraine: steps towards restitution/compensation”, November 2017.

⁷ Press release issued by Registrar of the Court. ECHR 277 (2018), dated 27 August 2018.

one of those States. Among other violations, the majority of applications are based on Article 1 (“Protection of Property”) of Protocol I to the European Convention of Human Rights (ECHR) and Article 13 (“Right to an Effective Remedy”) of ECHR. In one of such cases (*Lisnyi and Others v. Ukraine and Russia*⁸), the Court declared the applications inadmissible due to being manifestly ill-founded. (*The applicants had not exhausted domestic remedies before applying to the ECtHR. Furthermore, they had submitted only their passports as evidence and had not sufficiently substantiated their claims*).

Research objectives

The overall purpose of this study is to analyse the viability of a mass claims strategy in the Ukrainian context as a tool for identifying legislative gaps and for pursuing changing of existing laws and practices to address the loss of rights, value, use of and/or access to housing, land and property during the armed conflict in eastern Ukraine.

In addition, the study aims to address the following specific objectives:

- define and analyse the most common reasons for rejecting claims for property restitution/compensation by national courts;
- illuminate (in)effectiveness of existing national judicial remedies for restitution/compensation;
- assess the relevance of a mass claims strategy in light of the existing court practice and on its possible impact on generating political will to create a corresponding out-of-court mechanism (drawing on examples from other contexts);
- analyse the impact of legislative developments on opportunities for conflict-affected people to protect their HLP rights.

Research methodology

The study is based on a desk review of the domestic courts’ cases for example, *Petrova* case, *Makogon* case) and the ECtHR practice in similar cases, as well as an assessment of the viability of newly adopted legislation⁹ for protecting property rights of people affected by the armed conflict in eastern Ukraine.

⁸ Application no. 5355/15, *Anton Vasyliovych Lisnyi against Ukraine and Russia* and two other applications. <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-165566%22%5D%7D>.

⁹ [Law of Ukraine](#) “On Particular Aspects of Public Policy aimed at Safeguarding State Sovereignty of Ukraine over the Temporarily Occupied Territory of Donetsk and Luhansk Regions” [dated 18 January 2018](#).

Findings

Domestic court's practice

59% of the 146 cases before domestic courts concerning compensation for damaged or destroyed property were either resolved (both in favour of beneficiaries or rejected) or are still pending at the court of first instance; 21% are at the appeal stage; and 20% are now at the cassation stage. More than one hundred cases have already been considered on their merits.

NRC has identified only one case where the decision made in favour of a plaintiff became final.¹⁰ (*NRC has no information with regard to its enforcement yet*). This case is not typical, however, and could be considered an exception rather than the rule. In this particular instance, the plaintiff was the tenant of housing stock owned by local council. According to Ukrainian legislation, the responsibility for carrying out repairs of such housing stock rests on the council.¹¹ However, in this case, the tenant carried out repairs at her own expense. Thus, the local council, as a defendant in the case, was ordered by the court to reimburse the plaintiff's repair costs.

In 26 other cases, courts of the first and second instances satisfied the plaintiffs' claims and ordered the State authorities to pay compensation. In these cases, courts found that immobile properties were located within the territory of ATO, and that damages to housing had been caused by a terrorist act. The amount of damages had been identified and appropriately substantiated by an expert opinion.

In reaching decisions, judges have also used the analogy of law and have interpreted Article 19 of the Law of Ukraine "On Combatting Terrorism" in favour of the plaintiff – despite the legislative gap – by determining the amount of compensation in accordance with Article 86 of the Code of Civil Protection of Ukraine "Provision of Housing for Emergency Victims".

However, none of these decisions have become final yet. Some were canceled, following an appeal to higher courts while others are still pending review before appeal or cassation courts. In 8 of these cases, all the decisions of local and appellate courts were annulled by the Court of Cassation and remitted to lower level courts for reconsideration.

In all other cases, the claims were dismissed or rejected for the following reasons.

(I) Failure of the plaintiff to transfer title to the state (34% of cases dismissed/rejected)

Article 19 of the Law of Ukraine "On Combatting Terrorism" stipulates that compensation for the loss of property as the result of a terrorist act should be carried out in accordance with law. However, the law regulating such compensation has never been adopted. Instead, domestic courts use provisions of the Civil Defence Code of Ukraine by analogy.

Article 86 (Part 9) of the Civil Defence Code states that prior to the issuance of any compensation for the destroyed or damaged housing as a result of an emergency; victims should voluntarily transfer their title over the destroyed or damaged property to local councils or local administrations¹². Thus, in order to obtain compensation the owner should transfer his/her title of ownership to local council prior to claiming for compensation.

Naturally, the majority of the plaintiffs are reluctant to waive their property titles, being sceptical of ever obtaining compensation (*NRC observed this in the Petrova case*). The Donetsk Regional Court of Appeal used this provision a number of times in order to quash positive local courts' decisions. In fact, 34% of negative decisions (33 out of 95 cases) used this reasoning.

¹⁰ Case No. 243/4322/16-ц. The decision of Appeal court of Donetsk oblast became final because the defendant did not lodge a cassation appeal.

¹¹ According to the Housing Code, Law "On Housing and Communal Services", Resolution of the Cabinet of Ministers of Ukraine No. 572, dated 8 October 1992 "On the Mechanism of Implementation of the Law of Ukraine "On the Privatization of the State Housing Fund".

¹² According to Article 347 of the Civil Code of Ukraine, the owners may waive their property rights. For this purpose, a record of the termination of ownership should be made in the real-estate register.

This legislative requirement contradicts the Pinheiro Principles¹³, according to which “States should not establish any preconditions for filing a restitution claim” and “when housing, land and/or property is destroyed or when it no longer exists [...] the holder of the housing, land and/or property right should have the option to repair or rebuild whenever possible” (para. 13.1, para. 21.2 respectively).

(II) Failure of the plaintiff to pay court fees (19% of cases dismissed/rejected)

The second significant obstacle for plaintiffs is the necessity to pay a court fee.¹⁴ 19% of the claims (18 out of 95 cases) were dismissed when plaintiffs failed to pay the court fees.

Court fees in restitution cases are high - 1% of the value of the claim, but no more than 5 living wages (UAH 8,885). On average, such claims exceed UAH 1 million. Accordingly, court fees amount to the maximum of UAH 8,885. With an average monthly income per an internally displaced person of UAH 1,751 in Donetsk and UAH 1,931 Luhansk oblasts,¹⁵ the payment of court fees represents a substantial burden and a serious obstacle in access to justice.

This practice goes contrary to para. 13.2 of the Pinheiro Principles, according to which: “States should ensure that all aspects of the restitution claims process, including appeals procedures, are just, timely, accessible, free of charge”.

(III) Use of improper grounds for claims

During 2015-2016, plaintiffs instituted criminal proceedings with regards to damaged property under Article 194 of the Criminal Code of Ukraine (Intentional Destruction of Property), as opposed to Article 258 (“Terrorist Acts”). For this reason, the courts did not apply provisions of the Law of Ukraine “On Combatting Terrorism”. They applied Article 1177 of the Civil Code, which prescribes compensation for damages to victims of a crime. However, according to a well-established judicial practice, Article 1177 of the Civil Code may be applied only in cases where a final verdict is issued against the accused. Moreover, this Article also lacks legislative tools for its practical implementation. 19% of cases (18 out of 95 cases) have been rejected due to the absence of a verdict in criminal case (for example, *Makagon* case). Since 2017, no new cases have been instituted based on Article 194 of the Criminal Code.

Other shortcomings of national court proceeding were also identified.

(IV) Excessive length of the proceedings

Court proceedings in property claims are very lengthy. On average, it takes about 20 months to continue through all stages of the proceedings, although the length will depend on the number of instances, work load of the courts, and complexity of an individual case.

The Office of the High Commissioner for Human Rights (OHCHR) reported that “in some cases, trials are protracted due to the understaffing of courts, which is in part due to the ongoing judicial reform and process of reappointment of judges [...]. In Svatovo District Court of Luhansk region, operating at 50% of judges staffed, the average annual caseload of each of the five judges exceeds 20,000 cases, while the Council of Judges of Ukraine has estimated the optimal annual caseload to be 180-190 cases per judge.”¹⁶

¹³ Principles on housing and property restitution for refugees and displaced persons were presented on fifty-sixth session of Sub-Commission on the Promotion and Protection of Human Rights by Special Rapporteur, Paulo Sergio Pinheiro. The principles were endorsed by report of the Sub-Commission on the Promotion and Protection of Human Rights (E/CN.4/Sub.2/2005/17), 11 August 2005. ECtHR practice considers Pinheiro Principles as international standards (see: *Mago & Others v. Bosnia and Herzegovina*; *Sargsyan v. Azerbaijan*).

¹⁴ In many decisions courts do not specify whether a non-paid court fee or other failure on the applicant’s side resulted in a negative ruling. However, in a large number of cases courts considered non-paid court fees as one of the shortcomings on the applicant’s side.

¹⁵ International Organisation of Migration (IOM), National Monitoring Survey Report on the Situation of IDPs, June 2018.

¹⁶ OHCHR, “Report on situation with human rights in Ukraine 16 February -15 May 2018”.

Excessive length of proceedings goes against Pinheiro Principle 12.1, which provides that “States should establish and support [...] timely procedures to assess [...] property restitution claims.”

(V) Statute of limitations

Claims for compensation for loss of rights, value, use and/or access to housing, land and property have a three-year statute of limitations under the Civil Code of Ukraine. This requirement proves to be inadequate for the conditions in an armed conflict setting. Many plaintiffs whose properties were damaged or destroyed during 2014-2015 have now been barred from issuing claims for compensation because of the statute of limitations requirement.

(VI) Burden of proof rests with the plaintiff

A plaintiff claiming damages in civil proceedings bears the burden of proof with respect to both the extent of damages and the circumstances in which damages occurred. Many plaintiffs are unable to either access the evidence or provide expensive expert assessment of damages.

According to Pinheiro Principle 15.7, “States may, in situations of mass displacement where little documentary evidence exists as to ownership or rights of possession, adopt the conclusive presumption that persons fleeing their homes during a given period marked by violence or disaster have done so for reasons related to violence or disaster and are therefore entitled to housing, land and property restitution.”

A new Civil Procedure Code, which came into force on 15 December 2017, outline provisions concerning decisions of the Supreme Court of Ukraine establishing judicial guidance for all similar cases. This means that the conclusions of the Supreme Court regarding the application of the relevant rule of law provides mandatory guidance for courts of lower instances in considering cases on similar legal issues.¹⁷ For the purpose of receiving an applicable guiding decision of the Supreme Court, courts of lower instances are entitled to suspend proceedings until the decision on a similar legal issue (in another case) will be made by the Court of Cassation (Article 252 of Civil Procedure Code). Monitoring of cases on restitution/compensation related to the conflict in eastern Ukraine, offers grounds to believe that many judges are placing proceedings on hold, while awaiting the decision from the Supreme Court in the pending case – 757/61954/16-ц – which would frame the court practice to be followed by courts of lower instances.

Assessment of Law No. 2268

On 18 January 2018, Law of Ukraine No. 2268 “On Particular Aspects of Public Policy aimed at Safeguarding State Sovereignty of Ukraine over the Temporarily Occupied Territory of Donetsk and Luhansk Regions” (Law No. 2268) was adopted by the Verkhovna Rada of Ukraine and on 24 February 2018 the Law entered into force.

Law No. 2268 states that the Russian Federation bears responsibility for pecuniary and non-pecuniary damage caused to Ukraine (Article 2(4)). In addition, Law No. 2268 provides for the waiver of court fees in the following cases:

- 1) cases concerning applications to establish legal facts; filed with respect to violations of the right to ownership of movable and/or immovable property;
- 2) cases concerning lawsuits against the aggressor State – the Russian Federation - on compensation for property and/or non-pecuniary damage incurred by the temporary occupation of the territory of Ukraine, armed aggression and armed conflict, which led to: the forced displacement from the temporarily occupied territories of Ukraine; death; injury; imprisonment; illegal deprivation of liberty or theft; as well as violation of the title to movable and/or immovable property.

¹⁷ Civil Procedure Code, Article 263, para. 4.

The provision of the court fees waiver in cases against the Russian Federation may be misleading, given the immunity of a State before domestic courts under international law, and the limitations in effectively implementing rulings against Russia, if at all.

There are no court decisions with respect to property restitution cases where responsibility to pay compensation was demanded from the Russian Federation on basis of Law No. 2268. However, NRC identified five cases where parties have filed a motion seeking participation of the Russian Federation in the proceedings, as a third party, on the basis of Article 79 of the Law of Ukraine “On Private International Law” and Law No. 2268. The courts in those cases have suspended the proceedings until the Russian Government’s reply has been received.

As such, the introduction of Law No. 2268 has so far had a very limited influence on property restitution/compensation cases considered by the domestic courts.

In developing a strategy on instituting new cases based on the provisions of Law No. 2268, it is prudent to consider international legislation regarding state immunity. Despite the practice of the ECtHR¹⁸ the fact of an effective control over the territory was a key legal argument to finding a State which exercises such control, liable for property damages in a given territory, Ukrainian courts could not rely on this practice, because this does not solve the issue with the immunities of a foreign State in national courts of another. Furthermore, courts should thoroughly consider the groundlessness of the Government of Ukraine’s position in asserting that another sovereign State alone is responsible for certain types of cases, without prior consent at the international level.

Mass claims strategy

Evidently, pursuing individual claims of compensation for destroyed/damaged property aims to obtain compensation for the plaintiff. However, filing a large number of claims on the same subject (so-called mass claim strategy) aims to achieve more far-reaching goals in addition:

- to demonstrate of the systematic nature of the problem and to compel relevant duty bearers to act in addressing it;
- to seek the guidance of international mechanisms outside of the national judicial system, such as the European Court of Human Rights;
- to possibly procure a “pilot judgement” by such an international mechanism which would establish the international standard applicable in addressing such issues.

The “pilot judgment” procedure was developed as a technique for identifying and addressing the structural problems underlying repetitive cases against multiple countries and to impose a general obligation on States to address those problems. Where the ECtHR receives several applications that share a root cause, it can select one or more for priority treatment under the pilot procedure.¹⁹

As a tool aimed at managing the Court’s workload more efficiently, and in determining whether there has been a violation of the Convention in the particular case, “pilot judgements” also have other objectives:

- to identify the dysfunction under national law that is at the root of the violation;
- to offer clear indications to the Government as to how it can eliminate this dysfunction;
- to bring about the creation of a domestic remedy capable of dealing with similar cases (including those already pending before the Court awaiting the pilot judgment), or at least to bring about the settlement of all such cases pending before the Court.

The “pilot judgment” is therefore intended to assist national authorities in eliminating the systemic or structural problem, highlighted by the Court as giving rise to repetitive cases. The central idea behind the “pilot judgment” procedure is that where there are large numbers of applications concerning the same problem, applicants will obtain redress more efficiently if an effective remedy is established at the national level, rather than having to process their cases on an individual basis before the ECtHR.²⁰

¹⁸ *Sandu and Others v. the Republic of Moldova and Russia*.

¹⁹ ECtHR, Factsheet: Pilot Judgments, February 2018.

²⁰ ECHR Registrar, Information Note: The Pilot-Judgment Procedure.

The experience of other conflict-affected countries²¹ shows that when such a country faces a large-scale internal displacement and provides no administrative procedures, institutions or mechanisms for lost or damaged property, this situation may be considered a violation of its international human rights obligations. In such a situation usage of a pilot decision procedure could put an end to these mass violations and to redress as far as possible its negative effects.

This is exemplified in the context of the Turkish occupation of Northern Cyprus, which gave rise to approximately 1,400 property cases being brought before the ECtHR against Turkey; primarily by Greek Cypriots – some 211,000 of whom had been displaced from their homes following the Turkish occupation of Northern Cyprus in 1974.²²

In addressing the issue of restoring justice for such a large number of affected people whose property rights had been violated, the ECtHR, in the Case of *Xenides-Artises v. Turkey* (2005), held that:

“It is inherent in the Court’s findings that the violation of the applicant’s rights [...] originates in a widespread problem affecting large numbers of people, i.e. the unjustified hindrance of the applicant’s “respect for her home” and “peaceful enjoyment of her possessions” [...] Moreover, the Court cannot ignore the fact that there are already approximately 1,400 property cases pending before the Court brought primarily by Greek-Cypriots against Turkey.”²³

Therefore, the Court held that Turkey must introduce an effective remedy – within three months – to secure genuine redress for violations of property and other rights under the Convention – not just as suffered by the applicant in that case, but by all similar applicants whose cases were pending before the Court.²⁴

This made the Turkish Government to establish of the “Immovable Property Commission” (IPC), whose composition included a former Secretary General and Deputy Secretary General of the Council of Europe. Subsequently, in its decision of *Demopoulos and others v. Turkey* (2010), the Grand Chamber found that the IPC provided an accessible and effective framework of redress.

As previously outlined, the number of Ukrainian conflict-related applications currently pending in ECtHR is extensive (over 4000 including cases related to the events in Crimea and other categories). However, it is not certain how many of these cases relate to compensation for the destruction of housing during the conflict. Filing a greater number of cases for fair compensation for violation of property rights, will likely increase the probability of numerous judgements on compensation for damaged housing in eastern Ukraine. The execution of those decisions would, in turn, place a significant financial burden on the State, which is certainly the least preferable outcome for it. In order to prevent such significant expenditures from the State budget, the Government of Ukraine could instead design an effective remedy for solving the issue on a national level.

The practice of the ECtHR in the Northern Cyprus context, illustrates that the establishment of an effective national property restitution system in Ukraine could mitigate similar consequences. The role of a mass claims strategy would thus be:

- to illustrate the ineffectiveness of the existing system;
- to highlight the necessity of establishing an administrative procedure to redressing violations;
- to procure the guidance and direction of international mechanisms in solving a systemic issue, if effective and adequate remedies are not provided for domestically.

²¹Foreign Experience of Housing Solutions and Compensation for Destroyed/Damaged Housing for IDPs, available at: <https://www.sheltercluster.org/housing-land-and-property-working-group/documents/foreign-experience-housing-solutions-and>.

²² ECtHR, *Cyprus v. Turkey*, 25781/94, Judgement, 10 May 2001, paras 28, 163.

²³ ECtHR, *Xenides-Arestis v. Turkey*, 46347/99, 22 December 2005, para 38.

²⁴ *Ibid.*, paras 39, 40.

Conclusions

As of October 2018, none of the 146 cases concerning compensation/restitution for damaged or destroyed property in eastern Ukraine, instituted before the Ukrainian courts, has produced a decision, which has been enforced. As outlined above, the latest legislative developments brought by Law No. 2268 have actually served to complicate court procedure in cases concerning protection of property rights. Consequently, the current Ukrainian remedies appear to be ineffective. This situation may change once/if the Supreme Court of Ukraine enforces a model case on restitution/compensation for damaged or destroyed property in relation to the conflict in eastern Ukraine.

Considering the high volume of applications pending before the ECtHR, the probability of an ECtHR “pilot judgement” on property restitution/compensation in relation to the hostilities in eastern Ukraine is quite high. Moreover, considering the Court’s practice in similar cases, the ECtHR will likely order the Government of Ukraine to establish an effective property restitution/compensation system. However, the Court would suspend consideration of other similar cases to provide the Government with time to address the restitution/compensation issue in a systemic manner. Consequently, while a positive judgement in favour of an applicant would herald a significant victory for the property rights’ enforcement in Ukraine, the likelihood of an individual judgment in the foreseeable future is very low. Finally, with Ukraine’s record of non-enforcement of the ECtHR decisions, the applicants should be well advised that the remedy may not be forthcoming any time soon.

Litigation of restitution/compensation claims before the domestic courts have proven useful for the development and unification of the judicial practice. More is expected from the position of the Supreme Court of Ukraine – the findings of which will likely to be used in the future by the courts of lower instances in the consideration of compensation cases for damaged housing. Litigating the claims for compensation for loss of rights, value, use and/or access to housing, land and property has also pushed the Government of Ukraine to consider the implications of the mounting financial debt to affected individuals in eastern Ukraine. And, while Law No. 2268 may be considered as a step backwards in that respect, the restitution/compensation for conflict-related damage remains at the Government’s radar²⁵.

Thus, NRC, coordinating its activities with other partners, continues its dialogue with respective authorities of Ukraine regarding development of normative regulation and a mechanism for assessing damage and documenting claims in order to provide restitution and compensation in individual cases.

In particular, NRC urges the Government of Ukraine to take necessary steps to develop a policy document underpinning an applicable legal framework and listing basic parameters of such a mechanism (composition of a relevant body (that could be established, possibly, in the form of a mass claims commission), its powers, procedural aspects of its functioning and financing).

²⁵ Four draft laws on compensation for damaged property were elaborated. Draft law 2167 has been included to the agenda of current parliament’s session. On June 2018, the Ombudsperson confirmed that the Ministry of Justice prepared 6 lawsuits to ECtHR against Russia on compensation for damaged property (<http://www.ombudsman.gov.ua/ua/all-news/pr/8618-wg-budemo-zvertatisya-do-yespl-schob-ri-vidshkoduvala-nashim-gromadyanam/>).



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