

Title: Destruction of the Homes of Citizens as a Driver of Conflict in the East of Ukraine

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Abstract:

The article studies problems relating to the payment of compensation for the destruction or damages caused to private homes as a result of the armed conflict in the East of Ukraine. The author maintains that the absence of an effective mechanism for compensating damages to property caused by shelling is one of the factors that continues to fuel the armed conflict in Ukraine. The main actors, institutions, and structural factors playing an important role in finding a solution to the problem are examined through this lens. The author analyzes the possibilities for compensation in the circumstances described, taking into account the balance between the political will of Ukrainian authorities, available financial resources and the involvement of all actors in finding a solution.

Background

Geopolitics has played a crucial role in the conflict in the East of Ukraine. Lying directly between Russia and Europe, Ukraine has an important geostrategic position. For a long time, it effectively acted as a buffer between Russia and the West — a situation that became unsustainable in the long term. The very first steps taken towards Ukraine's integration into an alliance with one of its neighbors inescapably led to conflict.

An American political scientist, Zbigniew Brzezinski, called Ukraine one of the most important geostrategic pivots in the world. Geopolitical pivots, according to his research, are the states whose importance is not derived from their power and motivation but rather from their sensitive location and the consequences of their potentially vulnerable condition for the behavior of geostrategic players.¹ Hence Ukraine's strong dependence on its geostrategic position.

As long as Ukraine continued to balance between the West and Russia, the situation remained largely neutral. However, the events that unfolded in late 2013 and early 2014, when Ukraine faced a geopolitical choice, became critical. On November 29, 2013, the former President of Ukraine Viktor Yanukovich announced the signature of an association agreement with the European Union. And yet, while already at the EU Summit in Vilnius where the Association Agreement was to be signed, Yanukovich had a last-minute change of heart², which signaled that Ukraine had switched alliances and decided to side with Russia as a strategic partner. In the aftermath of this key event — and as a result of the Revolution of Dignity — the regime of President Yanukovich fell from power and pro-European politicians took over. In response, Russia launched the annexation of Crimea and an armed intervention in Eastern Ukraine. To ensure the success of this maneuver, the local pro-Russian population — traditionally more strongly affiliated with Russia than with Europe — was used.

The ensuing conflict in the East of Ukraine between the Ukrainian Army and Russian armed groups in 2014 provoked a catastrophe. Its adverse consequences are difficult to both measure and understand. As a result of Russia's military offensive, in the period between April 2014 and the end of 2018 some 12 800 to 13 000 people lost their lives. The figures were published on Monday, January 21, 2019, by the UN Human Rights Monitoring Mission in Kyiv. According to the mission approximately 3 300 civilians in the Donbass region were killed, along with 4 000 Ukrainian Army soldiers and 5500 armed militants supported by Russia. Another 27 000 to 30 000 people were injured in the conflict.³

The large number of Ukrainian casualties is compounded by the difficulty of protecting private property in the unsettled region. A pivotal issue is the damage or destruction of buildings as a result of military action. According to the Report on the Human Rights Situation in Ukraine published by the Office of the United Nations High Commissioner for Human Rights as of 15

¹ Brzezinski Z. The Grand Chessboard: American Primacy and Its Geostrategic Imperatives. P.41 http://www.takeoverworld.info/Grand_Chessboard.pdf.

² Ukraine has not signed an Association Agreement with the EU // BBC Ukraine https://www.bbc.com/ukrainian/politics/2013/11/131129_ukraine_eu_assignment_ek.

³ "Donbas War Death Toll Rises up to Nearly 13,000 – UN Read More on UNIAN: <https://www.unian.info/war/10416549-donbas-war-death-toll-rises-up-to-nearly-13-000-un.html>," UNIAN, <https://www.unian.info/war/10416549-donbas-war-death-toll-rises-up-to-nearly-13-000-un.html>.

February 2019 more than 50 000 civilian homes on both sides of the contact line had sustained damage during the hostilities. Moreover, the homes of some 40 000 families living on both sides of the contact line are reportedly in urgent need of repair to protect inhabitants from low winter temperatures.⁴

Addressing the issue of the damage to and destruction of private homes is of the utmost priority and the Ukrainian government should decisively take ownership of this process. The government has failed to guarantee the security and protection of citizens against armed assault — one of the principal responsibilities of the State. Instead, the efforts to reconstruct and repair destroyed homes are fraught with challenges.

The difficulties can be illustrated by the case of Galina Petrova, a Ukrainian woman living in the conflict zone, on the side under the control of the Ukrainian government. Ms. Petrova's house was completely destroyed in an air strike in October 2014. She subsequently challenged the protracted communication with various government institutions in order to receive compensation for the loss of her home. She appealed to local and central authorities for compensation and filed numerous claims and applications with government bodies. Galina Petrova's case made it all the way up to the Supreme Court where her claims were summarily dismissed. For two years she asked for help, filing appeals with government bodies and courts alike. Her best efforts were to ultimately prove futile.

Ms. Petrova is not alone in having turned to the Ukrainian courts seeking to protect her rights. According to the Norwegian Refugee Council there are currently more than 100 lawsuits involving claims for compensation for damaged or destroyed homes pending in the court system. And yet, except for a handful of exceptions, none of the litigants has so far been successful in obtaining compensation from the government for its failure to protect citizens and their property.⁵

The parties who fail to receive compensation feel vulnerable and humiliated, making threats to escalate the conflict. As a result, although the reconstruction of homes was not the root cause of the conflict in the East of Ukraine, it has not become a major driver for its continuation. This is a striking example of how horizontal social inequality can lead to violence.

Why have destroyed homes become a driver for continued conflict?

Injustice. Citizens who have lost their homes as a result of the conflict in the East of Ukraine feel that the government is treating them unfairly in failing to effectively restore damaged homes or refusing to pay compensation for the losses suffered. However, can the government be held liable for making reparations? The question should be considered in greater detail.

⁴ "Report on the Human Rights Situation in Ukraine 16 November 2018 to 15 February 2019," Office of the United Nations High Commissioner for Human Rights, <https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019.pdf>.

⁵ "People in Eastern Ukraine Living without Housing and Compensation." NRC. <https://www.nrc.no/people-in-eastern-ukraine-living-without-housing-and-compensation>.

There was no special law on compensation for destroyed real property during the war in Ukraine. Despite this, there are general rules on making good damages suffered. It is important to recall that according to the Ukrainian government the events in the East of Ukraine were a counterterrorist operation. In Ukraine, questions relating to the fight against terrorism are governed by the Law on Combating Terrorism (LCT). According to Article 19 of the LCT the State has an obligation to compensate citizens for damages suffered as a result of a terrorist act from the State budget. The cited provision is clear and straightforward. If the matter were to be reviewed from a simplistic perspective, it would leap to the eye that any government does indeed have an obligation and responsibility to protect its citizens from foreign aggression and guarantee security to its citizens, along with the peaceful enjoyment of their property. Where the government fails to ensure effective protection against hostilities and citizens lose their homes as a result, it is under a legal obligation to provide compensation for the damages suffered. Where the government refuses to make good such damages, its citizens justifiably feel unfairly treated. They are often unable to build new homes on account of prohibitively high prices.

Therefore, anti-terrorist measures must be such as to infringe on human rights to the least possible degree. This understanding is reflected in the document *Terrorism, Human Rights, Counterterrorism*, published by the Office of the United Nations High Commissioner for Human Rights. In the publication, the UN mentions that Member States have resolved to take measures aimed at addressing the conditions that foster and promote the spread of terrorism, including disregard for the rule of law and human rights violations. The document goes on to outline and ensure that any measures taken to counter terrorism comply with the respective countries' obligations under international law, in particular human rights law, refugee law and international humanitarian law.⁶ The right to private property is also included on account of being protected by a number of international human rights conventions.

In other words, the desire of citizens to receive compensation for the destruction of their homes is thoroughly understandable and justified. It is thus to be expected that when the government fails to fulfil its obligations to its citizens, leaving them in a situation where they lack shelter and basic amenities, they would feel unfairly treated, demeaned and unsafe. In the context of the conflict in the East of Ukraine, this is a significant problem. The conflict has not been resolved and is still ongoing. Feelings of depression and anger stemming from the loss of a home tend to invite aggression and behaviour that poses a threat to society. A sense of having no physical security, which the loss of shelter can induce, may have a strongly negative impact on Ukrainians, leading them to oppose their national government and ultimately to violence. They may also become more inclined to support illegal pro-Russian military formations, further escalating the conflict. In other words, the problem of restoring destroyed homes or receiving compensation from the government is an important factor for building peace in the East of Ukraine.

⁶ "Human Rights, Terrorism and Counter-terrorism," 20, <https://www.ohchr.org/Documents/Publications/Factsheet32EN.pdf>.

Contentious areas

Services. The challenges relating to the reconstruction of damaged houses or compensation for their loss are grounded in the imperfect mechanism provided for in Ukrainian legislation. In other words, there is no effective administrative procedure that allows citizens to receive compensation in a timely manner. There are numerous bureaucratic hurdles and complex procedures that make it virtually impossible to successfully seek reparation. This means that most victims have no choice but to turn to the courts. However, to date only a handful of litigants have been able to successfully defend their claims in court, where the plaintiffs would typically be referred to the procedure for compensation stipulated by law. Even where court award compensations, judgment remain unenforced.⁷ This means that in Ukraine the government does, in principle, recognize its obligation to pay compensation for damages suffered a result of acts of terrorism. At the same time, the government and the Parliament have put in place a complicated administrative procedure, which *de facto* precludes citizens from obtaining compensation. Furthermore, the central government has taken steps to shift the liability for damages in the East of Ukraine to Russia.

Let us examine the problem more closely. As mentioned earlier, the Ukrainian government has described the military operation in the east of the country as anti-terrorist. In Ukraine, there is a law on combating terrorism according to which compensation for damages caused to citizens by an act of terrorism is to be paid from the central government budget. At the next stage, the government may choose to file a claim against the perpetrators of violence seeking reimbursement of the compensation paid. In 2018, the so-called Law on Deoccupation came into force according to which liability for any moral and material damages caused to Ukraine and its citizens rests with the Russian Federation.⁸ The law in question is clearly contradictory. This is so because the root cause of the problem is the lack of a working mechanism for compensation in Ukraine, which is also the reason why the mechanism in its current form has failed to be properly funded.

Main actors, institutions, and structural factors

Actors. The main actors in the controversy are citizens who have suffered damage and loss as a result of the conflict in the Donbass — people who have either lost their homes or whose homes have sustained major damage as a result of shelling or other military action. Blocked access to compensation means that people would inevitably feel that justice has failed to be restored. According to the 2018 Peace Perceptions Poll a large number of Ukrainians feel that they have suffered injustice at the hands of the State. This is due to poor access to efficient social services and lack of redress that would have otherwise enabled them to protect their rights, when infringed as a result of the conflict.⁹ These factors can undoubtedly be attributed

⁷ "Pursuing Compensation for Properties Damaged or Destroyed as a Result of Hostilities in the Armed Conflict in Eastern Ukraine: Gaps and Opportunities," NRC, 4, https://reliefweb.int/sites/reliefweb.int/files/resources/nrc-study_pursuing-compensation-for-damaged-or-destroyed-property_eng.pdf.

⁸ "Questions Remain in Ukraine's New Donbas 'De-Occupation Law'," Hromadske International, January 2018, <https://en.hromadske.ua/posts/questions-remain-in-ukraines-new-donbas-de-occupation-law>.

⁹ "Peace Perceptions Poll 2018 - World," ReliefWeb, 14, accessed April 19, 2019, <https://reliefweb.int/report/world/peace-perceptions-poll-2018>.

to the lack of an effective mechanism for compensation for damages suffered as a result of the destruction of housing.

Another important actor is the group of public officials or government figures capable of steering decision-making on the issue or lobbying for the interests of victims. An example of such an actor is the member of the Ukrainian Parliament, Oleg Nedava, who assists in finding solutions to the problems of those affected by the conflict in the East of the country and actively promotes legislative initiatives on compensation payments. He once said: ‘... [T]he state should fulfil its constitutional obligations and protect the interests of the people and only then consider who is at fault for causing the need for compensation to arise, whether an aggressor state or another party.’¹⁰ The activities of such actors are crucial for creating proper conditions for resolving the controversies engendered by the conflict.

The last important group of actors comprises individuals or organizations that provide financial and other assistance to the victims of the conflict in the East of Ukraine. These include volunteers, international and non-governmental organizations. Their role entails filling in the gaps in the mechanisms put in place by the government and helping the efforts of victims to rebuild their homes. The Norwegian Refugee Council and many other international non-governmental organizations in the East of Ukraine are a case in point. For example, in the period between September and December 2018, 491 families (989 people) received aid from NRC to repair their damaged or destroyed houses. In addition, 803 families (1 472 people) from three frontline districts received cash for solid fuel, hand presses and wood shredders so that they can produce fuel briquettes from wood cuttings and waste materials to heat their homes in the winter.¹¹ This demonstrates that volunteers and donor organizations are important actors in the conflict as they are able to quickly respond to and assist people in need, thereby enhancing security.

Institutions. In the context of institutions, the executive, the legislative and judicial branches of government should be mentioned.

The role of Parliament is to create a relevant and effective legislative framework. In other words, it is expected to enact legislation that makes it possible for those who have lost their homes to receive compensation. The approval of the annual budget of Ukraine is also within the remit of competence of the Parliament. Accordingly, in these circumstances, budget spending plays a decisive role in the payment of compensation to the victims. So far, the Parliament has neglected to fulfil its task.

The Ukrainian government should develop and effectively implement a strategy to exit the crisis of compensation payments owed to those who suffered as a result of the military conflict. Government agencies have a responsibility to enforce court rulings. As already mentioned, Ukrainian courts occasionally rule in favor of victims, awarding them compensation. However, none of the judgments has yet been enforced. The government is

¹⁰ "Addressing Loss of Housing, Land and Property Rights of Internally Displaced and Conflict- Affected People in Eastern Ukraine: Steps towards Restitution/compensation," NRC, 9, http://www.ngoforum.org.ua/wp-content/uploads/2016/06/Addressing_loss_of_HLP_rights_IDPs_eastern_Ukraine_steps_to_resitution_compensation_eng_web.pdf.

¹¹ "NRC in Ukraine," NRC, <https://www.nrc.no/countries/europe/ukraine/>.

capable of addressing this problem and must do so, including in light of its responsibility for State budget execution. All funds allocated by Parliament for addressing the consequences of the destruction of private homes should be disbursed fairly and efficiently.

Ukrainian courts must effectively protect the rights of litigants seeking compensation for the loss or damage caused to their homes. In this situation, it is imperative that courts take into account not only the national but also international legal framework. Binding international treaties and conventions that Ukraine has ratified provide better protection of citizens' rights to property.

Structural factors. Ukraine currently faces economic difficulties. Since the beginning of the war 6 years ago, the government, aided by international financial institutions, has been able to save the country's economy from tumbling into default, ensuring a minimum level of stability. It will therefore be difficult for the Ukrainian authorities to find extra financial resources to fully compensate all victims.

The period between 2014 and 2017 saw the most active phase of the conflict, which inflicted more than USD 463.6 million in losses according to an official enquiry into damaged and destroyed property and the overall losses sustained in the Donetsk and Luhansk regions. As at 1 October 2017, a total of 7 672 properties had been damaged in the Luhansk region alone. The overall losses amount to USD 320 million. Housing in the Donetsk area has also sustained significant damage. As of 1 October 2017, a total of 7 402 properties were deemed destroyed or damaged, with losses estimated at USD 142.6 million.¹² These have been compounded in subsequent years. This creates a major financial liability for the government, which will likely remain a challenge for the Ukrainian budget and is the main reason why the government is unable to fulfill its obligations to victims.

Solutions consistent with the principle of rule of law

Peacebuilding in the wake of the conflict in the East of Ukraine should find a balance between the political will of the authorities to solve the challenge of compensation for ruined private homes, finding the requisite financial resources for the payment of compensation, and involving all possible actors in the efforts to find a solution. In order to do so, this paper proposes the following solutions:

1. Develop an effective mechanism for obtaining compensation for the loss and destruction of private homes. To this end, the Parliament should eliminate contradictory provisions in current legislation and adopt laws that create an obligation for the Ukrainian government to pay compensation for all damages sustained as a result of the war. The government may then demand that these funds be reimbursed by Russia. But Ukrainians should not have to wait until the problem of obtaining reparation for damages from the aggressor country has been resolved. Furthermore, the scope of the decision should include putting in place an expedient and easily accessible procedure for obtaining compensation. The

¹² "Pursuing Compensation for Properties Damaged or Destroyed as a Result of Hostilities in the Armed Conflict in Eastern Ukraine: Gaps and Opportunities," NRC, 1, https://reliefweb.int/sites/reliefweb.int/files/resources/nrc-study_pursuing-compensation-for-damaged-or-destroyed-property_eng.pdf.

government must also ensure the enforcement of court judgments awarding compensation to citizens for the loss of their houses.

2. Raising additional funds to compensate affected citizens. As the State budget of Ukraine is unable to cover all compensation costs in full, it is advisable that a strategy be developed to solve this most pressing issue. This may potentially include a program of tax incentives for the manufacturers of building materials ready to provide the necessary materials for the reconstruction of destroyed buildings. Another solution may be the active involvement of international donors and international financial institutions, which have already achieved success in the reconstruction of homes.

For each of these decisions, the government should establish a clear strategy for addressing the problem of compensation for destroyed or damaged private homes and ensure its consistent implementation.