

**NRC**

NORWEGIAN  
REFUGEE COUNCIL

## EMERGENCY COMPENSATORY MEASURES:

Compensation for Housing Destroyed as a result of the Armed Conflict

A word cloud of terms related to emergency compensatory measures for destroyed housing. The most prominent words are 'emergency situation', 'JFO', 'ATO', 'compensation', and 'destroyed housing'. Other visible terms include 'humanitarian assistance', 'hostilities', 'extrajudicial remedy', 'civil-military administrations', 'monetary compensation', 'armed conflict', 'provision of housing', 'recovery works', 'local self-government authorities', 'response measures', and 'Human Rights'.

humanitarian assistance  
ATO compensation JFO  
Human Rights  
hostilities extrajudicial remedy  
response measures  
local self-government authorities  
emergency  
situation compensation  
ATO  
JFO  
civil-military administrations  
Human Rights  
monetary compensation  
armed conflict  
provision of housing  
recovery works  
destroyed housing  
response measures  
hostilities



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# 1. Armed conflict in eastern Ukraine as a type of emergency

Due to the armed conflict in eastern Ukraine, which has been ongoing for six years already<sup>1</sup>, the residents of war-torn territories continue to face many challenges. Many people have been forced to leave their homes in search of a new life without shelling and fear, destruction and tears, hardship and feelings of total hopelessness. Yet, many of those affected by the conflict still stay in their homes. It may not be peaceful and quiet there, but they have roofs over their heads or at least some semblance thereof.

**Deterioration of the standard of living** is defined as the lack of drinking water, waste water disposal, electrical power, gas and heating supply (in autumn and winter), and/or changes in the technical condition of the residential house (premises) resulting in it being unsafe or unfit for living, and/or changes in the state of the territory (facility) making it impossible for the population to reside and carry out economic activity there.

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There are different terms used to describe the situation in the east of the country: hostilities, Anti-Terrorist Operation (ATO), Joint Forces Operation (JFO), armed conflict, aggression by the Russian Federation, and occupation, among others. This has resulted in the mass displacement of residents in the Donetsk and Luhansk regions and a deterioration of their standard of living<sup>2</sup>; regular threats to residents' health and safety; many victims and casualties,

including civilians; considerable pecuniary damages; and loss of housing.

It should be noted that the legal classification of the situation in Donetsk and Luhansk regions is crucially important, as it affects legal regulation of this issue. It also affects the Government, because it would determine the amount of the government responsibility for the State and each affected person. Thus, there are significant reasons for determining the legal qualification of the situation based on the existing laws of Ukraine. These laws give grounds for imposing an emergency regime in eastern Ukraine due to the armed conflict.

**Emergency** is defined as a situation within the specific territory or economic entity therein or at the water facility that involves the deterioration of standard of living as a result of a disaster, incident, fire, natural disasters, infectious disease that threatens humans, animals, and/or plants, use of weapons, or other hazardous event. This situation then results in threats to people's health or safety, many victims and casualties, considerable pecuniary damages, and people's inability to live within such a territory or facility, or to carry out economic activity therein<sup>3</sup>.

According to Article 5 of the Code of Civil Protection of Ukraine, emergencies are classified by their origin, coverage, human losses, and pecuniary damages. Depending on the origin of the events that result in emergencies within the territory of Ukraine, emergencies can be man-made, natural, social, or military. The events in eastern Ukraine mainly constitute a military and social emergency.

**A social emergency** is defined as the deterioration of standard in the daily lives of people within either the specific territory or at the facility therein or at the water facility. This deterioration is caused by illegal actions of a terrorist or anti-constitutional nature or

1 The armed conflict in eastern Ukraine started in the spring of 2014.

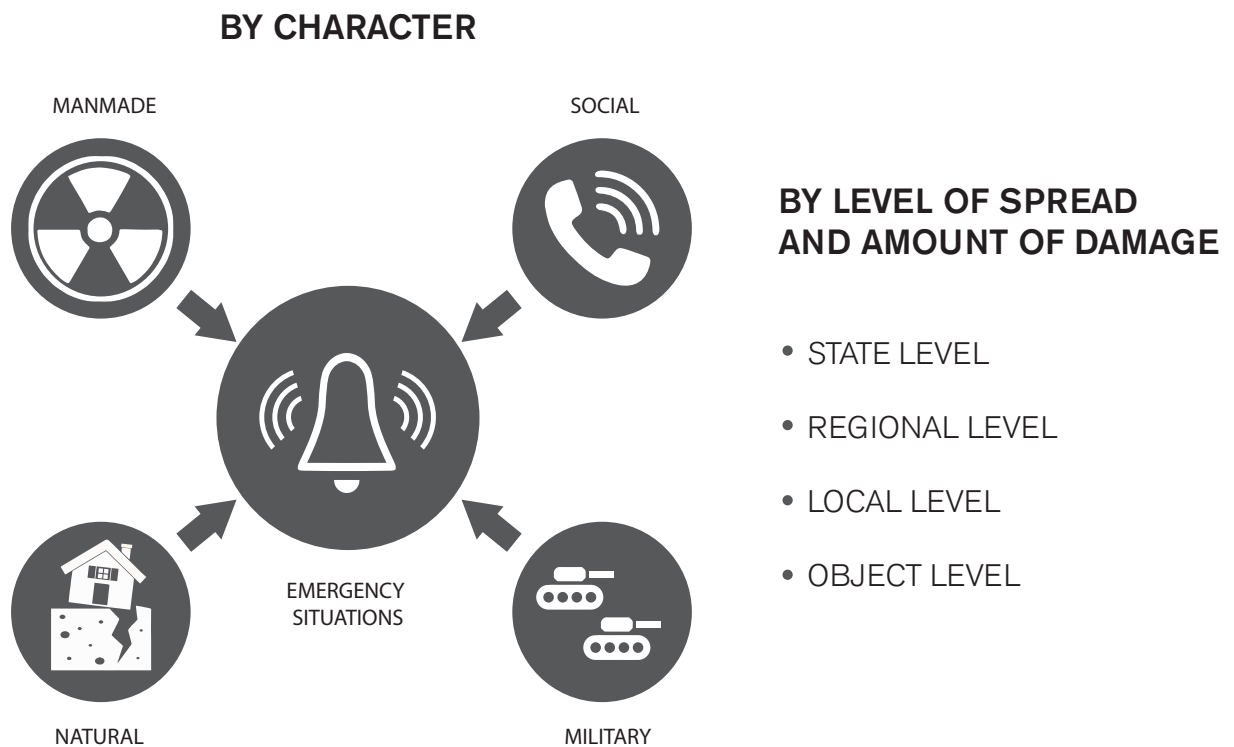
2 The definition is provided by the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Procedure for Classifying Emergencies by Their Level" No. 368 dd. 24 March 2004.

3 [Code of Civil Protection of Ukraine.](#)

is related to the disappearance (theft) of weapons and hazardous substances, accidents involving people etc.<sup>4</sup>, such as seizing and holding buildings of government authorities, attacks on military facilities, disappearance or theft of armoured vehicles, artillery weapons, explosions in public places, residential areas, transportation infrastructure, the taking of hostages, kidnapping, and missing people, etc.<sup>5</sup>.

**A military emergency** is defined as the deterioration of standard in the daily lives of people within the specific territory or at the facility therein or at the water facility that is caused by the use of conventional weapons or weapons of mass destruction.

## CLASSIFICATION OF SITUATIONS OF EMERGENCY



4 Classifier of Emergencies DK 019:2010, ref. to [Resolution of the State Committee for Technical Regulation and Consumer Policy](#) No. 457 dd. 11 October 2010.

5 Resolution of the Ministry of Internal Affairs of Ukraine ["On Approval of the Classification Features of Emergencies"](#) No. 658 dd. 6 August 2018.

Depending on the area and scope of the technical and material resources necessary to eliminate the consequences, there are national, regional, local, and facility-level emergencies.

The emergency regime was officially imposed in Donetsk and Luhansk regions in Ukraine on 26 January 2015<sup>6</sup>. The Decree states that the emergency regime is imposed in order to coordinate the activities of government authorities with a view of protecting the population, territories, and property, ensuring the operation of a single national civil protection system, and overcoming the consequences of a national emergency of **a social and military nature**. Moreover, Clause 2 of the above Decree provides for ensuring sustainable and proper operation of the committees for man-made emergencies and environmental safety and emergencies (in the Autonomous Republic of Crimea, regions, and cities of Kyiv and Sevastopol), for example, such committees of the regional level<sup>7</sup>.

Subject to its objectives in accordance with the emergency regime, the committee decides on the preliminary classification of the emergency by type, classification features, and level, and ensures furnishing of the above materials to the State Emergency Service of Ukraine (SES of Ukraine) within the prescribed period. However, the final decision (expert opinion) on the level of the emergency is made by the SES of Ukraine.

On 25 January 2015, the Expert Committee of the SES of Ukraine for Establishing the Levels and Classes of the Emergencies classified the events in eastern Ukraine, namely in Donetsk and Luhansk regions, as a **social** emergency at the **national** level. Therefore, this decision (expert opinion) of the SES of Ukraine is the basis for corresponding measures to be made in response to the national emergency in accordance with the domestic legislation in force. In order to formulate the response to such long-term emergency in the country, develop emergency response measures, and decide the responsibilities of specific government authorities, it is necessary to consider civil protection laws, including the Code

of Civil Protection of Ukraine governing these legal relations.

Yet, there is a question as to how the situation in eastern Ukraine had been classified before January 2015, for example, before the imposition of the emergency regime in Donetsk and Luhansk regions. According to the Information and Analytical Guide issued by the SES of Ukraine, 10 social emergencies were registered in 2014, a 16.7% decrease compared to 2013. The most common causes of people's death as a result of social emergencies in 2014 included non-compliance with water conduct rules and occupational safety rules. There was only one social emergency in Donetsk region in eastern Ukraine, namely the explosion in Illichivskyi district of Mariupol at 1260th kilometre of the stretch of the railroad haul between Mariupol and Sartana, as a result of which the railway bridge across the Kalchyk River was blown off. The explosion was caused by the malicious actions of unidentified persons<sup>8</sup>.

## Conclusions:

1. The armed conflict in eastern Ukraine falls within the notion of a national-level social and military emergency due to its consequences (the number of victims and casualties, the level of losses, etc.).
2. The emergency response and recovery measures as well as the powers of corresponding central and local government authorities are provided for by the Code of Civil Protection of Ukraine and other civil protection regulations.
3. The emergency level is a key aspect used to determine the principal source of funds for emergency response measures as well as the social protection of those affected by the emergency.

6 Decree of the Cabinet of Ministers of Ukraine "[On Imposing the High Alert and the Emergency Regime](#)" No. 47-p dd. 26 January 2015.

7 "[Standard Regulations on the Regional and Local Committee for the Industrial and Environmental Safety and Emergencies](#)" approved by the Resolution of the Cabinet of Ministers of Ukraine No. 409 dd. 17 June 2015.

8 [Information and Analytical Guide on the Emergencies in Ukraine in 2014](#) (published on the official website of the State Emergency Service of Ukraine on 31 December 2014).

## 2. Emergency response measures and social protection of the affected population

In case of an emergency that requires assistance to the affected population, response measures are the cornerstones of civil protection. Response measures are government functions focused on the protection of the population, territories, the environment and property from emergencies through the prevention of such situations, mitigation of consequences thereof, and assistance to victims during the time of peace and the emergency period.

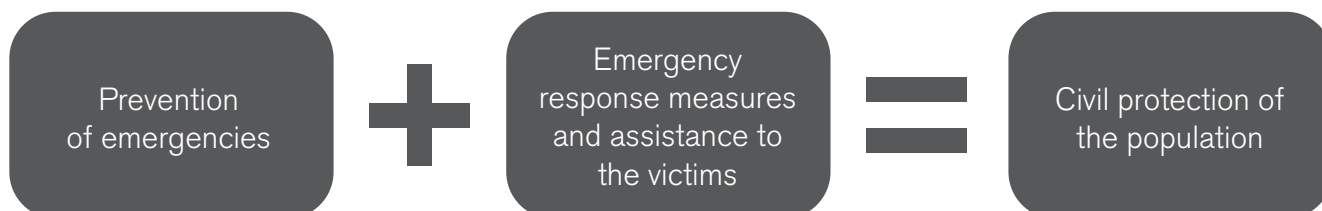
**The emergency period** means the period from the announcement of the mobilisation (except for targeted mobilisation), or the notification of designated persons for concealed mobilisation, or from the introduction of martial law in Ukraine or certain areas thereof, and covers the period of mobilisation, martial law, and partly the recovery period after hostilities<sup>9</sup>.

In case an emergency occurs, for example, an armed conflict, there must be response actions, including emergency response and recovery measures, as well as assistance to the victims.

been basic needs, social protection, monetary compensation for the inflicted damages, etc. Most of these people may claim the status of the affected person (victim) since each individual who has suffered moral, physical, or quantifiable damage as a result of an emergency is acknowledged as an affected person (victim) (Article 84 of the Code of Civil Protection of Ukraine).

Emergency response measures include rescue and other urgent measures, for example, search for and rescue of victims, search for and disposal of explosives, medical aid to the injured, psychological and financial assistance, prioritised repairs and recovery measures at the damaged critical civil, transport and communication infrastructure, establishment of the public order in the area of the emergency, and social protection of the victims, etc. (Article 79 of the Code of Civil Protection of Ukraine).

Social protection and compensation for pecuniary damages to the victims are ensured at the expense of state and local budgets, economic entities or individuals



According to Article 7 of the Code of Civil Protection of Ukraine, the principles of civil protection include:

- Guarantees by the Government to protect the constitutional rights of citizens to life, health, and private property
- Responsibility of government officials and municipal authorities to comply with civil protection laws

Due to the hostilities in Donbas, millions of Ukrainians have faced financial hardship (loss of jobs, housing, other property, agricultural products, cattle, and general sustainability in all the areas of life), so the most pressing issues for the population for five years running have

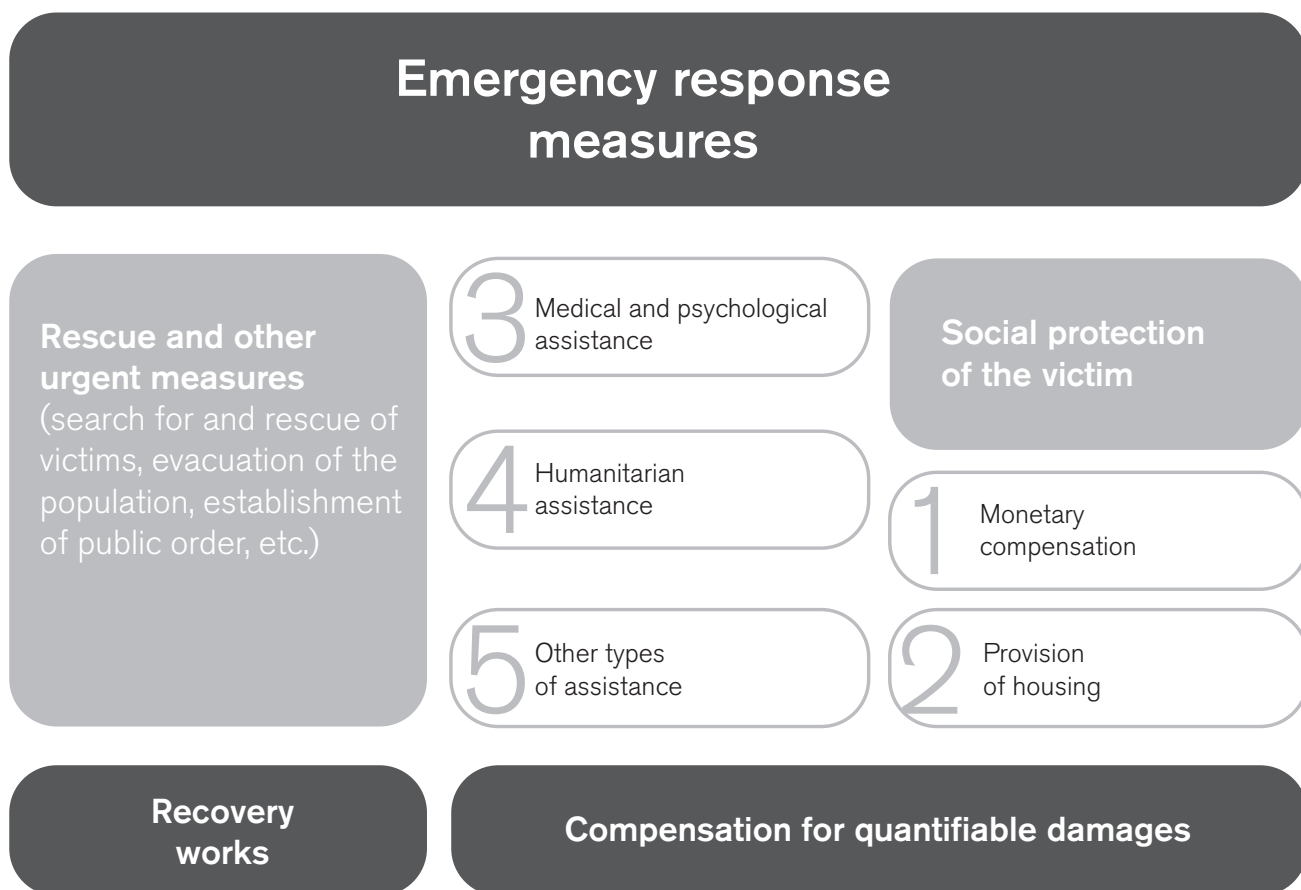
guilty for the emergencies, funds obtained under voluntary insurance policies, donations by individuals and legal entities, charitable organisations and civil associations, and from other sources consistent with the law. Urgent assistance to the victims may be provided at the expense of the contingency funds of state and local budgets with account of the level of the emergency as well as material contingency funds for prevention of emergencies and emergency response measures (Article 84 of the Code of Civil Protection of Ukraine).

It should be noted that a contingency fund within the budget is formed for unexpected expenditures of an irregular nature that could not be foreseen in the

<sup>9</sup> Law of Ukraine "On Defence of Ukraine" No. 1932-XII dd. 6 December 1991.

draft budget<sup>10</sup>. It may therefore be concluded that the contingency fund of the local/regional budget could have been used in 2014 when the people suffered the first damages as a result of the shelling. Upon acknowledgement the situation in eastern Ukraine as a national emergency (January 2015), the response

case of a regional or national emergency. Such draft resolutions of the Cabinet of Ministers of Ukraine on allocating the funds from the state budget contingency fund are submitted by the Ministry of Economic Development and Trade<sup>11</sup>.



to the national emergency had to include, for instance, amendments to the Law on the State Budget (or planning of such expenditures for each subsequent year, taking into account its long-term nature, the considerable scope of the consequences, and other specific aspects of the emergency), subventions from the state budget to the local budgets to grant monetary assistance to the victims, provision of accommodation or payment of monetary compensations etc.

The effective laws of Ukraine even provide for the allocation of additional funds to finance emergency response measures, including for the purposes of financial assistance to the victims, based on a the Resolution of the Cabinet of Ministers of Ukraine in

### Recovery works

Recovery works are one of the areas of emergency response measures. Recovery works to mitigate consequences of the emergency are organised and managed by the corresponding central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local city administrations, municipal authorities, senior executives of economic operators affected by the emergency (Article 82 of the Code of Civil protection of Ukraine).

**Recovery works** mean the set of measures related to restoration of buildings, structures, facilities, institutions, and organisations which, regardless of the ownership

10 Resolution of the Cabinet of Ministers of Ukraine "On Approving the Procedure for Using the Budget Contingency Fund" No. 415 dd. 29 March 2002.

11 Resolution of the Cabinet of Ministers of Ukraine "On Approving the Procedure for Financing the Prevention and Emergency Mitigation Actions" No. 140 dd. 4 February 1999.



status, have been destroyed or damaged as a result of the emergency, and the corresponding territories (Article 1 of the Code of Civil Protection of Ukraine). Recovery works are performed at the expense of state and local budgets, economic operators, and other sources. The decision on allocating funds from the budget contingency fund is made by the Cabinet of Ministers of Ukraine, the Council of Ministers of the Autonomous Republic of Crimea, local city administrations, municipal authorities, and economic operators with account of the level of the emergency.

Resolution of the Cabinet of Ministers of Ukraine No. 250 dd. 29 April 2015 establishes the Procedure and Conditions for Granting Subventions from the State Budget to the Local Budgets for Recovery (Construction, Major Repairs, Reconstruction) of the Infrastructure in Donetsk and Luhansk regions<sup>12</sup>, which provides for subventions to the regional budgets of Donetsk and Luhansk regions for recovery of their infrastructure. According to this procedure, the subvention is used to implement the projects and actions in the settlements in Donetsk and Luhansk regions affected by ATO where the government authorities discharge their powers in full, inter alia, regarding the housing, only for reconstruction, major repairs, design and survey works at municipal residential housing damaged as a result of ATO. No subvention has been granted to recover private housing.

However, media has reported on the active recovery of houses in the Donetsk and Luhansk regions damaged as a result of the hostilities. Construction materials for this purpose may be taken from the regional material contingency fund established to prevent and mitigate the consequences of emergencies.

The material contingency fund means the stock of construction materials, fuel and lubricants, medicinal products and medical devices, food, equipment, machinery, and other tangible assets (hereinafter, "tangible assets") designated to prevent and mitigate consequences of emergencies, assist the affected population, and to carry out urgent recovery works and measures<sup>13</sup>.

For instance, on 17 May 2019, the Department for Civil Protection, Mobilisation and Defence Work of the Donetsk Regional State Administration furnished the timber to recover the houses damaged as a result of the hostilities in Marinka, Donetsk region. In total, 64 houses and one infrastructural facility have been recovered at the expense of the regional material contingency fund in Donetsk region so far in 2019<sup>14</sup>. Moreover, recovery measures are carried out at the expense of the international humanitarian organisations represented in Ukraine.

## SOCIAL PROTECTION OF THE VICTIMS

### Cabinet of Ministers of Ukraine

The powers of the Cabinet of Ministers of Ukraine in the area of civil protection include organisation of emergency response, ensuring social protection of those affected by emergencies (Article 16 of the Code of Civil Protection of Ukraine).

### Local city administrations

The powers of the local city administrations in the area of civil protection include social protection of those affected by emergencies, including payment of the monetary assistance (Article 19 of the Code of Civil Protection of Ukraine).

### Органи місцевого самоврядування

The powers of the municipal authorities in the area of civil protection include social protection of those affected by emergencies, namely payment of the monetary assistance, support for the issuing of certificates for persons affected by the emergency, and lists (registers) of those affected by the emergency, based on which monetary assistance is granted (Article 19 of the Code of Civil Protection of Ukraine).

The citizens of Ukraine are ENTITLED to social protection and compensation for the damages to their life, health, and property as a result of emergencies (Article 21 of the Code of Civil protection of Ukraine).

<sup>12</sup> Resolution of the Cabinet of Ministers of Ukraine "[On Approving the Procedure and Conditions for Granting Subventions from the State Budget to the Local Budgets for Recovery \(Construction, Major Repairs, Reconstruction\) of the Infrastructure in Donetsk and Luhansk Regions](#)" No. 250 dd. 29 April 2015.

<sup>13</sup> Resolution of the Cabinet of Ministers of Ukraine "[On Approving the Procedure for Creating and Using Material Contingency Funds for Prevention and Emergency Mitigation Measures](#)" No. 775 dd. 30 September 2015.

<sup>14</sup> Information from the [News](#) section on the official website of the Donetsk Regional State Administration (posted on 17 May 2019).

## 2.1. Granting (paying) monetary assistance (compensation)

A perfect example of granting (paying) monetary assistance to the affected population may be Sloviansk City Council granting non-recurrent monetary assistance to citizens whose housing had been destroyed as a result of ATO. These citizens are included in the Programme for Social Protection of Specific Categories of Residents of Sloviansk for 2015—2019, and approved by the corresponding resolution of the Sloviansk City Council (as amended)<sup>15</sup>.

The procedure for granting such monetary assistance was approved by Resolution of the Executive Committee of the Sloviansk City Council No. 450 dd. 6 March 2019<sup>16</sup>. According to the Procedure, a decision on granting the non-recurrent monetary assistance is made by a special committee upon considering applications for non-recurrent financial assistance from the local budget to the citizens owning or renting apartments or owners of detached houses that have been destroyed as a result of ATO.

The committee makes a decision on granting assistance based on the following documents: application made personally by the citizen, passport (and copies thereof), identification number certificate (and copies thereof), report on examination of the premises (house, apartment) as approved by Resolution of the Cabinet of Ministers of Ukraine No. 1044 dd. 20 December 2017<sup>17</sup>, documents confirming the title, and bank certificate containing the details for payment of the assistance. The decision itself on granting the non-recurrent aid is made by the Executive Committee based on the minutes of the committee.

Pursuant to Clause 6 of the Resolution of the

<sup>15</sup> Resolution of the Sloviansk City Council [“On Approving the Programme for Social Protection of Specific Categories of Residents within the Territory of the Sloviansk City Council in 2015-2019 within Its Own Powers”](#) No. 9-LXXI-6 dd. 29 December 2014.

<sup>16</sup> Resolution of the Executive Committee of the Sloviansk City Council [“On Approving the Procedure for Granting the Non-Recurrent Monetary Assistance to the Citizens Whose Housing Has Been Destroyed as a Result of the Anti-terrorist Operation in 2019”](#) No. 450 dd. 06 March 2019.

<sup>17</sup> Resolution of the Cabinet of Ministers of Ukraine [“On Amending the Procedure for Granting the Monthly Targeted Aid to the Internally Displaced Persons to Compensate for Accommodation Expenses, Including for the Housing and Utility Services”](#) No. 1044 dd. 20 December 2017.

Sloviansk City Council, the non-recurrent monetary assistance to the owners of the destroyed housing is 10 subsistence rates for an able-bodied person as of the time of the application. In 2019, upon the repeated application, the aid will amount to UAH 10,000. For instance, such aid was paid to 13 residents of Sloviansk in 2019<sup>18</sup>.

The question is whether this social protection measure is adequate for the cases where the housing of the victim is unfit for living as a result of destruction (which is even recorded in the report on the examination of premises [house, apartment]), for example, when they need housing or funds to compensate for expenses incurred to recover their housing, which greatly exceed UAH 10,000 (and whether this measure is expedient from different points of view). Taking into the account the fact that the emergency regime was only officially declared in January 2015 even though housing was destroyed in spring 2014, there is the question of the applicability of the mechanism for granting compensation for destroyed housing under the Code of Civil Protection of Ukraine within the framework of social protection of the affected residents of Sloviansk.

Granting monetary assistance to those affected by the emergency should be considered as an urgent social protection measure for the population, especially in cases of mass displacement, loss of housing, and means of subsistence — all of which happened in eastern Ukraine as a result of the armed conflict.

So far, the municipal authorities in Ukraine have been trying to discharge their powers in this area to the maximum extent possible under the effective laws, despite no state funding for any compensatory measures.

The Members of the Parliament of Ukraine have tried to resolve some aspects of this issue, namely through providing housing assistance to the citizens of Ukraine

<sup>18</sup> Resolution of the Sloviansk City Council [“On Granting the Non-Recurrent Monetary Assistance to the Citizens Owning Apartments, Detached Houses \(Private Houses\) Destroyed as a Result of the Anti-Terrorist Operation in Sloviansk”](#) No. 1383 dd. 7 June 2019.

whose housing had been destroyed or damaged as a result of the hostilities. In May 2017, the draft Law of Ukraine “On Granting the Accommodation Aid to the Citizens of Ukraine Whose Housing Had Been Destroyed or Damaged as a Result of the Armed Aggression by the Aggressor State” (draft Law No. 6472) was submitted to the Verkhovna Rada of Ukraine for consideration. In general, the initiative is good, but the question arises: why should the right to such assistance be given to the citizens of Ukraine only? Here we should consider Part 3 of Article 21 of the Code of Civil Protection of Ukraine, which states that foreigners and stateless individuals residing in Ukraine on a legal basis shall enjoy the same rights as the citizens of Ukraine in case of an emergency, including the right to social protection and compensation for the damages inflicted upon their life, health, and property in accordance with law.

**Ukraine’s experience in the area of social protection of those affected by emergencies (granting monetary assistance):**

*Let us consider Ukraine’s experience in the area of emergency response, for instance, social protection of those affected by the flood in western Ukraine on 23-27 July 2008 due to the heavy rain in Vinnytsia, Ivano-Frankivsk, Zakarpattia, Ternopil, and Chernivtsi regions.*

*Those tragic events climaxed on 23-27 July, and it was resolved on 28 July to allocate UAH 145 million from the state budget contingency fund for the urgent mitigation actions, including granting monetary assistance to the families of the deceased and owners of the houses that had been damaged or completely destroyed<sup>19</sup>.*

*As for the monetary assistance to the victims who had suffered material damage as a result of destruction of their housing, the amount of the assistance varied subject to the circumstances, including the category of damage. The biggest monetary assistance was paid to those whose housing had been completely destroyed. A separate category was the families who had to leave their housing temporarily for the period of major repairs. The smallest monetary assistance was granted to the families whose housing had suffered minor damage. The assistance was*

*paid via the social protection authorities, the Ukrainian State Enterprise of Posts “Ukrposhta” and offices of Oschadbank based on the lists drawn up by the district state administrations (city executive committees). In October the same year, the Vinnytsia, Ivano-Frankivsk, and Chernivtsi Regional State Administrations were allocated additional funds from the state budget contingency fund to pay the assistance to the affected families<sup>20</sup>.*

*Moreover, in order to eliminate consequences* Submission of draft laws on amending the Law on the State Budget of Ukraine to the Verkhovna Rada of Ukraine is not an exclusive right of the Cabinet of Ministers of Ukraine. Any entities with the right of legislative initiative determined in Part 1 of Article 93 of the Constitution of Ukraine (Decision of the Constitutional Court of Ukraine No. 1-пн dd. 13 January 2009 [Case No. 1-5/2009 regarding the right of legislative initiative as regards amendments to the Law on the State Budget of Ukraine]), for example, the President of Ukraine, members of the Parliament of Ukraine, and the Cabinet of Ministers of Ukraine, are entitled to submit draft laws on amending the Law on the State Budget of Ukraine to the Verkhovna Rada of Ukraine.

*of the above natural disaster, in August of the same year, the subvention was granted from the state budget to the regional budgets of Vinnytsia, Ivano-Frankivsk, Zakarpattia, Lviv, Ternopil, and Chernivtsi Regions and the city budget of Chernivtsi, in the total amount of UAH 2,000,320. The corresponding amendments to the Law of Ukraine “On the State Budget of Ukraine in 2008” were made for that purpose<sup>21</sup>.*

*The subvention was used to pay a part of the assistance to the affected family<sup>22</sup>, namely to construct and purchase the housing, to carry out*

19 Decree of the Cabinet of Ministers of Ukraine “On Allocating the Funds for the Urgent Actions to Mitigate the Consequences of the Natural Disaster on 23-27 July 2008” No. 1008-p dd. 28 July 2008.

20 Decree of the Cabinet of Ministers of Ukraine “On Allocating the Additional Funds to Pay a Part of the Aid to the Families Affected by the Natural Disaster on 23-27 July 2008” No. 1389-p d. 22 October 2008.

21 Law of Ukraine “On Amending the Law of Ukraine “On the State Budget of Ukraine in 2008 and On Amending Certain Legislative Acts of Ukraine” No. 431 d. 31 July 2008.

22 Resolution of the Cabinet of Ministers of Ukraine “On Approving the Procedure for Using in 2008 the Subventions from the State Budget to the Regional Budgets of Vinnytsia, Ivano-Frankivsk, Zakarpattia, Lviv, Ternopil and Chernivtsi Regions, City Budget of Chernivtsi for Mitigation of Consequences of the Natural Disaster on 23-27 July 2008” No. 689 dd. 2 August 2008.

major and minor repairs of the damaged housing, to compensate for the destroyed household premises, lost property and agricultural products in gardens and adjacent sites, to improve health of the children from the affected families, to recover the infrastructural facilities, and to grant aid to the victims. It should be noted that the assistance was granted in several stages (advance amount, last advance amount, and final amount of the assistance), and its amount depended on the category of the victim. The final amount of the assistance was paid based on the average cost of construction of housing (Clause 15 of Resolution No. 689). The lists of citizens eligible for the final amount of the assistance were drawn up based on the reports on examination carried out in accordance with the special Procedure<sup>23</sup>. The Procedure was adopted in a week after the start of the natural disaster, which showed that the response to the natural emergency was prompt and of high quality. Thus, the first category included the families whose house (apartment) had been destroyed or could not be reconstructed, or the families who had to leave their house (apartment) as it was located in the increased-risk area for example, it could be flooded soon or damaged by a land slide). The second category included the families whose house (apartment) needed major repairs or was severely damaged (had the floor, window, and door frames, internal gas, water and electric supply systems unfit for operation, or had the external or internal finishing scaling off). The third category of the victims were the families whose damaged house (apartment) needed minor repairs. Moreover, the given amounts were

reduced by the amount of the assistance received by the victim in accordance with the Decree of the Cabinet of Ministers of Ukraine<sup>23</sup>.

In addition, the assistance paid for destroyed or damaged household buildings and summer houses (UAH 50 per square meter of the total area of each building), lost agricultural products (UAH 50 per one hundred square meters), killed cattle (UAH 2,000 per animal), young cattle (UAH 800 per animal), pigs (UAH 500 per animal), horses (UAH 2,000 per animal), sheep and goats (UAH 300 per animal) and bees (UAH 200 per bee colony). The agricultural enterprises and research institutions were partly compensated for their actual plant losses calculated in accordance with the Methodology for Assessing Damage Due to Industrial and Natural Emergencies<sup>24</sup>, yet no more than UAH 1,500 per hectare.

The above provisions of the effective laws of Ukraine are a very good example of how the State responds to the emergency, mitigates its consequences, and ensures social protection of the affected population. The present-day emergency in Ukraine is of equivalent legal nature, but has its own specific aspects; however, the response thereto in terms of social protection of the victim must be adapted to the circumstances of the armed conflict. Individual cases of assistance or compensation for the destroyed property do exist at the local level, but they are inconsistent and have no uniform approach or financing from the state budget.

23 Resolution of the Cabinet of Ministers of Ukraine "[On Approving the Procedure for Examining the Property Damaged as a Result of the Natural Disaster on 23-27 July 2008](#)" No. 688 dd. 30 July 2008.

24 Resolution of the Cabinet of Ministers "[On Approving the Methodology for Assessing Damage Due to Industrial and Natural Emergencies](#)" No. 175 dd. 15 February 2002.

## 2.2. Provision of accommodation and monetary compensation for housing unfit for living

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The Code of Civil Protection of Ukraine, namely Article 86, establishes the procedure for the provision of accommodation or paying monetary compensation for the housing destroyed or damaged as a result of an emergency. Thus, the law offers options to resolve the accommodation issue for those suffering pecuniary damages as a result of destruction or damage to their housing. However, it should be emphasised that this Article covers the cases when the housing has become unfit for living (Part 1 of Article 86 of the Code of Civil Protection of Ukraine). Yet according to the case law analysis, the claimants in this category of cases try to be compensated for their damaged housing even when it has suffered minor damage, for instance, minor damage to the roof, broken windows, or glass.

Nevertheless, given the above clauses of the Code of Civil Protection of Ukraine, it can be concluded that the right to accommodation or monetary compensation is granted only to victims whose housing has become unfit for living. So the challenge is to establish a procedure for identifying such housing as unfit for living. In this case, an obsolete but effective Procedure for Examining the Condition of Residential Buildings to Establish Compliance with the Sanitary and Technical Requirements and for Acknowledgement Residential Houses and Residential Premises as Unfit for Living No. 189 approved by the Council of Ministers of the Ukrainian SSR on 26 April 1984 might be used. For instance, the Executive Committee of the Popasna City Council adopted a decision<sup>25</sup> that acknowledged a block of apartments as a failing building in accordance with the Procedure. It must be noted that the Procedure provides for engaging experts from design and research institutions in the examination of housing when necessary, which might be a solution in the most complicated situations requiring special knowledge and/or special equipment.

Another noteworthy issue regarding the provision of accommodation or monetary compensation is

the requirement of Article 86 of the Code of Civil Protection of Ukraine that requires that victims voluntarily transfer their damaged or destroyed property to the local state administration and municipal authorities. It appears to be regarding the termination of/withdrawal from the title as prescribed by Article 347 of the Civil Code of Ukraine (CC of Ukraine). Pursuant to that Article, upon withdrawal from the title to the property, the rights to which are subject to state registration, the title thereto shall be terminated upon making the corresponding entry into the state registration based on the applicant's statement.

The property, the rights to which are subject to state registration, includes real property (Article 182 of the CC of Ukraine), for example, residential premises, including apartments. State registration of rights to real property is carried out in accordance with the Law of Ukraine "On State Registration of Property Rights to Real Property and Encumbrances Thereof". Information on termination of the title to real property is set out in the State Register of Property Rights and may be furnished in hard copy by the authorised official of the front office (administrative service centres)<sup>26</sup>, which can also serve as evidence of the transfer of the destroyed property to the municipal authorities.

In the case of withdrawal from the title to the residential house, the integrity of the land plot and the real property item located thereon must be taken into account under the CC of Ukraine and the Land Code of Ukraine (LC of Ukraine). Withdrawal from the title to the residential house, building or structure owned or used by another person entails withdrawal from the title or the right to use the land plot where the item is located.

At the same time, voluntary withdrawal from the title to the land plot is also provided for by the effective laws of Ukraine and is one of the grounds for terminating the title thereto. The procedure for such

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25 Resolution of the Executive Committee of the Popasna City Council "[On Acknowledgement the Block of Apartments a Failing Building](#)" No. 61 dd. 30 August 2018.

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26 Resolution of the Cabinet of Ministers of Ukraine "[On the State Registration of Property Rights to Real Property and Encumbrances Thereof](#)" No. 1127 dd. 25 December 2015.

withdrawal is established by Article 142 of the LC of Ukraine. Thus, the title to the land plot is terminated upon the land owner's voluntary withdrawal from the title thereto for the benefit of the state or the territorial community based on the land owner's application submitted to the corresponding authority. The signature in the application shall be certified by the notary or municipal authority. The title to the land plot is terminated upon the land owner's voluntary withdrawal for the benefit of the state or the territorial community based on the land owner's application submitted to the corresponding authority. If they agree to accept the title to the land plot, the executive authorities or municipal authorities enter into an agreement that transfers the title to the land plot. The agreement that transfers the title to the land plot shall be certified by the notary. The council or the territorial land resource authority acting on behalf of the state adopts a decision and gives its consent to accepting the land plot into the municipal or state ownership (see [the Explanatory Statement](#) by the central executive authority in charge of implementation of the national land relations policy, April 2016).

For instance, the Popasna City Council<sup>27</sup> (Luhansk region) uses this mechanism in pursuance of Article 86 of the Code of Civil Protection of Ukraine, but only for the claims of victims to be compensated for pecuniary damages in court. However, there is an opinion that this issue needs to be regulated by laws, for instance, by adopting a separate resolution of the Cabinet of Ministers of Ukraine providing for the procedure for the voluntary transfer of the housing damaged or destroyed as a result of an emergency by the victim.

Another case of implementation of Article 86 of the Code of Civil Protection of Ukraine is the Lysychansk City Council, which, on receiving the subvention from the regional budget, adopted Resolution No. 9/142<sup>28</sup> dated 28 April 2016 on Approving the Procedure for Using the Subvention from the Regional Budget to the Local Budget of Lysychansk for Paying the Monetary Compensation to the Citizens Losing Their Housing as a Result of the Destruction of Building

27 Resolution of the Popasna City Council ["On Approval of Acceptance of the Land Plot into Municipal Ownership by the Territorial Community of Popasna due to the Voluntary Withdrawal from the Title"](#) No. 90/19 dd. 16 November 2017.

28 Resolution of the Lysychansk City Council ["On Using the Other Subvention from the Regional Budget to the Local Budget of Lysychansk for Paying the Monetary compensation to the Citizens Losing Their Housing as a Result of the Destruction of Building No. 17 at Zhovtnevoi Revoliutsii Quarter in Lysychansk in 2014"](#) No. 9/142 dd. 28 April 2016.

No. 17 at Zhovtnevoi Revoliutsii (Skhidnyi) Quarter in Lysychansk in 2014 (as amended)<sup>29</sup>.

This Procedure establishes the mechanism for using the subvention for paying the monetary compensation to the citizens owning the housing in the above block of apartments destroyed in 2014. Where the housing was owned by several people, the payment was made to one person designated by the co-owners in the power of attorney certified by the notary.

The monetary compensation was paid based on the average cost of construction of housing as of the time of the destruction in accordance with the Order of the Ministry of Regional Development, Construction and Housing and Utilities of Ukraine No. 60 dd. 26 February 2014<sup>30</sup> (the cost of construction of housing is increased annually), taking into account the total area of the apartment, for example, UAH 5,261 per square meter. As of the date of the resolution on paying the monetary compensation, the mean annual indicator of the average cost of construction of housing in Luhansk region was UAH 8,186 per square meter<sup>31</sup>, so the cost has increased by almost 56% in two years.

The lists of citizens to receive the monetary compensation were drawn up by the Lysychansk City Council Department for Implementation of the Housing and Utility Policy and approved by the resolution of the Executive Committee of the Lysychansk City Council. An example of such resolutions can be Resolution of the Executive Committee of the Lysychansk City Council No. 182 dd. 29 April 2016<sup>32</sup>. Next, the approved lists were sent to Oschadbank for the card accounts to be opened for the people receiving the monetary compensation. The funds were transferred to the payees of the

29 Resolution of the Lysychansk City Council ["On Amending the Procedure for Using the Other Subvention from the Regional Budget to the Local Budget of Lysychansk for Paying the monetary compensation to the Citizens Losing Their Housing as a Result of the Destruction of Building No. 17 at Zhovtnevoi Revoliutsii Quarter in Lysychansk"](#) No. 13/213 dd. 30 August 2016.

30 Order of the Ministry of Regional Development, Construction, Housing and Utilities of Ukraine ["On the Forecast Mean Annual Indicators of the Average Cost of Construction of Housing by the Regions of Ukraine in 2014"](#) No. 60 dd. 26 February 2014 (ceased to be in force).

31 Order of the Ministry of Regional Development, Construction, Housing and Utilities of Ukraine ["On the Forecast Mean Annual Indicators of the Average Cost of Construction of Housing by the Regions of Ukraine in 2016"](#) No. 252 dd. 2 October 2015 (ceased to be in force).

32 Resolution of the Executive Committee of the Lysychansk City Council ["On Approving the List of Citizens Who Lost Their Housing in 2014 as a Result of the Collapse of Block of Apartments No. 17 at Zhovtnevoi Revoliutsii Quarter in Lysychansk for the Purposes of the Monetary compensation"](#) No. 182 dd. 29 April 2016.

monetary compensation after they had furnished the following documents:

- Application for the monetary compensation
- Identification document (passport) or a photocopy thereof
- Citizen's identification number and a photocopy thereof
- Photocopy of the document of title to the property (apartment)
- Certificate of termination of the title due to the destruction of housing
- Consent to the applicant's personal data processing
- Notarised powers of attorney granted by the owners of the housing authorising to receive the monetary compensation for the lost property (apartment), make any amendments to the state registers, and terminate the title

165 people, including 57 people from adjacent buildings No. 13 and 16, were evacuated urgently as a result of the collapse of the block of apartments consisting of 108 apartments damaged by fire and military weapons<sup>33</sup>.

All the residents of 108 apartments within building No. 17 at Zhovtnevoi Revoliutsii (Skhidnyi) Quarter lost their housing. The owners of 89 apartments were paid the compensation for the lost housing, and the other residents living in the municipal apartments were given permits to reside in the premises allocated from the housing fund and repaired at the expense of the local budget. The resolutions were adopted at the meetings of the Executive Committee of the Lysychansk City Council<sup>34</sup>.

In fact, many residents of the Donetsk and Luhansk regions have lost their housing. Yet few of them received any aid from the authorities. The issue of payment of the monetary compensation or provision of accommodation as regards the other fully destroyed houses in Lysychansk remains unsettled as allocation of funds to all the city residents affected by the armed conflict is beyond the capacities of the

local or regional budgets alone. In the above case of the collapse of apartments in building No. 17, the Luhansk Regional Military and Civil Administration, the Lysychansk City Council and its Executive Committee showed how the local executive and self-governance authorities could respond to the regional emergency<sup>33</sup> by means of the regional budget.

Judging by its scope, however, the actual emergency in 2014 could be considered a national-level emergency.

It should be noted that this case clearly refers to an officially recognised emergency. Information on this and several other emergencies (for example, in Mariupol, Donetsk region, where 55 blocks of apartments and 24 detached houses were damaged on 24 January 2015 as a result of the shelling of the residential district, and in Svatove, Luhansk region, where 581 residential buildings and 59 blocks of apartment were damaged, and one detached house was completely destroyed as a result of a fire followed by an explosion and a dispersion of ammunition fragments), which resulted in damage to and destruction of the housing as a result of the armed conflict, can be found on the official website of the SES of Ukraine<sup>30</sup>. Yet, classification of all the other shelling, especially during the period until the emergency regime was imposed in the Donetsk and Luhansk regions (January 2015)<sup>5</sup>, remains undecided as there is no information in open sources. For instance, according to the SES of Ukraine, the total quantity of emergencies did not change in comparison with 2013. The biggest number of casualties as a result of the emergencies (49 people) was registered in Donetsk region (most of whom died as a result of the fires [explosions] at the coal mines and transport accidents)<sup>35</sup>.

Therefore, the above examples of the implementation of certain clauses in the civil protection laws during the current armed conflict show the general nature of the laws existing in this area. It also shows the need to adopt special laws or regulations that would take into account all the aspects of the emergency existing in Ukraine and to unify the approach to emergency response by the local and central authorities.

33 [Information and Analytical Guide on the Emergencies in Ukraine in 2015](#) (published on the official website of the State Emergency Service of Ukraine on 31 December 2015, but the emergency itself took place in 2014).

34 Information from the official website of the Lysychansk City Council, Luhansk Region Recovery Section (published on 8 September 2017).

35 [Information and Analytical Guide on the Emergencies in Ukraine in 2014](#) (published on the official website of the State Emergency Service of Ukraine on 31 December 2014).

## 2.3. Humanitarian assistance

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Housing damaged as a result of the emergency, including the armed conflict, may be recovered at the expense of the humanitarian assistance, which, in turn, is one of the types of social protection of the affected population. It should be noted that the provisions of the Code of Civil Protection of Ukraine suggest that one civil protection measure does not always deprive the victim from the right to apply to the corresponding government and municipal authorities for other types of assistance. It depends on the kind of damage inflicted upon the victim, such as moral, physical, or pecuniary damage.

Therefore, a victim may be granted psychological or humanitarian assistance, such as a food package, or even non-recurrent monetary assistance from the local authorities, which does not deprive the victim of the right to accommodation or monetary compensation if the housing is unfit for living as a result of the emergency.

Here we should consider the Decision of the Donetsk Regional Court of Appeal<sup>36</sup> stating that humanitarian assistance is an element of compensation for damage by the state. This statement does not mean that the victims who had lost their housing but received some humanitarian aid, for instance, from the humanitarian organisation, are deprived of the right to monetary compensation or accommodation. In this decision, the fact of receiving humanitarian aid from the international organisation, People in Need, and local authorities in the form of the construction materials, is important for the hearing of the case. It confirms that the damaged housing does not have to be transferred to the local state administration or municipal authority in pursuance of Article 86 of the Code of Civil Protection of Ukraine, which is a precondition for receiving accommodation or monetary compensation.

As for social protection of the people who have suffered quantifiable damage as a result of the damage to or total destruction of their housing, this issue should be resolved with account of the extent of the damage/destruction, fitness or unfitness for living, and expediency of recovery thereof. For instance, the response to total destruction and to minor damage must be completely different. Thus, upon destruction of housing that results in it becoming unfit for living, there are clearly regulated legislative options of social protection (Article 86 of the Code of Civil Protection of Ukraine): provision of accommodation to the victim or payment of the monetary compensation. In other words, these measures are mutually exclusive as it is expressly stated in the law that the victims who have been paid the monetary compensation for the destroyed or damaged apartment (residential house) are not entitled to accommodation by the state.

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<sup>36</sup> Decision of the Donetsk Region Court of Appeal dated 12 September 2017 ([No. 242/519/17](#)).



## 2.4. Other types of assistance

It should be noted that the Code of Civil Protection does not restrict social protection of the victim to the exhaustive list of such measures, so in practice, the victims may expect other types of assistance, for instance, non-recurrent assistance to those affected by the emergencies who have stayed at their place of residence. The procedure for granting and determining the amount of such assistance was approved by the Cabinet of Ministers of Ukraine on 18 December 2013<sup>37</sup>. The right to such non-recurrent assistance is given to the people whose residential houses (apartments) have been damaged as a result of an emergency or the works performed to eliminate its consequences. This Procedure provides for receiving a certificate of assigning the status of the person affected by the emergency. In this case, such certificates shall be issued by the municipal authorities based on the approved lists of the affected people. The decision to grant non-recurrent assistance is made by local executive authorities based on the submitted application, the certificate of assigning the status of the affected person, a photocopy of the passport and identification number, with a record of the results of the examination of the damaged residential house (apartment) set out in the corresponding report.

The amount of the monetary assistance to the victim is 3 to 15 subsistence rates for an able-bodied person. For instance, starting from 1 January 2019, a subsistence rate per able-bodied person is UAH 1,912<sup>38</sup>. Therefore, the amount of such assistance before 1 July 2019 (UAH 2,007 from 1 July, UAH 2,012 from 1 December) may vary from UAH 5,763 to UAH 28,815.

The local authorities are governed by this regulation, but not within the framework of the social protection of those affected by the armed conflict (social/military emergency). An example can be the resolution adopted by the Chornomorsk City Council in the Odesa region approving the list of the residents of Chornomorsk affected by the regional natural

emergency resulting from the land slide<sup>39</sup>. The non-recurrent monetary assistance to the victims was paid at the expense of the contingency fund of the local budget. The assistance amounted to UAH 26,430 per person provided that the person was the sole owner of the damaged real property. If the damaged real property was jointly owned by several people, the monetary assistance was allocated in proportion to their shares in the title to the real property item.

Alongside with the general civil protection laws, adoption of special laws or regulations that would govern the issue of monetary assistance or compensation in more detail would be the best solution for issues in this area, especially if all aspects of the emergency existing in Ukraine were taken into consideration, including:

- Long-term nature of the hostilities, as a result of which the number of the victims who have suffered pecuniary damage or have lost their housing keeps increasing (moreover, it affects financing of social protection of the victims, namely allocation of funds from the contingency fund formed for unexpected expenditures of irregular nature that could not be foreseen in the draft budget)<sup>40</sup>
- Very high level of the potential threat of pecuniary damage suffered repeatedly (for residents of the settlements along the frontline, upon repeated damaged to the housing, which does not happen in other types of emergencies [natural, industrial ones, e.g. destruction of housing as a result of a hurricane or flood etc.] )
- Change to the official status of the military operation at different stages of the armed conflict and dependence of payment of compensation on these conditions, which results in issues in administration of the law associated with payment of compensation (ATO from April 2014 to April 2018 and JFO thereafter; the national emergency regime in

37 Resolution of the Cabinet of Ministers of Ukraine "[On Approving the Procedure for Granting and Determining the Amount of the Monetary Assistance to Those Affected by the Emergencies Who Have Stayed at Their Place of Residence](#)" No. 947 dd. 18 December 2013.

38 Law of Ukraine "[On the State Budget of Ukraine in 2019](#)" No. 2629 dd. 23 November 2018.

39 Resolution of the Chornomorsk City Council "[On Approving the List of the Residents of Chornomorsk in Odesa Region Affected by the Regional Natural Emergency Resulting from the Land Slide, and on Granting the Non-recurrent Monetary Assistance Thereto](#)" No. 343-VII dd. 8 June 2018.

40 Resolution of the Cabinet of Ministers of Ukraine "[On Approving the Procedure for Using the Budget Contingency Fund](#)" No. 415 dd. 29 March 2002.

Donetsk and Luhansk regions was imposed in January 2015 only, so the adopted regulation must provide for the compensatory measures not only for those affected by the ATO);

- Great numbers of the victims, including people who have suffered pecuniary damages as a result of the damage to or total destruction of the housing, when a question of its unfitness for living arises. In this regard, it would be reasonable to legislatively prescribe the categories of the people affected by the armed conflict in eastern Ukraine (for instance, like in the Law of Ukraine “On the Status and Social Protection of the Citizens Affected by the Chornobyl Disaster”). Moreover, the mechanism for paying the monetary assistance to the victims as well as compensation for lost property (for example, completely destroyed, unfit for living, or non-recoverable) needs to be established since the general clauses of the Code of Civil Protection of Ukraine and other civil protection regulations fail to answer many questions as to the implementation of certain clauses thereof in different cases: What claims can a victim put forward if their housing has different degrees/categories of damage, is fit or unfit for living, can or cannot be recovered?

## Conclusions:

1. The residents of Donetsk and Luhansk regions whose housing has been damaged or destroyed as a result of the armed conflict are considered to be affected by the emergency and require a special status as an affected person (victim) as well as are entitled to benefit from social protection.
2. According to the national laws of Ukraine, provision of monetary assistance, provision of housing and monetary compensation to the people whose housing has been damaged or destroyed as a result of the armed conflict in eastern Ukraine are measures of social protection of the people affected by the emergency of social and military character. Emergency response measures and social protection of the victims are within the competence of the corresponding government and municipal authorities.
3. Policies of the local state administration and municipal authorities regarding monetary assistance or compensation to those affected by the armed conflict are fragmented and have no unified approach to the adequate measures taken to ensure social protection of those affected by the emergency.
4. The central executive authorities with the corresponding powers should take measures to ensure social protection of those affected by the national emergency (for instance, by adopting a special law or regulation on granting aid, monetary compensation, and provision of housing to the victims, by including such expenditures into the state budget through the allocation of subventions from the state budget, etc.).

### 3. Compensation for quantifiable damages to the people affected by the armed conflict

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According to the Code of Civil Protection of Ukraine (Article 85), quantifiable damages to those affected by emergencies shall be compensated as prescribed by the law. It might mean the CC of Ukraine regulating the issues of compensation for damages by the guilty party. There is no special law of Ukraine (but several draft laws on the compensation for damages inflicted upon housing of the population as a result of the ATO in pursuance of this article of the CC of Ukraine, for example, draft laws No. 6041<sup>41</sup> and No. 4301<sup>42</sup>) that would establish the procedure for compensating for quantifiable damages to those affected by the armed conflict. Neither of the above draft laws is likely to be adopted, at least, in the immediate future as one of them was rejected in 2016, and the second one was returned for follow-up revision more than a year ago, in March 2018.

In fact, this issue is regulated in Ukraine by the special Resolution of the Cabinet of Ministers of Ukraine “On the Procedure for Compensating for Damage to the People Affected by the Emergencies”<sup>43</sup>, which was adopted in 1992 in pursuance of the Law of Ukraine “On the State of Emergency” dd. 26 June 1992<sup>44</sup>, but it is not as easy as it sounds.

First of all, the emergency regime<sup>6</sup>, rather than the state of emergency (which is a special legal order imposed by the Decree of the President of Ukraine and approved by the Verkhovna Rada of Ukraine), was imposed in Ukraine starting from January 2015.

The state of emergency may be imposed for up to 30 days countrywide or for up to 60 days in certain regions. Therefore, it is unlikely that this Resolution can be used as a tool for legal regulation of the

emergency regime rather than the legal order of the state of emergency.

Secondly, even if it was possible, application of the Resolution of the Cabinet of Ministers of Ukraine as a subordinate law obviously contradicts Article 85 of the Code of Civil Protection of Ukraine, stating that compensation for quantifiable damage is regulated by the law (rather than the Resolution of the Cabinet of Ministers of Ukraine as a delegated act).

In October 2014, the Cabinet of Ministers of Ukraine approved the Action Plan for Recovery of the Damaged (Destroyed) Social Infrastructure Facilities, Housing and Essential Service Systems within the Territory of Donetsk and Luhansk Regions<sup>45</sup>. According to this document, in October 2014 the Ministry of Regional Development, Construction, Housing and Utilities, the Ministry of Social Policy, the Ministry of Economic Development, the Ministry of Justice and the Ministry of Finance were to prepare the draft regulation “On Approving the Procedure for Granting Monetary Assistance and Compensation for Damage to the People Affected by the Anti-Terrorist Operation in Donetsk and Luhansk Regions” and furnish it to the Cabinet of Ministers of Ukraine for consideration. It is yet to be done.

The need for the state to provide social protection measures to this category of the victims is growing more urgent with each day. Payment of monetary assistance or any other compensatory allowances would be the main step on the way of overcoming the humanitarian consequences of this long-term conflict, namely resolution of the housing issues of the victims.

The victims who have suffered considerable quantifiable damage due to the damage to or destruction of their housing try to defend their rights in court as there is no sustainable and effective **extrajudicial** mechanism for obtaining financial

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41 The draft Law of Ukraine “[On Compensating for the Damage Inflicted upon the Citizens by the Terrorist Attack and as a Result of the Anti-Terrorist Operation](#)” submitted to the Verkhovna Rada in February 2017 (returned for follow-up revision).

42 Draft Law of Ukraine “[On Compensating for the Damage to the Residents’ Housing as a Result of the Anti-Terrorist Operation](#)”, submitted to the Verkhovna Rada in March 2016 (rejected).

43 Resolution of the Cabinet of Ministers of Ukraine “[On the Procedure for Compensating for Damage to Those Affected by the Emergencies](#)” No. 562 dd. 5 October 1992.

44 Now, it is Law of Ukraine “[On the Legal Order of the State of Emergency](#)” No. 1550 dd. 16 March 2000.

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45 Decree of the Cabinet of Ministers of Ukraine “[On Approving the Action Plan for Organising Recovery of the Damaged \(Destroyed\) Social Infrastructure Facilities, Housing and Essential Service Systems within the Territory of Donetsk and Luhansk Regions](#)” No. 1002-p dd. 16 October 2014.

support from the state. Anyone may go to court to defend their property right, namely to claim compensation for property damage, for example, seek **legal redress** to defend the violated right, which is not an efficient and adequate tool for defence of the violated right in some cases.

Almost from the very start of the armed conflict until the present, the civil mechanism for compensation for the damages resulting from the crime such as terrorist attack has been used. There is good reason for that as in this case, the emergency resulted from a hazardous social or military event, which, in turn, had been caused by the illegal actions of unidentified people, which is confirmed by the instituted criminal proceedings based on the damage to/destruction of the housing as a result of terrorist attack.

The effective laws provide for possible compensation for the damage resulting from the terrorist attack at the expense of the state budget<sup>46</sup> provided however that the amount of such compensation is thereafter collected from the people guilty of the damages, as prescribed by the law. This clause is fully compliant with the general grounds of liability for damages, namely Article 1166 of the CC of Ukraine, stating that the damages inflicted to the property of an individual or a legal entity shall be fully compensated for by guilty person.

Obviously, in addition to the damage itself, the general preconditions for civil liability are the illegal nature of the action (or omission) of the person inflicting the damage, the cause-and-effect relation between the action and the damage, as well as the guilt of the person inflicting the damage. Even if such elements as damage (1), illegal nature of the action (2), and cause-and-effect relation (3) are proven during the litigation, the guilt (4) of the person cannot be established. It is explained by the special nature of the emergency in eastern Ukraine: the hostilities marked by continuous and chaotic shelling, and consequences thereof in the form of damage to and destruction of housing are a common thing and cannot be investigated separately (and sometimes even recorded) as criminal proceedings.

Moreover, court verdicts within criminal proceedings make it difficult to prove cause-and-effect relations between the criminal actions (a terrorist attack) and the inflicted damage (damage to or destruction of the residential house). When answering whether such actions have taken place, and whether they

have been taken by the specific person, the outcome of the criminal proceedings (court verdict or ruling on terminating the criminal proceedings and releasing the person from criminal liability) is obligatory for the court hearing the case of legal consequences of the action or omission<sup>47</sup>.

The damage resulting from a criminal offence may also be collected by the court upon consideration of the civil claim within the criminal proceedings<sup>48</sup>. However, when the case is heard within the criminal proceedings, the victim may file a civil claim against the suspect or the accused, but this approach is also not very feasible under the conditions of an armed conflict. During hostilities, it is very difficult to establish the party to the conflict that fired a shot, let alone the person or persons who fired that shot (or at least to present such a suspicion). These circumstances will result in the termination of the instituted criminal proceedings due to the lack of elements of the crime, namely the perpetrator of the crime, for example, the person who committed the crime.

In any case, this civil mechanism does not appear to be effective enough, both at the stage of the court decision, and the later enforcement thereof. Even if one insists that the damage resulting from individual terrorist attacks shall be compensated for by the state where the perpetrator of the crime (their guilt) has not been established, the issue of practical implementation thereof remains unsettled.

There is currently no special law that would regulate the procedure for compensating the damage resulting from such criminal offence as a terrorist attack at the expense of the state budget. Therefore, these challenges are an obstacle in defending the property right within the civil proceedings.

It should also be noted that where there is a situation such as an armed conflict, an emergency may also result from hazardous events that can be caused by illegal actions or omission by certain persons, such as officials of the government authorities or municipal authorities. In these cases, there may be all the elements of the civil mechanism for compensating for the damage resulting from the illegal actions by the public officers. A good example can be the situation when, due to their illegal action, mostly in the form of omission, the official has failed to discharge their powers in responding to a certain hazardous event (forest fire, natural disaster, etc.), and such omission

46 Law of Ukraine ["On the Fight against Terrorism"](#) No. 638-IV dd. 20 March 2003.

47 [Civil Procedural Code of Ukraine](#) (Part 6 of Article 82).

48 [Criminal Procedural Code of Ukraine](#) (Article 127).

has resulted in an emergency, i.e., victims who have suffered moral, physical, or quantifiable damage.

Special attention should be paid to cases when there are major hazard facilities, including during armed conflict (explosive and inflammable substances), which are deemed to be under real threat of an accident and/or creating an industrial or natural emergency. In such cases, an element of guilt in the civil compensation mechanism can be absent because, according to the laws of Ukraine<sup>2</sup>, the damage inflicted by the increased hazard source shall be compensated by the person who owns the vehicle, machinery, or other facility, the use, storage, or maintenance of which creates a major hazard, on the corresponding legal grounds (title, another property right, independent work contract, lease agreement etc.). The person carrying out the activity that is the source of a major hazard shall be liable for the damage unless he or she proves that the damage was inflicted as a result of an insuperable force or the criminal intent of the victim (“general intent”).

Given the above aspects of application of the civil mechanism for compensation for damage resulting from armed conflict in eastern Ukraine, it can be concluded that the existing judicial mechanism for defending the property rights of people whose housing has been damaged or destroyed as a result of the armed conflict is not an efficient remedy.

In this regard, there is the pressing matter of the use of other **judicial** and **out-of-court** remedies for defending the property rights of this category of the victims, especially given the fact that the ATO was officially completed in April 2018<sup>49</sup>, but the people living in Donetsk and Luhansk regions keep suffering considerable damages due to damage or total destruction of their property. An efficient remedy might be filing a claim to the administrative court for receiving the monetary assistance or compensation as the person by the emergency.

The relevance of the defence of rights violated as a result of the armed conflict in eastern Ukraine within administrative judicial proceedings is preconditioned by the nature of the administrative court itself as an administrative justice authority. Thus, unlike in civil

court, the administrative court shall not only resolve disputes, but also guarantee efficient defence of the rights, freedoms, and interests of individuals as well as the rights and interests of legal entities from violations by public officers<sup>50</sup>. Therefore, this objective of administrative judicial proceedings gives many opportunities to the judicial defence of the rights of people suffering quantifiable or moral damages as a result of shelling. In particular, claimants may file a claim against various public officers and dispute their actions or omission resulting in damage to the private property, or actions and omission making it impossible to receive fair compensation for the damage.

## Conclusions:

1. The civil mechanism for protecting the property rights of the people affected by an armed conflict is not always an efficient remedy in court. The quantifiable damages, resulting from the destruction or damage of housing, have been caused by the actions of unidentified people who cannot be held liable within the instituted criminal proceedings based on the crimes, qualified as terrorist attacks.
2. Alternative remedies to the rights of the people suffering quantifiable damages as a result of the hostilities in eastern Ukraine should be considered, especially taking into account the fact that the situation has officially been declared as an emergency.

49 Decree of the President of Ukraine “[On the Resolution of the National Security and Defence Council of Ukraine dated 30 April 2018 “On the Large-Scale Anti-Terrorist Operation in Donetsk and Luhansk Regions”](#) No. 116/2018 dd. 30 April 2018; the Letters of the Security Service of Ukraine, National Security and Defence Council of Ukraine, Presidential Administration of Ukraine in Response to the Official Inquiries by DONBAS SOS NGO (published on [the official website](#) of the organisation on 25 July 2018).

50 [Code of Administrative Judicial Proceedings of Ukraine](#) (Part 1, Article 2).

# Recommendations

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## Recommendations by the Norwegian Refugee Council (NRC):

1. The legislative and executive authorities should, when adopting relevant laws and regulations/ resolutions on granting monetary assistance or monetary compensation to those affected by the armed conflict in eastern Ukraine:
  - Take into consideration the special aspects of the emergency in Donetsk and Luhansk regions since spring 2014, despite the fact that the emergency regime officially was imposed only in January 2015.
2. State and local executive authorities, as well as municipal authorities who have the corresponding powers in the area of social protection of those affected by the emergencies, should:
  - Assign people, whose housing has been damaged or destroyed as a result of the armed conflict in eastern Ukraine, the status of individuals affected by (victims of) the social or military emergency;
  - Take actions to introduce an effective and accessible administrative mechanism for granting monetary assistance and monetary compensation for property damaged or destroyed as a result of the armed conflict in eastern Ukraine;
  - Take actions to coordinate and improve their interaction with a view to introducing and implementing an efficient mechanism for the social protection of those affected by the emergency of the social or military character (adaptation of the laws to the conditions of the armed conflict, financing of actions taken to grant monetary assistance, or monetary compensation for the damaged or destroyed property, etc.).



This publication was produced with the assistance of the UN Refugee Agency (UNHCR). The contents of this publication are the sole responsibility of the NRC and should in no way be taken to reflect the views of the UN Refugee Agency.

