

ARMED CONFLICT IN THE EAST OF UKRAINE: THE DAMAGE CAUSED TO THE HOUSING OF THE CIVILIAN POPULATION

Kharkiv
HUMAN RIGHTS PUBLISHER
2019

Authors:
Nataliia Melnyk, Alina Pavlyuk, Maksim Petrov, Oksana Glushko

Armed conflict in the East of Ukraine: the damage caused to the housing of the civilian population
3-41 / compiler Nataliia Melnyk. — Kharkiv: LLB "Human Rights Publisher", 2019. — 82 p.

ISBN 978-617-7391-64-6

The report analyzes the scale of destruction of houses as a result of hostilities in the Donetsk and Luhansk oblasts, possible violations of international humanitarian law that could lead to a damage or destruction of homes of civilians, the impact of mass shelling on the population of the region, especially the protection of property rights of civilians during the armed conflict. Recommendations are provided to improve the situation.

The publication is prepared within the initiative "Overcoming impunity for massive human rights violations and other international crimes committed in an armed conflict" is being implemented within UNDP Ukraine's "Civil Society for Enhanced Democracy and Human Rights in Ukraine" project with financial support from the Ministry of Foreign Affairs of Denmark and the "Human Rights and Justice" programme of the International Renaissance Foundation (IRF).

© No part of this publication can be reproduced, stored in search engines, or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or otherwise, without prior written consent. Opinions, conclusions or recommendations belong to the authors and editors of the publication, and do not necessarily reflect the views of the International Renaissance Foundation, the Ministry of Foreign Affairs of Denmark, the United Nations Development Programme or other UN agencies.



УДК 355.01-058.65(477.61/.62-07)(047.1)"2014/2018"=111

© Nataliia Melnyk, Alina Pavlyuk,
Maksim Petrov, Oksana Glushko, 2019
© Nataliia Melnyk, compiled, 2019
© Oleg Miroshnychenko, design, 2019

ISBN 978-617-7391-64-6

LIST OF ABBREVIATIONS

- ARC — Autonomous Republic of Crimea
ATO — anti-terrorist operation
ERW — explosive remnants of war
IDP — internally displaced person
MCA — military-civil administration
NGO — public organization
GCA — government controlled area
NGCA — non-government controlled area
PGoU — Prosecutor General's Office of Ukraine
SES — State Emergency Service of Ukraine
HCS — housing and communal services
MM — mass media
AFU — Armed forces of Ukraine
The Convention — Convention for the Protection of Human Rights and Fundamental Freedoms
ECHR — European Court of Human Rights
Checkpoint — entry-exit checkpoint
MIAU — the Ministry of Internal Affairs of Ukraine
IAG — illegal armed groups
UXO — unexploded ordnance
OSCE — Organization for Security and Co-operation in Europe
OSA — Oblast State Administration
UN — United Nations organization
JFO — Joint Forces Operation
PACE — Parliamentary Assembly of the Council of Europe
DSA — District State Administration
NSDC — the National Security and Defense Council of Ukraine
MRL — multiple rocket launcher
RF — Russian Federation
SSU — Security Service of Ukraine
IED — improvised explosive device
LPR — so-called "Luhansk People's Republic"
DNR — so-called "Donetsk People's Republic"
TOT — temporarily occupied territory
OHCHR — Office of the United Nations High Commissioner for Human Rights
AMIAU — Authority of the Ministry of Internal Affairs of Ukraine

INTRODUCTION

This is the sixth year of fighting in the East of Ukraine. For the sixth year, civilians, infrastructure, residential buildings and non-residential facilities in the Donetsk and Luhansk regions are being affected during attacks.

One of the biggest losses caused by the regular shelling in this region is the damage to the civilian population, namely their immovable property. The UN Monitoring Mission to Ukraine in its report on the human rights situation in Ukraine for the period of November 16, 2018 – February 15, 2019 noted that on both sides of the contact line there are more than 50 thousand civilian homes damaged during the fighting.

The facts of violations of norms of international humanitarian law remain outside the attention of the general public, that has caused so much destruction. According to the statistics of appeals to the NGO “Donbass SOS” hotline from civilians who reside in the conflict zone, the problem of damaged and destroyed housing and compensation for damage is one of the most urgent.

The purpose of the analytical report “Armed conflict in Eastern Ukraine: the damage caused to the housing of the civilian population, is to overcome impunity for violations of international humanitarian law in the East of Ukraine, which have caused a large number of damaged or destroyed residential facilities and assistance in restoring the rights of civilians whose homes have been damaged as a result of the fighting in Donetsk and Luhansk oblasts.

Goals and objectives of this report:

- to assess the scale of the destruction of houses as a result of the fighting in Donetsk and Luhansk oblasts and to analyze the measures taken to restore the property of civilians;
- to investigate possible violations of international humanitarian law, which could lead to damage or destruction of homes of civilians

in Eastern Ukraine, and to establish the impact of mass shelling on the population of the region;

- explore international mechanisms for the protection of property rights of civilians during an armed conflict;
- develop recommendations to the authorities on the protection of property rights of persons affected by the armed conflict in Ukraine.

Structure of the report. Taking into account certain goals and objectives of the report, its authors decided to conduct the study in four stages. Each stage is covered in a separate section.

At the first stage, to establish the impact of mass shelling in Eastern Ukraine on the population of the region, the authors of the document focus on the analysis of the chronology of the armed conflict, the destruction of civilian housing in the combat zone and the study of the impact of mass shelling on the civilian population of the region.

Using the chronological method of reflection of the armed conflict in Eastern Ukraine from 2014 to 2019, the researchers determine the possible phasing of damage to property, the presence or absence of patterns between the intensity of attacks and decisions taken at the national or international levels.

At the same time, in addition to tracking the sequence of events, for clarification of the circumstances prevailing in the region, quantitative indicators of destruction are used, as well as decisions of the Ukrainian authorities and actions of international organizations aimed at resolving the situation are provided.

The method of comparison used in this report allowed to determine the differences in the overall scale of destruction of civilian housing in the combat zone. The following indicators are taken into account: the number of damaged/restored houses on the GCA and the NGCA, the availability and content

of programs for the reconstruction of houses on the GCA and the NGCA. Taken together, such information provides an opportunity to assess the extent of the destruction, as well as how exactly the process of restoration of destroyed or damaged property during the fighting in the Donetsk and Luhansk oblasts is taking place.

Experts of the NGO “Donbass SOS” analyze in more details the situation with the immovable property of civilians in individual settlements with the use of multi-factor analysis. In particular, the data on the course of the armed conflict is compared with the chronology of attacks, the work of Commissions for the inspection of damaged property is being analyzed, as well as the process of restoration of damaged houses and the possible causes of shelling of residential facilities.

To the sample of settlements in the Donetsk oblast the following were included: Avdiivka city, Karlivka village and Krasnogorivka city of Maryinsky district, Maryinka city, Pisky village and urban settlement of Verkhnetoretsk of Yasinovata district, urban settlement Zaytseve of Bakhmut district, Gorlivka city, Debaltsevo city and city of Donetsk. Concerning the Luhansk oblast, depositions of residents or property owners in the cities of Luhansk, Pervomaisk, Popasna, Lysychansk, and urban settlement Stanytsia Luhanska were processed. Familiarity with this section will help to formulate a comprehensive view of the situation in the region, to assess the scale, consequences, and impact of the armed conflict on the population and their property in Donetsk and Luhansk oblasts.

At the **second stage**, the team of the NGO “Donbass SOS” pays attention to the peculiarities of the protection of property rights of civilians during the armed conflict. For this purpose, applying a comprehensive approach, the legal qualification of the events in the East of Ukraine from the point of view of international law (international standards for the protection of civilians in armed conflict, UN standards and principles, elements of international humanitarian law and international human rights law) is provided.

An important component of the international system for the protection of the property rights of civilians in armed conflict was the application of

the provisions of the Rome Charter, and the study, therefore, included consideration of this instrument as well.

Detailizing the chosen approach, we note that in the second stage, the authors appeal to resolutions adopted by the UN institutions on the situation in Eastern Ukraine, reports of the UN Monitoring Mission in Ukraine, documents of the Prosecutor’s Office of the International Criminal Court, decisions of the International Court of Justice.

Additionally, international standards for the protection of civilians in an armed conflict are considered and provisions of international humanitarian law (norms of the Geneva Conventions of 1949, the Convention on the Laws and Customs of War on Land of 1907, the Hague Convention of 1907, the Geneva Convention relative to the Protection of Civilian Persons), international human rights law (norms of the Universal Declaration of Human Rights), as well as standards and principles of the UN and regional organizations are analysed (“Pinheiro principles”, Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights law and serious violations of International Humanitarian law, the UN Guiding Principles on internal displacement, etc.).

Based on the results of the second stage of the study, authors of the NGO “Donbass SOS” devote the **third section** of the analytical report to the monitoring of the national practice of protection of property rights of persons affected by the armed conflict in Ukraine. Thus, readers will be able to draw parallels between “external” and “internal” systems of protection of rights in the chosen perspective. To this end, the procedures entailed by the national legislation are reviewed, the judicial procedure and its effectiveness are evaluated, as well as specifics of the national investigation of cases are outlined.

Procedures are described within the national legislation, such as compensation for damage caused to citizens by a terrorist act, or the application of legislation in the event of an emergency. Analyzing the judicial procedure and its effectiveness, attention is drawn to the Statute of limitations

in such appeals, the use of anti-terrorism legislation, the duration of the trial and other factors.

Concerning the practice of national pre-trial investigations, it is proposed to consider the main aspects of this process: filing an application, legal qualification, the purpose of the crime, the involvement in criminal proceedings of the Chief Military Prosecutor's Office, etc.

Each of them has its specifics, and its consideration will allow citizens whose property has been damaged or destroyed as a result of the armed conflict in the East of Ukraine to better protect their rights in a court.

The fourth stage summarizes all the analytical work which was carried out and provides conclusions and recommendations for public authorities.

Sources and literature analysis. The basis of the analytical report was the information received by the NGO "Donbass SOS" hotline (evidence from residents or property owners whose property has been damaged or destroyed as a result of hostilities in some settlements). It allowed receiving additional documentary confirmations of the caused destructions to real estate, information on the new facts of damages, human and material losses. A total of 227 people were interviewed, whose real estate was damaged in 54 settlements, which are located on both sides of the contact line in Eastern Ukraine. The survey was conducted during the 2016–2019.

When writing the analytical report, two groups of sources were used: national and international. Among the national resources, several groups of sources should be identified: the media, websites of human rights organizations, government agencies, etc, as well as sources of the so-called "LPR" and "DPR", interviews and photos of the destroyed property from applicants of the NGO "Donbass SOS" hotline and residents of certain cities in the East of Ukraine, replies to the queries from Donetsk and Luhansk oblast State Administration, as well as to the MCA of the individual settlements, PGOU, the National Police of Ukraine.

Analyzing media space, authors of the report used materials of the following media sources: "Ukrainska pravda", "Rubrika", "Uryadovyi kur'yer", "UNIAN", "Ukrainfor", "Interfax", "Censor.net", "RBK-Ukraine", "5 channel", "1+1", "Economichna pravda", "BBC News Ukraine", "Radio Svoboda", "Depo.ua", "CXID.info", "Dzerkalo tyzhnya", "Facts", "Korrespondent.net", "112", "Espresso", "Tribun", "Gorlovskaya mosaic", "avdeevka.city", "Donetsk news", "URA-inform", "Ostrov", "VistiLug", "Izvestiya".

Part of the information about the situation on the NGCA was obtained from portals of the so-called "DPR" (Information portal of the Donetsk People's Republic) and the so-called LPR (State television and radio broadcasting company of the Luhansk People's Republic).

An important source of information was materials of the Ukrainian Helsinki Human Rights Union and the Kharkiv Human Rights Group.

Also, data from the official web resources of the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine, the President of Ukraine, the Ministry of Defense of Ukraine, the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine, the State Statistics Service of Ukraine, the State Emergency Service of Ukraine, the Main Department of the National Police in Donetsk oblast, the Information and analytical center of NSDC of Ukraine, the Unified Register of Court decisions were taken into account.

Among the foreign sources that were used for the report there were: UN reports and resolutions, OSCE news digest, Centre on Housing Rights and Evictions documents, PACE resolution and report, news and comments of the International Committee of the Red Cross, ECHR's decisions, the facts documented by the Human Rights Watch, report of the Prosecutor's Office of the International Criminal Court and other documents, publications of non-governmental organization "Counter Extremism Project", etc.

MASS SHELLING IN THE EAST OF UKRAINE

1.1. CHRONOLOGY OF THE ARMED CONFLICT IN EASTERN UKRAINE

The protests that took place in support of Ukraine's European integration in Kyiv at the end of November 2013 turned into mass long-term rallies throughout Ukraine. During these events, dozens of protesters died on the Independence square in Kyiv (primarily during the clashes of 18–20 February 2014). As a result of these events on February 21, 2014, the President of Ukraine V. Yanukovich fled the country. Already at the end of February, the transfer of Russian troops without identification marks to the territory of the Crimean Peninsula has begun. March 16, 2014, on the territory of the ARC and the city of Sevastopol a "referendum" was held regarding the status of the Peninsula, which was not recognized by the international community. Based on this "referendum", Russia declared Crimea to be a part of its territory. In many other oblasts of Ukraine, primarily in the East of the country, rallies of both supporters of the unity of Ukraine and supporters of federalization continued at this time. In March 2014, the UN and OSCE sent missions to Ukraine to monitor the situation. On March 27, 2014, the UN General Assembly Resolution on the territorial integrity of Ukraine No. 68/262 was adopted.¹

On April 7, 2014, the armed supporters of federalization seized the Donetsk oblast State Administration and proclaimed the establishment of the so-called "DPR". On April 12, 2014—armed groups of supporters of the so-called "DPR" under the leadership of Russian citizen Igor Girkin (Strelkov) captured the city of Slavyansk, Kramatorsk, Krasnyi Lyman and several small towns in the North

¹ Resolution adopted by the General Assembly on March 27th, 2014
https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262&Lang=R.

of Donetsk oblast. At the evening of the same day, the RNBO meeting was held, on April 13, 2014, the beginning of the ATO without the introduction of the martial law with the assistance of the AFU was declared². On April 17, 2014, at the initiative of the OSCE, the Geneva Declaration was adopted, which was signed by the representatives of the Russian Federation and Ukraine; it called on the parties to stop the violence and vacate administrative buildings in exchange for Amnesty³. The ATO was temporarily terminated, but after finding in the river near Slavyansk bodies of Vladymyr Rybak and Yuriy Popravka on April 19, 2014, the operation was restored on April 24. On April 27, 2014, in the building of SSU in Luhansk, which was captured by armed groups, creation of the so-called LPR was proclaimed. On the territories of Luhansk and Donetsk oblasts block posts were created during April, which were built by both sides, the seizure of administrative buildings by armed groups continued. On May 11, 2014, a "referendum on self-government" of unrecognized state entities was held on the territories of Luhansk and Donetsk oblasts that are not under the control of the Government of Ukraine. On the eve of the "referendum" the displacement of residents started, who were afraid of violence on the streets. At this time, the first IDPs from the East of Ukraine appeared on the controlled territory of Ukraine⁴.

During May – June 2014 around the cities of Slavyansk, Kramatorsk, Artemovsk, Konstantinovka there were fierce battles.

² The NSDC begins a large-scale anti-terrorist operation involving the Armed Forces — Turchynov
<https://www.pravda.com.ua/news/2014/04/13/7022274/>.

³ Geneva Statement as of April 17, 2014
<https://www.kmu.gov.ua/ua/news/247221188>.

⁴ Report on the human rights situation in Ukraine, June 15, 2014 (p. 143)
http://www.un.org.ua/images/stories/Report_15_June_2014_ua.pdf.

At the end of May, the fighting covered the South of Donetsk oblast (May 22 – the battle of Volnovakha) and Luhansk oblast (May 22, armed groups took control of Rubezhnoye, Lysychansk, Severodonetsk).

On May 26, 2014, a battle for the Donetsk airport took place, during which the adjacent districts of Donetsk suffered.

As of June 8, 2014, armed groups held almost the entire industrial agglomeration, including Donetsk and Luhansk. Then the Northern border of the territories not under the control of the Government of Ukraine passed along the line of Krasny Liman — Seversk — Severodonetsk — Stanychno — Luhanske. The Western and Southern borders took place on the outskirts of cities Druzhkivka — Konstantinovka — Dzerzhinsk (from 2016 — Toretsk) — Avdiivka — Donetsk — Starobeshevo — Komsomolsk¹. Battles were also fought in the border areas of the Luhansk oblast.

During June — July 2014 there was a “professionalization of armed groups fighting in the East”, as stated by the UN Monitoring Mission. What used to be a “motley collection of armed men with different beliefs and purposes” is now being consolidated under the centralized command of these leaders. Now they use heavy weapons, namely mortars and anti-aircraft guns, tanks, armored vehicles and landmines, testified Mission’s employees². Ukrainian military in this period also used heavy weapons and inflicted airstrikes³. The armed groups deployed their military forces and assets in densely populated areas and struck from there, putting the entire civilian population at risk. People blocked in areas controlled by armed groups continued to die as a result of heavy shelling on both sides⁴.

The Government of Ukraine regained control over the Northern part of Donetsk oblast in July 2014. On July 5, the armed group led by Igor

¹ War chronicles in Donbas: from rallies to tanks
<http://mediarnbo.org/2014/10/18/chronika-viyni-nadonbasi-vid-mitingiv/>.

² Report on the human rights situation in Ukraine, June 15, 2014 (p. 143)
http://www.un.org.ua/images/stories/UKR_OHCHR_Report_15_July_FINAL.pdf.

³ Ibid (p. 10).

⁴ Ibid (pp. 12, 31).

Girkin (Strelkov) has left the cities of Slavyansk, Kramatorsk and moved to Donetsk⁵. On July 6, troops of the Government of Ukraine released Artemivsk (since 2016 — Bakhmut), Druzhkivka, on July 8 — Konstantinivka.

On July 21st, the armed group left the village of Pisky and Karlivka. During the fighting, the civilian population and residential areas suffered, and even the OSCE representatives were not always able to find out which side carried out non-selective attacks⁶. The urban infrastructure (water and gas supply systems, power substations) was severely damaged. Already in the report of June 15, 2014, the UN Monitoring Mission recommended the Government of Ukraine to provide monetary compensation for housing to victims “for damage to their property during these security operations”⁷. In the recovered villages, towns and cities destruction had a mass character, the villages of Semenivka, Karlivka, Pisky and others were destroyed during these events. Since mid-June, the number of IDPs from the East of Ukraine has increased significantly, due to material damage to housing and infrastructure⁸. Only damages caused to homes in Slavyansk SES estimated at UAH 1.5 billion⁹.

On July 20–24, 2014, the Northern part of Luhansk oblast (Severodonetsk, Rubezhnoye, Lysychansk, Popasna) was returned under the control of the Government of Ukraine. On August 2–5,

⁵ Fighters escape from Slavyansk. Exclusive chronicle
<https://rubryka.com/article/zvilnennya-slov-yanska/>.

⁶ Latest news from the Special Monitoring Mission in Ukraine — based on information received as of May 12, 2014, 18:00 (Kyiv time)
<https://www.osce.org/uk/ukraine-smm/118529>.

⁷ Report on the human rights situation in Ukraine, June 15, 2014 (p. 260)
http://www.un.org.ua/images/stories/Report_15_June_2014_ua.pdf.

⁸ Report on the human rights situation in Ukraine, July 15, 2014 (p. 128–129)
http://www.un.org.ua/images/stories/UKR_OHCHR_Report_15_July_FINAL.pdf.

⁹ The damage from the destruction of houses in Slavyansk estimated at UAH 1.5 billion
<https://www.unian.ua/society/940387-zbitok-vid-ruynuvannya-jitlovih-budinkiv-u-slovyansku-otsinili-v-15-mlrd-grn.html>.

2014 — the cities of Krasnogorivka and Maryinka, Donetsk oblast.

From mid-June to early July 2014 cities to the North of the river Seversky Donets (Shasty city, urban settlement Stanitsa Luhanska and others), as well as Luhansk, Alchevsk, Krasnodon (since 2016 — Sorokino) and others have experienced constant shelling. In Donetsk oblast in August — September, 2014 cities of Gorlivka, Yenakiyev, Snizhne, Ilovaysk, Debaltseve, Shyroko village were in the center of military operations. The civilian population, infrastructure, residential areas suffered, and a real humanitarian disaster occurred. According to the UN Monitoring Mission, there was ample evidence of non-compliance with the principle of distinction when using different types of weapons, including artillery, mortars and multiple launch rocket systems in and around densely populated areas. The Ukrainian authorities assure that the Armed Forces of Ukraine never fire at populated areas... However, in those cities and suburbs controlled by armed groups and constantly attacked by Ukrainian troops, at least partial responsibility for the loss of life and damage to civilian objects lies with the Ukrainian army. On the other hand, armed groups have their weapons in or near densely populated areas and attack from those areas¹. Especially intense fighting took place on August 24 — September 5, 2014. At this time, the Ukrainian military near Ilovaysk suffered a brutal defeat. Also, according to the message, during this period the number of Russian military personnel who took part in military operations significantly increased². The first Minsk trilateral agreement was signed on September 5, 2014. However, after the truce, although the scale and intensity of the fighting significantly decreased, the fighting did not stop. The civilian population of the cities of Debaltseve, Donetsk, Gorlivka, Ilovaysk, Luhansk, Pervomaisk, Shasty

¹ Report on the human rights situation in Ukraine, August 17, 2014 (p. 26)
http://www.un.org.ua/images/stories/OHCHR_Ukraine_5th_report_UA.pdf.

² Report on the human rights situation in Ukraine, September 16, 2014 (p. 22)
http://www.un.org.ua/images/stories/UA_OHCHR_Ukraine_6th_report_Final.pdf.

and several other settlements continued to suffer from crossfire and attacks³. At the beginning of September 2014, according to preliminary estimates of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine, 4,501 houses and 4,733 objects and systems of energy and water supply were damaged as a result of hostilities or were deliberately destroyed by armed groups. There was substantive evidence of illegal seizure of property by members of armed groups⁴. Such information has also been received in respect of territories under the control of government forces, for example, from Maryinka⁵.

Despite the ceasefire, which came into force on September 5, 2014, the fighting and related human rights violations in Eastern Ukraine continued until the end of 2014. Especially heavy fighting was fought near the Donetsk airport (Pesky — Avdiivka area), the cities of Debaltseve and Mariupol, Sartana village (Donetsk oblast), Schasty city, urban settlement Stanitsa Luhanska and Toshkivka (Luhansk oblast). Workers of the UN Monitoring Mission began to receive numerous reports on the use of cluster munitions <...> in both urban and rural areas”, which are weapons of indiscriminate nature⁶. In autumn 2014, residential areas continued to experience indiscriminate shelling by artillery and MRL. Military facilities were located in close proximity to residential areas, but areas located at a distance from such facilities, especially in Donetsk, were also subjected to a shelling⁷.

According to the Ministry of Internal Affairs, only from August 1 to October 26, 2014, more than 300 criminal proceedings concerning artillery attacks of the inhabited areas of Donetsk oblast which were carried out without observance of the

³ Report on the human rights situation in Ukraine, September 16, 2014 (p. 20)
http://www.un.org.ua/images/stories/UA_OHCHR_Ukraine_6th_report_Final.pdf.

⁴ Ibid (p. 112).

⁵ Ibid (p. 113).

⁶ Report on the human rights situation in Ukraine, November 15, 2014 (pp. 8, 26)
http://www.un.org.ua/images/stories/OCHCR_seventh_report_Ukraine_-UA.pdf.

⁷ Ibid (p. 25).

principle of distinction were conducted. On October 4, 2014, the Military Prosecutor's Office of the Eastern region initiated the first criminal proceedings on charges of terrorism because of artillery shelling of populated areas in Debaltseve¹. Progress in these and later investigations remains to be limited as of today. The Ministry of Internal Affairs, GPO and SSU noted problems with access to the firing sites to be the main obstacle to the investigation, but in February 2015 the UN Monitoring Mission pointed out that "many witnesses/victims are reluctant to address their complaints to the police for fear of reprisals and lack of reliable protection mechanisms"².

On October 26, 2014, Ukraine held early parliamentary elections. On November 2, 2014, on the NGCA, contrary to the norms of Ukrainian legislation and the provisions of the Minsk Protocol, "elections" of the "heads" and "people's councils" were organized in the so-called "DPR", and the so-called "LPR". Both "republics" thus actively created a parallel system of state power. In response to this situation, the President and the Government of Ukraine adopted legislative acts, which provided for the transfer of all state institutions and its employees from areas controlled by armed groups to the GCA until December 1, 2014. Also in October – November 2014, a number of legislative and subordinate acts were adopted to ensure the rights of IDPs.

On December 9, 2014, the AFU and armed groups declared a "regime of silence", which provided several weeks of relative calm.

In January 2015, tanks, heavy artillery, and MRL were re-used in settlements along and near the contact line. The use of cluster munitions continued to take place.³ The main hot spots were: Donetsk airport, Pesky village, Avdiivka city, surrounding villages, the outskirts of Debaltseve, Gorlivka and

¹ Ibid (pp. 142–143).

² Report on the human rights situation in Ukraine, December 1, 2014 – February 15, 2015 (p. 69) http://www.un.org.ua/images/stories/9th_OHCHR_report_Ukr.pdf.

³ Report on the human rights situation in Ukraine, December 1, 2014 – February 15, 2015 (p. 25) http://www.un.org.ua/images/stories/9th_OHCHR_report_Ukr.pdf.

Mariupol (Donetsk oblast), as well as Shastya city, and the village of Stanitsa Luhanska (Luhansk oblast). According to the UN Monitoring Mission, as of mid-February 2015, at least 50 houses were damaged every week in cities that were subject to a regular shelling⁴. On January 22, 2015, Ukrainian troops were forced to leave Donetsk airport. Heavy shelling of populated areas without respect for the principle of led to a significant destruction in settlements in which they occurred distinction in January and February. In some cities, which are controlled by armed groups such as Debaltseve and Uglegorsk (Donetsk oblast), almost 80% of homes and public buildings were destroyed⁵.

On January 21, 2015, the *Temporary order of crossing the contact line within Donetsk and Luhansk oblast*, which was prepared by SSU came into force. Since that day, a permit system to control the movement from the NGCA to the GCA and vice versa is operating. As of July 7, 2015, permits are obtained electronically. On February 3, 2015, the Verkhovna Rada of Ukraine adopted the Law "On military and civil Administrations", which expanded the powers of the OSA on the GCA of Donetsk and Luhansk oblasts.

On February 12, 2015 the so-called second Minsk agreement was signed in the city of Minsk (officially – "Package of measures for the implementation of the Minsk agreements")⁶, which provided, among other things, a new ceasefire, starting from February 15, 2015, the withdrawal of heavy weapons from the contact line, the creation of a 50–140-kilometer security zone, the withdrawal of foreign armed groups, mercenaries and weapons from the territory of Ukraine. On February 17, 2015, by the Resolution 2202 (2015), the UN Security Council requested from

⁴ Ibid (p. 44).

⁵ Report on the human rights situation in Ukraine, February 16 – May 15, 2015 (p. 83) http://www.un.org.ua/images/stories/10th_HRM-MU_report_-Ukraine_-1_June_2015-UA.pdf.

⁶ Package of measures for the implementation of the Minsk agreements. Full text. <https://www.pravda.com.ua/articles/2015/02/12/7058327/>.

all parties of the conflict to fully implement this set of measures¹.

Despite these agreements, armed groups at this time tried to oust Ukrainian troops from the outskirts of Debaltseve city. On February 18, 2015, military units of the Government of Ukraine were forced to leave Debaltseve.

The signing of the Package of measures had a significant impact on the situation in the conflict zone. Although measures to cease-fire and withdrawal of forces and means established in this document were never fully implemented, they led to a significant decrease in the number of civilian casualties related to the conflict, and the reduction of the number of attacks, as a result of which the damage or destruction of residential buildings occurred. According to the OHCHR statistics, for the first 10 months of the conflict (from mid-April 2014 and until mid-February 2015) more than 80% of all civilian deaths were registered².

Between February 19 and April 10, 2015, the ceasefire regime was generally respected, despite daily reports of sporadic gunfights and clashes. But settlements located near the contact line continued to be shelled, during which civilians were killed and their homes and infrastructure suffered. The UN Monitoring Mission continued to receive evidence of the looting of abandoned property in many cities located in the conflict zone-both on the GCA and the NGCA³. In the period from April 11 till April 15, 2015, there was a significant escalation of hostilities in the area of Donetsk airport and near the village of Shyrokyne (Donetsk oblast), for which the battle was going. Heavy weapons, including mortars, artillery, and tanks, were again used during the fighting. Further escalation occurred in the period from May 3 to May 8, 2015. In summer 2015, the

¹ Resolution 2202 (2015) adopted by the Security Council at its 7384 meeting on February 17, 2015 [https://undocs.org/ru/S/RES/2202\(2015\)](https://undocs.org/ru/S/RES/2202(2015))

² Report on the human rights situation in Ukraine, November 16 2018 – May 15, 2019 (p. 27) http://www.un.org.ua/images/stories/10th_HRM-MU_report_-Ukraine_-1_June_2015-UA.pdf.

³ Report on the human rights situation in Ukraine, February 16 – May 15, 2015 (pp. 87, 89) http://www.un.org.ua/images/stories/10th_HRM-MU_report_-Ukraine_-1_June_2015-UA.pdf.

continued shelling of settlements on both sides of the contact line, especially the cities of Donetsk and Gorlivka (NGCA) and the government-controlled towns of Pisky, Avdiivka, Maryinka, Shyrokyne village (Donetsk oblast), Shastya city and Stanitsa Luhanska village (Luhansk oblast) together with ERW and IEDs continued to take away lives of civilians and cause damage to houses⁴. In particular, on June 3, 2015, the city of Maryinka suffered from heavy shelling, on August 9–10 – villages of Starohnativka and Novolaspa, Volnovakha district, Donetsk oblast⁵.

On June 5, 2015, the Permanent Mission of Ukraine to the Council of Europe officially announced the leadership of the Council of Europe about the derogation from obligations under the ECHR and the International Covenant on Civil and Political Rights in the territories of Crimea and Sevastopol, as well as on the non-government controlled territories of Donetsk and Luhansk oblast, according to the Resolution of the Verkhovna Rada of Ukraine "About the Statement of the Verkhovna Rada of Ukraine "On derogation of Ukraine from certain obligations defined by the International Covenant on Civil and Political Rights and the Convention for the Protection of Human Rights and Fundamental Freedoms"⁶.

On August 26, 2015, a new "ceasefire within the framework of the truce" was agreed at a meeting of the Trilateral contact group in Minsk. This led to a significant decrease in the intensity of hostilities in September and October 2015, but in November fighting intensified again along the contact line with the use of artillery systems, and in other hot

spots, especially near Donetsk¹. On December 23, 2015, a “total silence regime” was introduced.

During 2016, violations of the ceasefire regime by AFU and armed groups, in particular with the use of heavy weapons, were constantly recorded. There was a regular intensification of hostilities along the contact line. Thus, in January – February 2016 there were increased fights and skirmishes in a few hot spots, mostly near Donetsk, Gorlivka, and in the villages and towns located along the contact line such as Kominternovo, Debaltseve, Vodyane, Shyrokyne and Zaytseve². In March 2016, there was intensified fighting in Avdiivka and Yasinovataya. Because of single attacks in the spring of 2016 the civilian population suffered especially those residing in the cities of Maryinka, Donetsk, Gorlivka and Makiivka, and villages of Novooleksandrivka, Pisky, Vodyane, Kominternovo, Mykolaivka, Olenivka and Yakovlivka that are located near the contact line³. A new escalation occurred in June – July and the second half of August 2016. By the framework decision of the Trilateral contact group on the withdrawal of forces and means as of September 21 2016⁴ it was decided to restrict the conduct of hostilities in the agreed areas. However, during October – December 2016 there was a significant intensification of hostilities, primarily near Avdiivka and Yasinovataya, in the North and East of Mariupol, as well as in other places along the contact line, for example, in Novozvanivka village in Luhansk oblast⁵.

¹ Report on the human rights situation in Ukraine August 16 – November 15, 2015 (p. 3)
http://www.un.org.ua/images/stories/12th_OHCHR_report_on_Ukraine_EN.pdf.

² Report on the human rights situation in Ukraine November 16 – February 15 2016 (pp. 3–4)
http://www.un.org.ua/images/stories/UKR_13th_OHCHR_Report_-UA_-_3_March.pdf.

³ Report on the human rights situation in Ukraine February 16 – May 15, 2016 (p. 19)
http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf.

⁴ Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware
<https://www.osce.org/cio/266266>.

⁵ Why Novozvanivka became the leader of attacks
<https://www.depo.ua/ukr/war/chomu-novozvanivka-stala-liderom-obstriliv-09112016090000>.

According to the UN Monitoring Mission, during the year the AFU and armed groups advanced their weapons and personnel even deeper into populated areas and thus violated their obligations under the international humanitarian law. From there they often fought and therefore exposed the civilian population to the effects of a backfire⁶.

The widespread use of civilian buildings and facilities by the military, the conduction of hostilities from settlements, as well as the looting of civilian property was recorded by both sides of the conflict. Residents informed about such actions of the Ukrainian military, in particular, in the cities of Avdiivka, Maryinka, Krasnogorivka, the village of Shyrokyne, Luhanske, Zhovanka, Opytne, Tetenke, Lam'yanka village, Bakhmutka (Donetsk oblast), Shastya village, villages of Staryi Aydar, Tryohizbenka, Stanytsia Luhanska, Pshenichne, Lopaskyne, Novozvanivka (Luhansk oblast)⁷. At the same time, families whose homes were used by the AFU for military purposes often complained about very large utility bills due to the use by the military.

Information about the location of military facilities in settlements was also reported from the GCA (Donetsk, Kominternove, Alchevsk, Luhansk,

⁶ Report on the human rights situation in Ukraine November 16, 2015 – February 15, 2016 (p. 25)
http://www.un.org.ua/images/stories/UKR_13th_OHCHR_Report_-UA_-_3_March.pdf;
Report on the human rights situation in Ukraine November 16, 2016 – February 15, 2017 (p. 18)
https://www.ohchr.org/Documents/Countries/UA/UAResort17th_UKR.pdf.

⁷ Report on the human rights situation in Ukraine November 16, 2015 – February 15, 2016 (p. 161)
http://www.un.org.ua/images/stories/UKR_13th_OHCHR_Report_-UA_-_3_March.pdf;

Report on the human rights situation in Ukraine February 16 – May 15, 2016 (p. 150)
http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf;
Report on the human rights situation in Ukraine May 16 – August 15, 2015 (p. 31–33, p. 138)
https://www.ohchr.org/Documents/Countries/UA/Ukraine15thReport_ukr.pdf;

Report on the human rights situation in Ukraine August 16 – November 15, 2016 (p. 137–138)
https://www.ohchr.org/Documents/Countries/UA/UAResort16th_UKR.pdf.

Makeyevka, Dokuchaevsk, Gorlivka, Zaytseve, Spartak, Sahanka, Yasinovata)¹.

On March 25, 2016, the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine announced the creation of a working group to develop a mechanism for the payment of compensation for a property affected by the conflict², but there are no details about the activities of this group. Today, there is no information about the activities of the group on the official pages of the Ministry.

In the period from January 29 to February 3, 2017, there was an outbreak of hostilities within the following triangle: Avdiivka – Yasinovata – Donetsk airport, as well as in the southern districts of Donetsk. During this escalation, critical civilian infrastructure was severely damaged by indiscriminate shelling of populated areas with long-range explosive shells. From December 26 2016, until March 15, 2017 Ukrainian activists, military and law enforcement officers carried out the blockade of railway lines, and later of roads that connect the GCA and the NGCA³. On March 15, 2017, all freight traffic across the contact line was officially terminated by the decision of the NSDC⁴. In response to these events, the armed groups introduced the so-called external control of all enterprises of Ukrainian jurisdiction, which by that

¹ Report on the human rights situation in Ukraine November 16 2015- February 15, 2016 (p. 162)
http://www.un.org.ua/images/stories/UKR_13th_OHCHR_Report_-UA_-_3_March.pdf;
Report on the human rights situation in Ukraine February 16-May 15 2016 (p. 155)
http://www.un.org.ua/images/UA_14th_OHCHR_report_on_the_human_rights_situation_in_Ukraine.pdf.

² Report on the results of monitoring of the implementation of the National human rights strategy (I quarter of 2016)
<https://helsinki.org.ua/zvit-za-rezultatamy-monitoryni-implementatsiji-natsionalnoji-stratehiji-u-sferi-prav-lyudyny-i-kvartal-2016-roku/>.

³ And what about the ORDLO blockade?
<https://www.epravda.com.ua/publications/2017/02/16/621051/>.

⁴ Zhebrivskyi is waiting for clarification of the NSDC on crossing of block posts in Donbas
<https://www.rbc.ua/rus/news/zhebrivskiy-zhdet-razysneniy-snbo-peresechenii-1489577946.html>.

time worked on the temporarily occupied territory of Donbas⁵.

On April 25, 2017, electricity was cut off on the temporarily occupied territory of the Luhansk oblast⁶, and on July 26 2017, on the TOT of the Donetsk oblast⁷. Since then, the needs of the TOT for electricity were covered either by the Russian Federation⁸, or through the use of power plants that are located in the Donetsk oblast⁹. This situation has had a negative impact on civilian infrastructure on both sides of the contact line.

As it was stated by OHCHR in May 2017, there is a little evidence that would indicate the serious intention of either party to implement the Minsk agreements in the near future¹⁰.

During 2017, the fighting continued along the contact line with variable intensity, from which civilians and their property suffered a lot. A significant escalation took place in June 2017 in the area of villages of Zholobok and Krymske of Luhansk oblast (the so-called “battles for the Bakhmut highway”)¹¹.

⁵ “DPR” and “LPR” declared “nationalization” of the Ukrainian enterprises located on the occupied Donbas
<https://www.unian.ua/war/1801066-dnr-i-lnr-zayavili-pro-natsionalizatsiyu-ukrajinskikh-pidpriemstv-roztashovanih-na-okupovanomu-donbasi.html>.

⁶ The supply of electricity to ORDLO is discontinued
<https://www.pravda.com.ua/news/2017/04/25/7142187/>.

⁷ “Ukrenergo” completely stopped supplying electricity to ORDLO
<https://www.epravda.com.ua/news/2017/07/26/627470/>.

⁸ What Russia provides Donbas with and how much it costs
<https://meduza.io/feature/2017/04/27/chem-rossiya-obespechivaet-donbass-i-skolko-eto-stoit>.

⁹ Economy of Donetsk People’s Republic: condition, problems, solutions: scientific report
https://issuu.com/econri/docs/_konomika_dnr_nauchnyj_doklad__20.

¹⁰ Report on the human rights situation in Ukraine February 16 – May 15, 2017 (p. 180)
https://www.ohchr.org/Documents/Countries/UA/UAResort18th_UKR.pdf.

¹¹ Fighting against the 93rd brigade of AFU in the Zholobok through the eyes of the enemy
https://censor.net.ua/resonance/447835/boi-protiv_93yi_brigady_vsu_za_jelobok_glazami_protivnika.

A temporary lull was recorded in September and October, but in November and December the number of attacks and, accordingly, civilian casualties increased again¹. The parties continued to frequently use heavy weapons, in particular, explosive weapons with a wide range of destruction or weapons, the use of which leads to the destruction of a large area by numerous shells, including in populated areas and areas where vital civilian infrastructure is located, contrary to their obligations under the Minsk agreements to withdraw such weapons from the contact line.

Throughout the year, the UN Monitoring Mission on both sides of the contact line recorded the continued presence of the military in densely populated areas and the use of the civilian property for military purposes. On the GCA: cities of Toretsk and Shastya, urban settlements of Novoluhaniske, Novotroitske, Zolote-4, Krymske, Luhanske, Malynove, Novgorodske, Novomoskovske, Optyne, Torenke, Troitske, Lopaskine, whereas on the NGCA: settlements of Donetsk, Lozove, Dolomotne, Admin-ploshadka, Dacha, Donetsk, Zolote 5, Lukove, Molodizhne, Pikuzy (formerly Kominternovo), in the so-called "gray area" near the Chygary mine, in Pivdenne, in Zaytseve². The shelling damaged hospitals and schools, as well as other infrastructure, resulting in the disruption of water supply, electricity, and gas.

From December 23 2017, till January 10 2018, the level of hostilities decreased significantly as a result of the resumption of ceasefire agreements reached by the Trilateral contact group and other signatories of the Minsk agreements for the period of Christmas and New Year holidays³. But on January 12, 2018,

¹ Report on the human rights situation in Ukraine August 16 – November 15, 2017 (p. 166) https://www.ohchr.org/Documents/Countries/UA/UAResport20th_UKR.pdf.

² Report on the human rights situation in Ukraine August 16 – November 15, 2017 (p. 6, note 18) https://www.ohchr.org/Documents/Countries/UA/UAResport20th_UKR.pdf; Report on the human rights situation in Ukraine February 16 – May 15, 2017 (p. 22–24) https://www.ohchr.org/Documents/Countries/UA/UAResport18th_UKR.pdf.

³ The OSCE SMM Chairman in Ukraine welcomes new re-commitment to ceasefire in Eastern Ukraine and calls on the parties to honour their commitments

there was a new increase in the number of shelling and explosions along the contact line and surrounding areas, which affected, in particular, the civilian population and their housing⁴.

On January 18, 2018, the Verkhovna Rada of Ukraine adopted the Law "On the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk oblasts."⁵ In accordance with this law, by 30 April 2018 the anti-terrorist operation in the East of Ukraine, which lasted 4 years, was replaced by the Joint Forces Operation which is responsible for resistance and determination of the armed aggression of the Russian Federation in Donbas.

In the first three months of 2018, the number of civilian casualties was relatively low, but in April – June 2018, it was documented to increase sharply due to the escalation⁶.

On May 8 2018, the AFU brought under their control the most part of Chyhari, the district in the Pivdenne village of Donetsk oblast.

Approximately 95% of 185 residents have been displaced, 15 homes destroyed and 47 damaged, and the surrounding areas were contaminated with UXO.

During some of the attacks, AFU positions were reportedly located in close proximity to civilian homes, and the civilian property was also used for military purposes. Commissions responsible for assessing the extent of damage and destruction of houses were forbidden to visit the village for safety

¹ <https://www.osce.org/uk/special-monitoring-mission-to-ukraine/364041>.

⁴ See, for example: Latest news from the OSCE Special Monitoring Mission in Ukraine based on information received as of 14 January 2018, 19:30 <https://www.osce.org/uk/special-monitoring-mission-to-ukraine/366531>.

⁵ About features of the state policy on ensuring the state sovereignty of Ukraine on temporarily occupied territories in Donetsk and Luhansk oblasts: the Law of Ukraine as of January 18, 2018 No. 2268-VIII <https://zakon.rada.gov.ua/laws/show/2268-19>.

⁶ Report on the human rights situation in Ukraine February 16 – May 15, 2018 (p. 17) https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf.

reasons. Later Donetsk MCA has allocated funds to help IDP families from Chyhari¹.

In the summer of 2018, the Trilateral contact group in Minsk agreed on two truces: from July 1 and September 1. However, civilians were still in danger through some skirmishes, local shooting, and a slight shift of the contact line. Government forces and armed groups continued the practice of positioning their forces and advancing in populated areas, thus dividing villages. Very often the clashes happened around the contested city of Zolote-4 to the West of the Luhansk oblast. In September 2018, the AFU and armed groups entered the Vlynyi khutor in the Zolote-4, and divided it. On the night of September 28 2018, armed groups forcibly evicted 13 families from their homes. On October 18 2018, a man and a woman were killed by a mine or ERW explosion while trying to repair a power line that had been damaged in the fighting².

During year 2018, as before, skirmishes across the contact line resulted in civilian casualties and damage to houses and civilian infrastructure, particularly water and power lines. Especially vulnerable due to the proximity to the contact line remained the pumping station of the 1st raising main South-Donbass water pipeline and the Donetsk filter station. Military positions were further located in close proximity to residential areas; in addition, the distance between the positions of Ukrainian forces and armed groups was reduced³. New cases of the use by military or armed groups of civilian property and its further damage were recorded (among other things,

¹ Report on the human rights situation in Ukraine May 16 – August 15, 2018 (p. 9) https://www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018_UKR.pdf;

Report on the human rights situation in Ukraine August 16 – November 15, 2018 (p. 34) https://www.ohchr.org/Documents/Countries/UA/24thReportUkraineAugust_November2018_UKRAINIAN.pdf.

² Report on the human rights situation in Ukraine August 16 – November 15, 2018 (p. 10, note 23) https://www.ohchr.org/Documents/Countries/UA/24thReportUkraineAugust_November2018_UKRAINIAN.pdf.

³ Report on the human rights situation in Ukraine November 16 – February 15, 2019 (p. 18) https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf.

in the settlements of Verkhnetroytske, Pisky, Per-vomayske, Vodyane, Travneve and others)⁴. In some settlements on the GCA, such as Shyrokyne, Pisky and Rozsadky, from the point of view of security concerns of AFU, as before, village residents were denied access to this territory, which prevented the assessment of damages and, accordingly, appeals to a court with claims for compensation⁵.

Overall, as stated by the OHCHR, the number of civilian casualties associated with the conflict in 2018 was the lowest for the entire period of the conflict⁶.

During 2019, skirmishes and shootings continued along the contact line and in the surrounding areas, which led, in particular, to the deaths of civilians and damage to residential areas on the GCA and the NGCA. Meanwhile, cities of Dokuchaevsk, Zolote-4, Zolote-5, and Glyboke as well as other settlements continue to suffer⁷.

Given the chronology of the armed conflict in the East of Ukraine, it is possible to about certain phases of causing damage to the property of the civilian population.

Phase I — April–May 2014: the initial phase, which is characterized by the proclamation of the so-called "DPR" and "LPR", the appearance of first IDPs. The beginning of the ATO.

Phase II — May–September 2014: the armed groups fighting in the East were professionalized. The beginning of the use of heavy weapons, which caused significant damage to the property of the civilian population. During this period, the ATO forces

⁴ Report on the human rights situation in Ukraine November 16 – February 15, 2018 (p. 7, p. 25) https://www.ohchr.org/Documents/Countries/UA/ReportUkraineNov2017-Feb2018_UKR.pdf

⁵ Report on the human rights situation in Ukraine February 16 – May 15, 2018 (p. 37) https://www.ohchr.org/Documents/Countries/UA/ReportUkraineFev-May2018_UKRAINIAN.pdf.

⁶ Report on the human rights situation in Ukraine November 16 2018 – February 15, 2019 (p. 5) https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf.

⁷ Latest news from the OSCE Special Monitoring Mission in Ukraine based on the information received as of March 31, 2019, 19:30 <https://www.osce.org/uk/special-monitoring-mission-to-ukraine/415778>.

liberated a number of settlements from the control of armed groups. The signing of the first Minsk trilateral agreement.

Phase III — September—December 2014: despite the ceasefire that began on September 5, 2014, the fighting, though somewhat reduced, continued until the end of 2014. There have been reports about the use of prohibited weapons (cluster munitions), those marked by non-selectivity and a special degree of object destruction. At the same time, the Military Prosecutor's Office of the Eastern region initiated the first criminal proceedings on charges of terrorism through artillery shelling of populated areas in Debaltseve. Both "republics" actively created a parallel system of state power.

Phase IV — January—February 2015: another escalation of the conflict, increased shelling of civilian objects. The main hot spots are Donetsk airport, Debaltseve and settlements in close proximity. Amendments to the Ukrainian legal framework in accordance with the security challenges in the oblast, the signing of the so-called second Minsk agreement.

Phase V — April—December 2015: the reduced intensity of hostilities, yet settlements located near the contact line continue to be shelled. There is a periodic escalation of the conflict and an increase in the destruction of residential facilities. There is an important feature of this period when the Mission of Ukraine to the Council of Europe officially informed the leadership of the Council of Europe about the derogation from obligations under the ECHR and the International Covenant on Civil and Political Rights in the territories of Crimea and Sevastopol, as well as on the non-government controlled territories of Donetsk and Luhansk oblast.

Phase VI — 2016: during the year there was a regular intensification of hostilities along the contact line. The decision of the Trilateral contact group on the withdrawal of forces and means on September 21, 2016, established a limit on the commission of hostilities in the agreed areas.

Phase VII — 2017: reduction in the number of attacks, fighting occurred with variable intensity. During the year, there were several escalations of the conflict in certain areas along the contact line. The parties continued to use heavy weapons.

The beginning of the economic and energy blockade of the NGCA.

Phase VIII — 2018 and present: reduction in the intensity of hostilities. The beginning of the JFO. Sporadic skirmishes, local shootings and minor displacement of the contact line occurred along the contact line and in the surrounding areas.

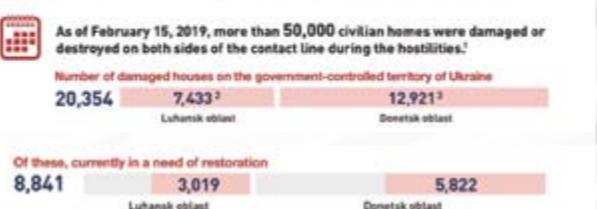
1.2. DESTRUCTION OF CIVILIAN HOUSING IN THE COMBAT ZONE

According to the data from the UN Monitoring Mission, which was released in the 25th report of the OHCHR, as of February 15 2019, on both sides of the contact line were more than 50 thousand civilian homes damaged during the fighting, and the houses of about 40 thousand families living on both sides of the contact line were in an urgent need of repair¹.

According to Donetsk and Luhansk OSA, as of February 2019, the number of damaged houses on the GCA was 20 354.

In Donetsk oblast — 12 921 residential building of all forms of ownership, as of February 2019 — 5 822 houses required restoration.

In Luhansk oblast — 7 433 houses of all forms of ownership, as of February 2019 — 3 019 houses required restoration.



The greatest number of damaged residential buildings in Donetsk oblast is in the cities of Avdiivka — 1301 houses, Sloviansk — 1991 houses, Toretsk — 881 houses, and in the districts of

¹ Report on the human rights situation in Ukraine November 16, 2018 — February 15, 2019 (p. 5)
https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf.

Bakhmut — 1082 houses, Volnovakha — 874 houses; Maryinskyi — 2858 houses, Yasinovata — 2271¹.

It should be noted that the number of damaged or destroyed residential facilities on the GCA is higher. These statistics do not include houses located in hazardous areas, to which neither the owners of the property nor the local authorities have access. For example, in the Pisky village, no inspection of destroyed residential facilities has been carried out, and no counting of such objects has taken place. Such hazardous places are also in a series of settlements located in close proximity to the contact line, among them: Maryinka, Krasnogorivka, Zaytseve, Verkhnotoretske, Avdiivka, etc².

The procedure for inspection of the damaged or destroyed housing stock is regulated by local governments. As a result, in Ukraine, there are significant differences in the procedure of the inspection conduct, its template and the available data in the acts of inspection of housing issued to the population, which suffered as a result of hostilities. In each settlement, on the basis of rural and village Council, Commissions or working groups on inspection of property which was damaged during military operations in the East of Ukraine are created. In some settlements, there are not enough specialists for a full examination of damaged buildings, assessment of the suitability or unsuitability of the house for a living. This situation, first of all, is in settlements that are still suffering from shelling and which were left by a significant part of the local population. Local authorities do not inspect damaged housing of persons who have left the village and did not apply to the authorities for the inspection of their property. But in some settlements, local authorities keep the record of damaged houses without filing a certificate of inspection of the immovable property based on external signs.

As of February 2019, 11,513 houses have been restored in Donetsk and Luhansk oblasts on the GCA.

The recovery of private immovable property occurs primarily through international humanitarian organizations, charity aid, and citizens themselves.

¹ Donetsk and Luhansk Oblast State Administration responses to requests.

² MCA of settlements responses to requests.

In Donetsk oblast, in towns of Krasnogorivka, Avdiivka, Maryinka, Toretsk and Novoluhansk village of Bakhmut district, aid for the recovery of private housing was provided from the regional material reserve of Donetsk oblast. Restoration of communal property houses is provided by local and regional budgets and humanitarian aid. In the city of Lysychansk, 88 owners of apartments in the destroyed multi-story building received compensation from the oblast budget.

Individuals with destroyed houses have been provided with housing which is in communal ownership of local governments. NGO "Donbass SOS" was notified about such cases by residents of Lysychansk, Popasna, Zolote.

In certain districts of the NGCA of Donetsk oblast, according to the message from the so-called "Ministry of Construction, Housing and Communal Services of DPR" made in January 2019, since the beginning of hostilities 26 719 houses were damaged: 21 950 private, 4 769 apartment houses, out of them more than 2000 are beyond repair. At that time, 7 880 private and 2 062 apartment houses have been restored³. According to the Memorial Human Rights Center, the bulk of the restoration work in the NGCA is carried out with the help of the Russian Federation. International organizations also provide aid for the restoration of immovable property. Since September 2015, on the NGCA of Donetsk oblast, there were various programs for the restoration of housing stock. For example:

- "2 000 homes program". In the framework of this program, owners were given construction materials, and they had to conduct all repair work by themselves;
- construction of 111 new private homes to replace the destroyed ones in settlements of Debaltsevo, Uglegorsk, Donetsk, Zuhres and Shakhtarsk⁴.

Information about the part of restored houses, aid provided in the form of construction materials

³ The number of destroyed houses were counted in DPR <<http://gorlovka-news.su/novosti/novosti-gorlovki/11652-v-dnr-podschitali-kolichestvo-razrushennyh-domov>>.

⁴ Monitoring on NGCA <<http://khpgr.org/index.php?id=1475592296>>.

and obtainment of alternative housing instead of the destroyed by affected population is being received by NGO "Donbass SOS" from citizens residing on the NGCA of Donetsk oblast.

Similar programs exist in the so-called "LPR". For example, within the framework of the program "100 houses", new private houses are being built to replace those destroyed in the settlements of Novosvitlivka, Khrushuvate, Chernukhino, Georgiivka¹. "2,000 houses" and "2000+ homes" programs were also carried out². There is also a "Restoration of individual houses located on the territory of "LPR", damaged as a result of hostilities, with minimal damage as of 2018" program is being implemented³.

The exact number of affected residential facilities on the NGCA of Luhansk oblast is unknown. According to various sources, between 6,000 and 9,000 houses of various forms of ownership have been destroyed or damaged.

In June 2018, the so-called "Ministry of Construction, Housing and Communal Services of DPR" reported about the restoration of 5,618 individual houses that were affected by shelling in 2014–2015⁴.

According to the information provided by victims who reside in certain areas of the NGCA of Luhansk oblast, a significant number of damaged houses have already been restored. Some victims were as-

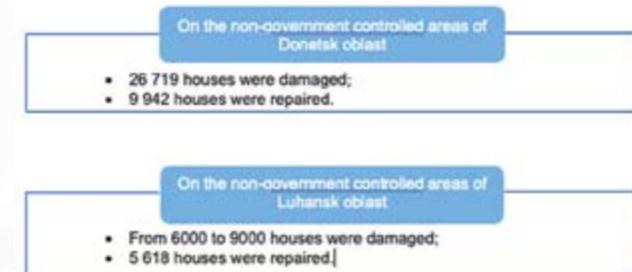
¹ "100 houses": how is the restoration of destroyed housing in LPR is going
<http://cxd.info/laquo-100-domov-raquo-kak-idet-vosstanovlenie-razrushennogo-jilya-v-lnr-n126087>.

² Luhansk residents got the building materials for the reconstruction of destroyed houses
<http://cxd.info/jiteli-luganska-poluchili-stroymaterialy-dlya-vosstanovleniya-razrushennyh-domov-n127423>.

³ Resolution of the Council of Ministers
http://lawdonbass.ru/zakonodatelstvo/postanovleniya_sovmina/ob_utverzhdenii_gosudarstvennoy_programmy_vosstanovlenie_individualnyh_zhilyh_domov_raspolozhennyh_na_territorii_luganskoy_narodnoy_respubliki_povrezhdennyh_v_rezultate_boevyh_deystviy_s_minimalnymi_razrusheniya-mi_na_2018_god-736_18/.

⁴ The Republic has restored more than 90% of houses suffered from shelling of the AFU — the Ministry for building
<https://gtrklr.com/2018/06/08/respublika-vosstanovila-bolee-90-postradavshix-ot-obstrelov-vsuzhlyx-domov-ministroj/>.

sisted with construction materials. But not all victims have received aid. The local population who have received construction materials, faced with the problematic issue of payment for repairs with their own money: some people were unable to pay, and some independently rebuild their houses at their own expense.



It should be noted that the data on the number of damaged and restored housing provided by representatives of the de facto authorities on the territories of Donetsk and Luhansk oblast is not confirmed by any official institution.

It is obvious that the destruction of residential facilities was the result of shelling of both, the Ukrainian military and representatives of the so-called "LPR" and "DPR".

Primarily, given the official sources, we can conclude that on the NGCA the number of damaged residential properties is higher than on the GCA. As noted above, the OHCHR, as of February 15, 2015, gives data about the damage caused to more than 50,000 civilian houses on both sides of the contact line. According to the information provided by Donetsk and Luhansk OSA, on the GCA as of February 2019, the number of damaged houses of all forms of ownership is 20,354.

Reconstruction of residential buildings on the NGCA is taking place at a faster pace. As of February 2019, 11,513 houses were restored on the GCA of Donetsk and Luhansk oblasts, while in January 2019, representatives of the de facto authorities of the so-called "DPR" reported about 9942 restored houses, and the so-called "LPR", in June 2018, reported about the restoration of 5 618 houses.

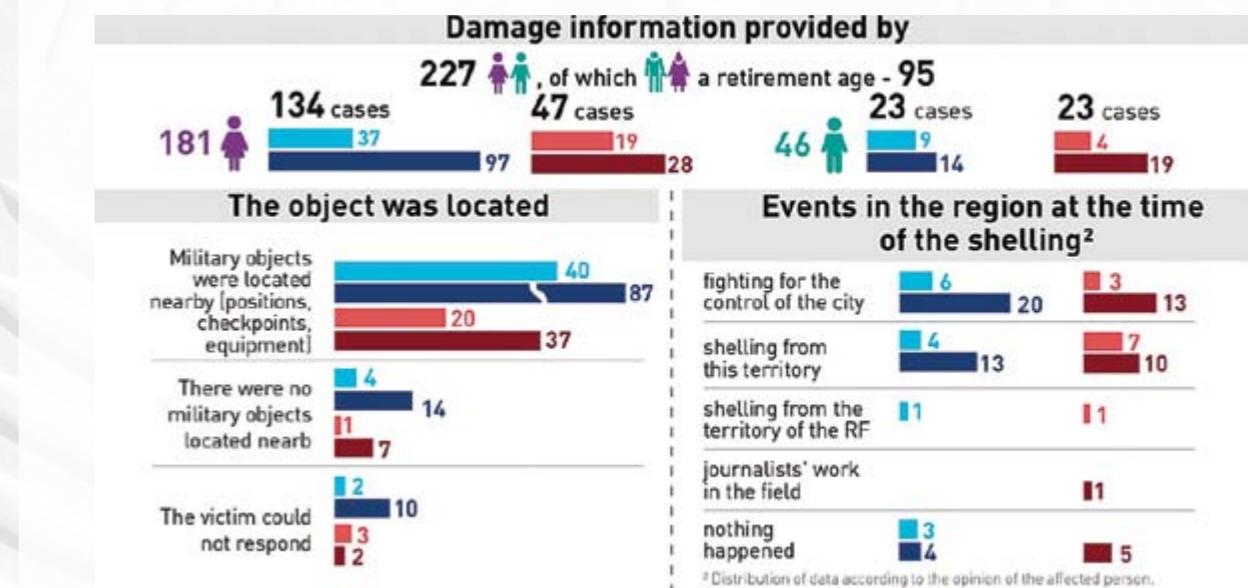
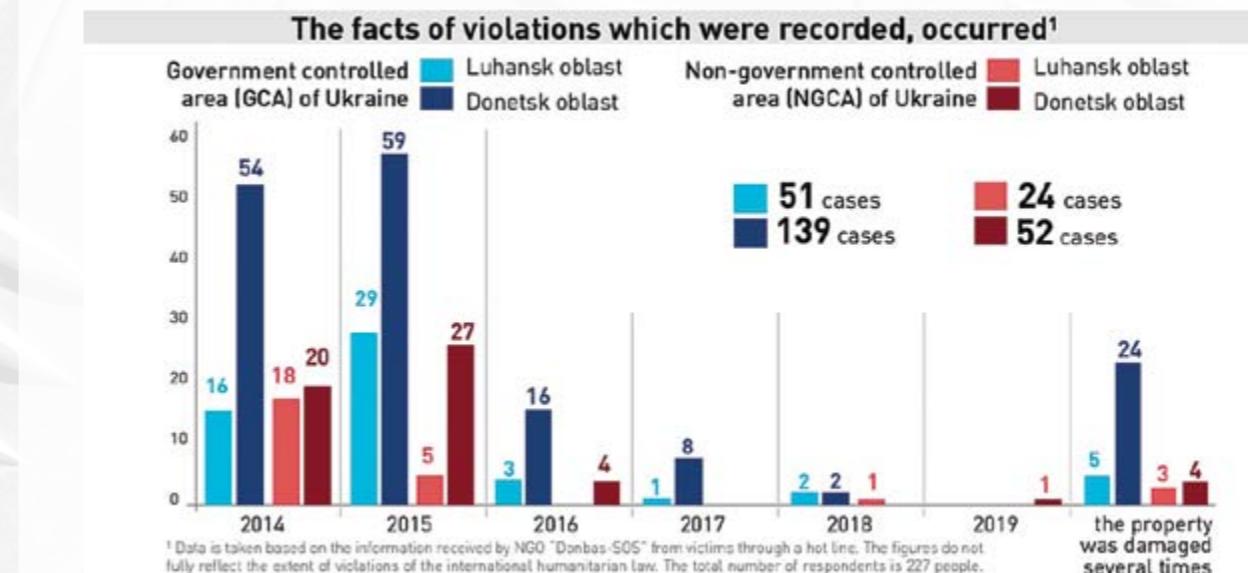
A survey conducted by NGO "Donbass SOS", revealed that the highest number of damaged immovable property was in 2014–2015. With a decrease in the intensity of the fighting in the East of Ukraine,

there is a significant decrease in the number of destroyed residential properties. At the same time, damage to the housing of civilians occurs in settlements located in close proximity to the contact line. Overall, 227 people whose immovable property has suffered from damage were interviewed: 181 female and 46 male, of whom 157 have their damaged property on the GCA, and 70 people on the NGCA of the so-called "LPR" and the so-called "DPR".

In the above sample of cases of damaged civilian property, a greater number of facts is related to

humanitarian law by the parties to the armed conflict in Eastern Ukraine.

Respondents of the survey notice that next to their damaged accommodation in the vast majority of cases military facilities, and equipment were placed. On both sides of the armed conflict were recorded cases of placement of military fortifications, and military equipment practically on the territory of private households. At the same time, there are cases of destruction or damage to residential facilities, when there were no military facilities placed



the GCA of Ukraine. This is due to a large number of respondents who live on the GCA of Donbas, so the figures obtained cannot be regarded as those fully reflecting the extent of violations of international

DESTRUCTION OF CIVILIAN HOUSING IN THE COMBAT ZONE

nearby and other reasons that could potentially provoke the shelling.

Analysis of survey results suggests that most of the destruction of residential facilities on both

sides of the contact line resulted from battles for control of the city or a specific object, such as the airport, industrial zone, etc.

Carrying out attacks from the territory of settlements where the damaged immovable property is located, was also mentioned by respondents as one of the possible causes of destruction or damage to their houses. Therefore, it is necessary to notice that individuals whose houses were damaged on the NGCA additionally pointed out that the attacks on the settlement could be carried out by illegal armed groups. This situation is more typical for large settlements, such as Donetsk, Luhansk, Gorlivka, etc.

Below an analysis of the situation with civilian houses in individual settlements of Donetsk and Luhansk oblasts is provided.

Avdiivka city

Avdiivka is the city of regional significance in Ukraine in Donetsk oblast. It is located 13 km north of Donetsk.

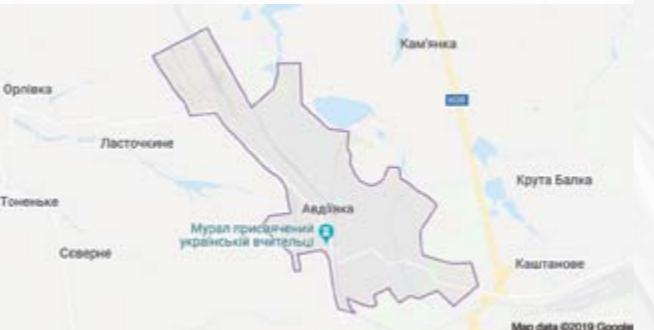
Avdiivka is a part of Donetsk-Makiivka agglomeration and positions around it give the ability to control the Northern outskirts of Donetsk and Yasynovata, the southern suburbs of Gorlivka, and also M04 highway "Donetsk – Gorlivka". In addition to the tactical importance of the city, it also operates one of the largest coke plants in Europe, which is called Avdiivka coke plant. As of January 1, 2013, the city had a population of 35,128 people¹.

Avdiivka has historic zoning:

- The old town (formerly Avdiivka I) consists of private buildings;
- Khimik village (formerly Avdiivka II) – multi-story buildings².

Since the end of April 2014, Avdiivka was under the control of IAG of the so-called "DPR". On July 29,

2014, the city was liberated and completely taken under the control of the AFU³.



Shelling of the city, during which residential facilities were damaged, began in the summer of 2014. The most fierce battles for Avdiivka occurred in January–February 2015.

Another escalation occurred at the end of January 2017, when IAG has made several attempts to capture Avdiivka industrial zone with the previous use of heavy artillery. Then, during three days only, the city had received more than 7 500 ammunition from heavy weapons⁴. The destruction of civilian houses as a result of tank attacks was also recorded⁵. According to the police of Donetsk oblast on May 15, 2017, more than 560 buildings have been damaged in Avdiivka since the beginning of 2017⁶.

According to the MCA of Avdiivka city, currently, 3 240 citizens applied to the working group on the investigation of facilities damaged in the fighting. Members of the working group examined and compiled 3,172 reports of damaged objects. The working group conducts an investigation of immovable property solely on the request of citizens. The investigation is not carried out in places of combat

¹ Population in Ukraine as of January 1, 2013. Data from the State Statistics Service of Ukraine http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2013/sb_nnas_2012.pdf.

² Population in Ukraine as of January 1, 2013. Data from the State Statistics Service of Ukraine http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2013/sb_nnas_2012.pdf.

operations, through a direct threat to the life and health of members of the working group¹.

According to residents, the most affected locations are Khimik village, area of the Old Avdiivka, and the outskirts of the city near the industrial zone.

"Our street is short, 20 houses only. All of these houses are damaged. Whether the window panes are broken, or there was a direct hit. Nine and ten-story buildings near block posts are also severely damaged. This is such a spectacle"².



Attacks were carried out both in a day and at night. Some of the houses were hit by shell two or three times. Destroyed multi-story house, 20, Molodizhna Str. Mural is dedicated to the Ukrainian teacher³.

"I was just talking to a friend on the phone and at that moment she hears this explosion in the phone. I got buried, and could not see the window... Where are those windows, where to climb. People have called rescuers. The shell hit the kitchen, it was "Grad"⁴.

Since the end of 2017, the number of attacks, as a result of which houses of civilians were subjected to destruction, has decreased significantly. But on the streets, which are located in close proximity to the industrial zone of Avdiivka, people still do not feel safe. Bullets are flying, in some places, mortar and shrapnel from shells land on the territory of

¹ MCA of Avdiivka response to the request.

² Interview M.

³ Photo Novynarnya <https://novynarnia.com/2017/03/10/trusimosya-y-chytayemo-otche-nash-yak-vedetsya-v-avdiyivtsi-maryni-marchenko-geroyini-znakovogo-muralu/r Zukrashka-avdiyivka-mural/>.

⁴ Interview G.

households. The destruction of civilian homes was recorded in 2018 and 2019.

"They shoot at Ukrainian positions, but they fly across"⁵.

"Bullets fly like bees. 24/7. Even though they say that there is a truce... well, yesterday... There were clothes hanging on a rope. I tried to get my clothes 5 times. Who shoots and where, it is impossible to understand..."⁶.

In addition to residential buildings, many outbuildings were damaged or destroyed in private households: garages, summer kitchens, sheds, toilet, etc. Also some damage was caused to household plots, land, orchards, greenhouses etc. Part of the population was unable or is still unable to use the land.

During 2014–2018 within the town of Avdiivka, 99 communal property houses were restored, 2 houses of a housing cooperative, 1003 private houses. The restoration was carried out at the expense of the Avdiivka coke plant, charitable organizations, subventions from the state budget and other sources not prohibited by the current legislation. Restoration work was carried out with the involvement of SES units⁷.

There were reports on robberies of houses whose owners were out of town for the period of heavy shelling. The perpetrators were not found and/or punished.

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Avdiivka, the following reasons for the destruction of property were named:

- shelling of the city during the liberation of Avdiivka in July 2014;
- the proximity of residential houses to block posts, military equipment, premises where the military was based. There were cases when block posts were placed at a distance of 50–100 m from houses. Some of them were later removed;
- launching of attacks from the territory of the city;

⁵ Interview K.

⁶ Interview Y.

⁷ MCA of Avdiivka response to the request.

"On our side, everything was stolen. There was no one there. Only the military. Who else could take everything out?"¹.

According to the information from the MCA of Maryinka and Pobeda village, as of June 2019, 1840 residential facilities were damaged. Of them destroyed 83 apartments and 112 private houses, 1645 facilities have suffered a medium degree of damage.

The Commissions for the inspection of damaged property does not inspect without the written request from house owners. At the same time it is impossible to examine residential properties on the following streets due to a high level of danger: Zelenyi Hay, Stepna, Sadova, Yuvileyna, Gagarina, and partly on Slav'yanska, Petra Karpova, Sergiya Prokofieva, Moskalevskogo, Mury.

On the territory of the city started a gradual restoration of damaged houses at the expense of the regional material reserve of Donetsk oblast, oblast budget, international organizations and citizens themselves. At the expense of the regional material reserve of Donetsk oblast, 195 roofs in private houses were restored, at the expense of the oblast budget 11 apartments have been renovated.

In 117 private houses, medium and partial repairs were made, 7 houses were built from scratch after the destruction. In 113 houses glass was replaced. The Danish Refugee Council and the International Committee of the Red Cross assisted in the reconstruction of private homes². Employees of the State Emergency Service of Ukraine were involved in the restoration works³.

Apart from residential buildings, many outbuildings were also destroyed: sheds, summer kitchens, garages, etc. On household plots which were located in close proximity to military positions, military fortifications were built. Part of victims reported that the territory on their plots was mined, and tripwires were laced on it.

¹ Interview L.

² MCA of Maryinka and Pobeda village to the request

³ In the Donetsk oblast the restoration of houses in the cities of Avdyivka, Maryinka, and Krasnogorivka continues

<https://www.dsns.gov.ua/ua/Nadzvichayni-podiyi/81485.html>.



*The house on Petrovska Str in the city of Maryinka.
Destruction outside and inside the house⁴*

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Maryinka, the following reasons for the destruction of property were named:

- fight for the control over the city in 2014 and 2015;

⁴ Photos provided to NGO "Donbass SOS" by locals.

- location of the city on the contact line, proximity of military positions of the parties;
- basing of the military in Eastern parts of the city, arrangement of military positions on the territory of private households and launching of attacks from there;
- location of block posts in close proximity to residential houses;
- shelling of the settlement by IAG.

Krasnogorivka city

Krasnogorivka is a city of regional significance in the Maryinka district of Donetsk oblast. It is located in the Central part of the region, on the Lozova river (a tributary of the Vovcha, Samara basin). As of January 1, 2013, the city had a population of 15,937¹.

Krasnogorivka's East side of the city borders with the village of Staromykhailivka that is under control of the so-called "DPR", the Western suburbs of Donetsk (Petrovsky district) directly adjoin to the territory of the city².



At the beginning of the armed conflict in Donbas, Krasnogorivka was under the control of the so-called "DPR". On August 2, 2014, after the battle, the city was liberated by anti-terrorist operation forces³.

¹ Population in Ukraine as of January 1, 2013. Data from the State Statistics Service of Ukraine
http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2013/sb_nnas_2012.pdf

² Krasnogorivka
<https://uk.wikipedia.org/wiki/%D0%9A%D1%80%D0%B0%D1%81%D0%BD%D0%BE%D0%B3%D0%BE%D1%80%D1%96%D0%B2%D0%BA%D0%B0>.

³ The ATO forces liberated Krasnogorivka, "Donetsk" terrorists are cut off from "Luhansk" (map)
<https://www.unian.ua/politics/946792-sili-ato-zvili-nili-krasnogorivku-donetski-teroristi-vidrizani-vid-luganskih-karta.html>.

The contact line runs through the Eastern outskirts of Krasnogorivka. The first artillery shelling of the city was on July 13, 2014⁴. On the same day, there were the first civilian casualties and the first destruction of houses. According to eyewitnesses, at that time on the outskirts of the city, block posts of the so-called militia were placed. Part of the respondents from the local population blames the ATO forces for the first shelling of the settlement.

Since then, the shelling of Krasnogorivka city was regularly mentioned in the reports of the ATO, JFO.

The city was subjected to a massive shelling in early June 2015, during the offensive of armed groups on Maryinka. As of November 2015. In Krasnogorivka 500 houses (1500 flats) and 200 infrastructure objects were damaged⁵.

"Shootings were from both sides. Boy... Shelling were coming here and going there. When I came back (in 2017. — ed.), it does not get to us, thank God. Our village, it was badly damaged. Because it is on the outskirts and a lot of shellings were coming. Literally, every second home is damaged. There were destructions in the center and near the village. It was going everywhere. Across Krasnogorivka there is no street which is untouched"⁶.

The destruction of residential properties in the city took place in 2016, and in 2017. In 2018–2019 the number of messages about the destruction of immovable property in the city of Krasnogorivka decreased. The Eastern part of the city, which is located near the contact line, suffers the most.

"Here the ceasefire has never begun. It's just a name. Every day there are shellings. Sometimes heavier, sometimes a little less, but they are constant. When "Grad" worked, we heard about 10 shells. Tank was shooting in the city, as well as

⁴ The shelling of Krasnogorivka killed civilians
<https://ua.korrespondent.net/ukraine/events/3392096-vnaslidok-obstrilu-krasnogorivky-zahynuly-myjni-zhyteli>.

⁵ The repair lines of water and power are being finished in Maryinka and Krasnogorivka which suffered from shelling
<https://fakty.ua/208213-v-postradavshih-ot-obstrelov-marinke-i-krasnogorovke-zakanchivayut-remont-liniy-elektro-i-vodosnabzheniya>.

⁶ Interview Y.

*the heavy artillery. Mortars, small arms worked. All that could be,” said on July 20, 2017, the Chairman of the MCA of Krasnogorivka city in his comments to the military television*¹.

Apart from residential buildings, many outbuildings were also destroyed or damaged: sheds, summer kitchens, garages, toilets, etc. Household plots and orchards were also damaged.

There were reports on robberies of houses whose owners were out of town for the period of heavy shelling.

In August 2017, the Deputy Head of Krasnogorivka MCA Roman Korzhov published a list of damaged houses in the city. *“What is highlighted by markers is restored at the expense of humanitarian organizations and friends-volunteers. What is left blank—awaits restoration: its either located in the “red” zone, or there is simply a lack of materials”, said Roman Korzhov*².



*Photo of the list of houses damaged in the shelling in the city of Krasnogorivka*³

As of June 2019, on the basis of the MCA of Krasnogorivka the following damages were recorded: 100 multi-story buildings, 1726 apartments in these building, of which 102 apartments were damaged

¹ The comment of the Chairman of the MCA of Krasnogorivka regarding the shelling of residential areas
<https://www.youtube.com/watch?v=qxx1BbLtYus&t=19s>.

² Published a huge list of destructions in Krasnogorivka
http://kumar.dn.ua/news/opublikovan_ogromnyj_spisok_razrushenij_v_krasnogorovke/2017-08-01-4947?fbclid=IwAR2JqqDt43CHm6TlfQrJAWPmPx2fTE6PmZ_H99PMoKAYEc1Uf_W1vTjTU.

³ Ibid.

heavily; 1058 private houses, 69 of them were completely destroyed and 100 are in need of serious repairs. In some cases, an inspection of destroyed or damaged housing was conducted, even though its owners left the place of residence and did not apply for inspection. In these cases, a house or an apartment is listed in the database of damaged objects, but inspection reports are not compiled. At the same time, there are areas in the village near the contact line (in the Eastern part of the city) where the inspection of damaged immovable property cannot be carried out because it is too dangerous.

A restoration of damaged civilian property is being gradually carried out on the territory of Krasnogorivka. Now 662 private houses and 46 multi-story buildings have been restored.

For the restoration of residential facilities the following funds were used: the regional budget, private funds of residents, aid provided by international organizations: the Danish Refugee Council, the Czech NGO “People in need”, the International Committee of the Red Cross, Adventist Development and Relief Agency” ADRA Ukraine”, “Caritas Ukraine”⁴.

During the survey which was carried out by NGO “Donbass SOS” among persons whose property was damaged or destroyed in Krasnogorivka, the following reasons for the destruction of property were named:

- massive artillery shelling;
- the proximity of block posts to residential buildings;
- the proximity to advanced military positions;
- launching of attacks from the territory or suburbs of the city.

Pisky village

Pisky — the village in Yasinovata district, Donetsk oblast.

The distance to the district center is about 20 km and it passes through a local highway. The settlement is located in close proximity to the Donetsk airport. The lands of the village border the territory of the Kuibyshev district of Donetsk.

⁴ MCA of Krasnogorivka response to the request.

According to the 2001 census, the village had a population of 2,160¹.



The location of the village, its proximity to Donetsk and Donetsk airport, played a tragic role in the history of this settlement.

On November 21, 2014, the ATO press center reported on the seizure of control over the Pisky village².

According to residents, the first shelling of the village took place on July 18, 2014. The majority of witnesses place the responsibility for the first attack on ATO forces.

“Block posts were based only at the beginning of the village, there are a Motel and a gas station. But we had nothing in the village itself. I want to ask why they were shooting at us? Why were they shooting Pesky, peaceful people, at 7 am on July 18? What for, Ukraine?”³.

“For one or two days we had IAG in the village. It was said that Pesky was released, but in reality, IAG left voluntarily and people who wanted to go to Donetsk were taken by bus. They left Pesky by themselves. It was July 17, 2014”⁴.

Since then, the village has been under a regular shelling, which led to heavy destruction of residential facilities. Pesky has become a reference point for the protection of the Donetsk airport by ATO forces in 2014–2015. The defenders of the

¹ Pisky (Yasinovata district)
[https://uk.wikipedia.org/wiki/%D0%9F%D1%96%D1%81%D0%BA%D0%B8_\(%D0%AF%D1%81%D0%BA%D0%BD%D1%83%D0%B2%D0%B0%D1%82%D1%81%D1%8C%D0%BA%D0%B8%D0%B9%D0%80%D0%B0%D0%B9%D0%BE%D0%BD\)](https://uk.wikipedia.org/wiki/%D0%9F%D1%96%D1%81%D0%BA%D0%B8_(%D0%AF%D1%81%D0%BA%D0%BD%D1%83%D0%B2%D0%B0%D1%82%D1%81%D1%8C%D0%BA%D0%B8%D0%B9%D0%80%D0%B0%D0%B9%D0%BE%D0%BD)).

² ATO forces took control of the suburb of Donetsk-Pisky
https://espresso.tv/news/2014/07/21/syly_ato_vzyaly_pid_kontrol_peredmistya_donecka_pisky.

³ Interview V.

⁴ Interview T.

airport were supplied with food and ammunition through the village, as well as conducted a rotation of soldiers. Artillery fire support was also deployed in Pesky⁵.

Eyewitnesses recall strong attacks on the village in January 2015, they were probably associated with the fighting escalation for the Donetsk airport, the defense of which the Ukrainian military continued till January 22, 2015.

“Well, before the New year, it was not that bad. And at the beginning of 2015, it was very scary. The shelling was crazy”⁶.

Constantly, because of the massive shelling, the population was forced to leave the village. There were facts of the forced departure of the civilian population in the summer of 2014 by separate military personnel of Ukraine. According to various reports, from 6 to 13 civilians currently, reside in Pesky.

For some time, during 2014–2015, some local residents were still able to get to the village periodically, inspect the house, pick up their personal belongings. But now the settlement is closed both for property owners, and for local authorities. The majority of citizens do not know in what condition is their housing or other property which remained in the settlement.

Also, property owners are not able to obtain inspection certificates of damaged or destroyed property. The Commission for the inspection of property damaged as a result of ATO/JFO created by the Yasinovata OSA did not conduct any inspection of the property in Pesky. An inspection of destroyed (damaged) buildings and infrastructure will be possible only after a sustainable cessation of hostilities, demining and authorization from the military and emergency response agencies.⁷

According to various preliminary data, there is not a single house in the village that has not been damaged as a result of massive shelling.

⁵ Fights for Donetsk airport
<https://uk.wikipedia.org/wiki/%D0%91%D0%BE%D1%97%D0%B7%D0%BA%D0%94%D0%BE%D0%BD%D0%BA%D0%86%D1%8C%D0%BA%D0%BD%D0%BA%D0%80%D0%BE%D0%BD%D0%BE%D1%80%D1%82>.

⁶ Interview N.

⁷ MCA of Yasinovata response to the request.

constantly under the control of the armed groups of the so-called “DPR”

The first shelling of the city took place in July 2014. According to locals, the massive shelling of the city was in 2014–2015 and later attacks became periodic. Now suburbs and the outskirts of the city suffer from the shelling more, than other parts of the city.



“In 2015, attacks were happening on a daily basis. And they still do... In 2014, that’s when the shelling started, I was counting only in our village – up to 15 houses. Up to 15 fires. The village of Kochegarka. Someone was building something, hoping for something...”¹.

Residents have repeatedly stated about the attacks being carried out by armed groups in 2014–2015 from the city and the placement of military equipment near residential buildings.

According to locals, the number of damaged houses in the city reaches thousands. In August 2016, citing the so-called Deputy Head of Administration of Gorlivka Igor Gorbatenko, it was announced that 2 244 private houses are destroyed, of which 154 are beyond repair, and 1584 received destruction of a non-capital nature².

“The central city district and suburbs suffered the most. It is unknown who was firing. Because everybody lies! It is unknown who exactly was firing.”³.

The affected civilian population was provided with construction materials under the current so-called “Republican programs” aimed at res-

toration of private housing: “3728 “and” Quick repair”⁴.

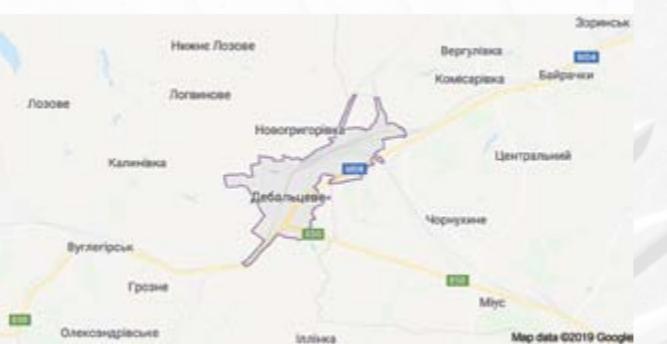
During the survey which was carried out by NGO “Donbass SOS” among persons whose property was damaged or destroyed in Gorlivka, the following reasons for the destruction of property were named:

- possible shelling of residential areas of the city by the so-called “militias”;
- shelling of the city from Ukrainian positions;
- placement of military formations and military equipment in the city;
- unknown cause. In certain parts of the city, the respondents did not note anything that could provoke the shelling.

Debaltseve city

Debaltseve is a city of regional significance in Donetsk oblast. The distance to Donetsk is 74 km by roads. On the Eastern outskirts of the City there is a border between the Donetsk and Luhansk oblasts.

Debaltseve is a city with a large railway junction. From here the roads diverged in several directions. As of 2013, there were dozens of commuter and night trains. The city intersects 2 European corridors: E40M03 and E50M04⁵. As of January 1, 2013 the city had a population of 45 983 people⁶.



¹ Interview O.

² In Gorlivka began the restoration of 437 private houses of 2244 private houses damaged by shelling <http://mozaika.dn.ua/index.php?newsid=73723>.

³ Interview X.

The city of Debaltsevo was at the epicenter of the armed conflict for some time. There were fierce battles for the control over this settlement. From April 2014 till July 29, 2014. the city was controlled by IAG of the so-called “DPR”. Then almost for a half a year the city was held by the AFU. Since February 18, 2015, after protracted fights, the city is controlled by the so-called “DPR”.

The first shelling of Debaltsevo took place in July 2014. The first destruction of residential properties took place at the same time. According to eyewitnesses, regular shelling of the city did not stop even after the signing of the first Minsk agreements on September 5, 2014¹. According to this document, Debaltseve is supposed to be under the control of Ukraine.

“On July 25, 2014, at 5 o’clock in the morning they started bombing us. We climbed into the basement of our own house. All our windows were smashed. And it was the first day they started shooting at us. It was July 24 or 25. IAG were in our city back then, and the Ukrainian army was trying to expel them. It is unclear who shot. We were in the shelter for two months. The Ukrainian army was bringing us food”².

In January – February 2015, the city underwent a mass shelling and destruction of infrastructure and residential facilities during the so-called “Battle of Debaltseve”. On January 22, 2015 offensive on Debaltseve by IAG was launched. According to eyewitnesses, attacks occurred all the time.

Within three weeks, AFU were attacked several times per day from MLR “Grad” and “Hurricane” and cannon artillery with calibers of 152 and 203 mm. Apart from large calibers, mortars were also used during the attack³. Also, for a few days there were street fights in the city.

“Our house burned down in February. The windows flew out, the roof was damaged, but the

¹ From the official point of view, there are no two “Minsk agreements”. There is only a Protocol that contains a number of agreements and a set of measures to implement them.

² Interview O.

³ Fighting for Debaltseve –chronicles of hell in 2014 year and the situation in the suburbs today https://censor.net.ua/blogs/1105917/bo_za_debaltseve_hronki_pekelnogo_2014go_roku_situatsya_v_peredmst_sogodn.

building stood. In our garden were explosions all the time. And then, in February, we got a call. People were sitting in the shelter, in February they got out and we do not have home any more”⁴.

The shelling did not stop after the signing of the so-called “Second Minsk agreements” on February 11–12, 2015 at the negotiations in Minsk. Massive shelling of the settlement stopped after the Ukrainian military left the city on February 18, 2015.

Locals often do not know the exact date when their houses were damaged. Many people left for a period of heavy shelling, and when they returned after the relative stabilization of the situation in the city, they saw destroyed houses. According to some reports, there were about two thousand inhabitants in the city at that time.⁵

From different sources of information, Debaltseve has the greatest number of damaged houses as a result of the armed conflict in the East of Ukraine. From 70 to 90% of city buildings received varying degrees of damage.

“It was all broken. Of all the people I knew, no one had a house that wasn’t damaged. Employees, friends, acquaintances, everyone. It’s after February.”⁶.

In addition to residential buildings, in many private households outbuildings and household plots were also damaged. According to locals, in some places, defensive military structures (foxholes, trenches) were placed on the territory of private households.

“We have a place there... We have a railway hospital there. First, IAG settled there, in schools and in college dormitories. The Ukrainian army shot at a cluster of the military. Then those escaped, and Ukrainian troops stayed there. They began to dig trenches. And then IAG began to shoot them. In January – February of 2015, in our courtyard Ukrainian troops set mortar and were shooting from our own backyard”⁷.

⁴ Interview O.

⁵ The battle continues in Debaltseve <http://paralel-media.com.ua/p69654.html>.

⁶ Interview G.

⁷ Interview O.



In March 2015, journalists of the program "Vikna-Novyny" (STB) visited the occupied Debaltsevo¹.

According to residents, some of the damaged houses have now been restored. In Debaltsevo, several multi-story houses for the population, whose housing was destroyed were built². But not all victims received aid.

In March 2019, the media published information about the restoration of private property in Debaltsevo with reference to the so-called HCS Deputy Chairman of Debaltsevo Irina Gordus:

*"Out of 297 multi-story buildings, 225 were damaged. As of today, 110 are fully repaired. Out of 6 thousand private houses, more than 3,5 thousand were damaged, and nearly 300 completely destroyed. 46 we built from scratch. To those people whose houses survived, we provide building materials. Also, the Red Cross helps with a repair"*³.

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Debaltsevo, the following reasons for the destruction of property were named:

- fighting for the control of the city;
- location of block posts, advanced military positions, military equipment, weapons in the city;

¹ Photos provided to NGO "Donbass SOS" by locals.

² In the uncontrolled Debaltsevo 32 families received accommodation (photos)
<https://dnews.dn.ua/news/555655>.

³ Residents spoke about the restoration of the most damaged city of DPR
<https://iz.ru/856097/2019-03-14/zhiteli-rasskazali-o-vosstanovlenii-samogo-postradavshego-goroda-dnr>.

- shelling of the city from the NGCA;
- launching of attacks from the territory of the settlement.

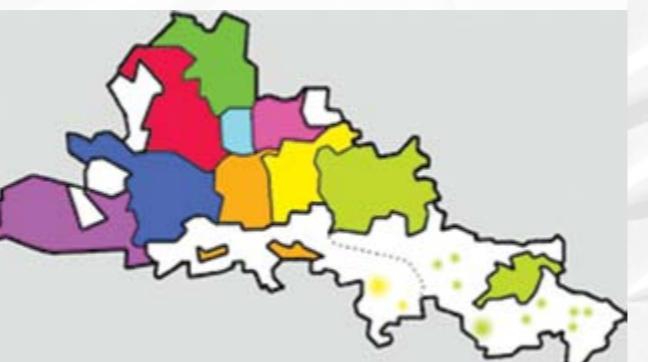
Donetsk city

The city of Donetsk is the administrative center of Donetsk oblast. Before the armed conflict in Donbas, Donetsk was a major industrial and financial center of Ukraine, the "mining capital" of Ukraine, the center of the most economically developed oblast of Ukraine.

Donetsk is one of the five largest cities in Ukraine.

The territory of the city of Donetsk is divided into nine administrative units – districts⁴.

Map of Donetsk districts:



- | | |
|--|---|
| ■ Budenovsky ■ Voroshilovsky ■ Kalininsky ■ Kyivsky ■ Kirovsky | ■ Kuibyshevsky ■ Leninsky ■ Petrovsky ■ Proletarsky |
|--|---|

As of January 1, 2013 the city had a population of 953 217 people⁵. Since April 2014, Donetsk is under the control of the so-called "DPR", except the territory of the Donetsk airport which the Ukrainian military have been defending till January 22, 2015. Fights for the Donetsk airport became one of the most fierce in the armed conflict in the East of Ukraine.

The first shelling in Donetsk and first destruction of infrastructure and residential facilities took place

on May 26, 2014 in the area of the airport. On that day, the IAG attempted to seize the airport. Then the Ukrainian command to protect this strategic object used combat helicopters "MI-24" and attack aircraft "SU-25". Ukrainian units were also supported by the Ukrainian aviation with fire¹.

In the summer of 2014 artillery attacks on other areas of Donetsk began, including with the use of MLR "Grad". According to the findings of the organization "Human Rights Watch", which visited Donetsk with a field mission in July 2014, at least four attacks on the city from the MLR "Grad", occurred during July 12–21, 2014, and were committed by government troops. It was also noted by the organization that the IAG placed its positions in densely populated areas².

Locals note about the further practice of placements of military positions and techniques near houses and bombardments from the territory of the city by IAG representatives. Also, some of the inhabitants of Donetsk believe that part of shelling of the city was carried out by IAG.

*"Repeatedly witnessed shooting from "Grad", located on the territory of the military unit (Kyivsky district, the book market "Mayak") and in the forest near the neighborhood Donsky (Budenovsky district). "Grad" was not hidden. The shooting was conducted in the direction of the airport"*³.

"IAG begin. Shooting towards the other side. Avdiivka, Pesky. Directly to houses, I did not see any "paybacks". In Putilovsky Grove where IAG positions are placed, it is near my house. They have tanks there, I have seen them being shelled, there was smoke. Apparently, the shooting was coming from Avdiivka, Pesky. But we know that from our side they also shoot... And we are getting shelled from the city. From the city to the city. And the Red Cross

¹ Battle on May 26, 2014
https://uk.wikipedia.org/wiki/%D0%91%D0%BE%D1%97%D0%B7%D0%BA_%D0%94%D0%BE%D0%BD%D0%B5%D1%86%D1%8C%D0%BA%D0%B8%D0%B9%D0%B0%D0%B5%D1%80%D0%BE%D0%BF%D0%BE%D1%80%D1%82%D0%91%D1%96%D0%B9_26_%D1%82%D1%80%D0%B0%D0%B2%D0%BD%D1%8F_2014.

² Ukraine: civilians killed by shelling from "Grad"
<https://www.hrw.org/uk/news/2014/07/24/254650>.

³ Interview V.

*when the Swiss died, too⁴. We know where it came from, we drove next to it*⁵.

According to eyewitnesses, the most mass attacks of the city occurred from the end of August 2014 till the end of February 2015. Later, in 2015–2016, attacks had a periodic character. On the outskirts of the city, the sounds of shelling can still be heard.

The destruction of houses occurred in the past five years of conflict, but the vast majority in 2014–2016. The largest number of destroyed houses is in Kuibyshevsky, Kirovsky, Kievsky, Petrovsky districts of Donetsk.

*"In 2014 all civilians left. We passed by it not so long ago, in the private sector, all houses are destroyed. Not a single house has survived. Stratonatov Street is totally destroyed"*⁶.

In July 2017, the media with reference to the data of the so-called "Head of Administration" of Donetsk Oleksiy Kulemin published the number of destroyed and damaged housing in Donetsk. According to this data, in Donetsk the shelling damaged:

- 2,278 apartment buildings (12 of them destroyed);
- 8171 private residential building (700 of them are beyond repair).

Some of the damaged houses have already been restored, some of the victims were assisted with the construction materials to conduct restoration of houses by themselves. It is also known about the construction of 18 houses for people whose homes were destroyed⁷.

Locals also noted that not all affected areas of Donetsk are being restored evenly. The slowest recovery of private property occurs in areas close to the contact line.

⁴ Laurent Du Pasquier, an employee of the International Committee of the Red Cross, was killed in a shelling on October 2, 2014 in Donetsk
<https://www.icrc.org/ru/doc/resources/documents/news-release/2014/10-02-ukraine-delegate-killed.htm>.

⁵ Interview D.

⁶ Interview O.

⁷ In Donetsk they built a village for those who lost their homes in the war (Photo)
<https://dnews.dn.ua/news/615712>.



Apartment in Donetsk after it was hit by a shell¹

Some residents whose homes were destroyed were provided with temporary housing.

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Donetsk, the following reasons for the destruction of property were named:

- the proximity to the contact line;
- fights for the Donetsk airport;
- placement of block posts, advanced military positions, military equipment, weapons in the city;
- attacks from the territory of the city towards the Ukrainian positions;
- shelling of the city by IAG;
- attacks carried out from positions of the Ukrainian military.

Luhansk city

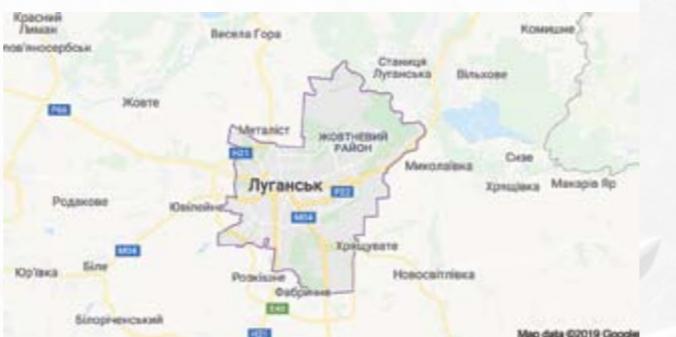
Luhansk is the city of regional subordination in the East of Ukraine, the administrative center of Luhansk oblast, the easternmost oblast center of the state. As of January 1, 2013, the city had a population of 425 828 people². In early 2014, Luhansk ranked 11th among Ukrainian cities in terms of population.

The territorial community of Luhansk city Council consists of four districts:

- Artemovsky district (including Oleksandrivsk city, villages of Zrakove, Teplychne, Yuvileyne, Yuvileyne village Council, urban settlement Katerynivka);
- Oktyabrsky district;
- Kam'yanobridsky district;
- Leninsky district³.

Since the beginning of the armed conflict in the East of Ukraine, the settlement is controlled by the so-called "LPR". Ukrainian paratroopers held the defense of Luhansk airport, which is located at a distance of 9 km from the city borders (Vidny micro-district) until September 1, 2014.

The summer of 2014 was tragic for the locals. It was then that massive shelling occurred in the city, which resulted in a large number of civilian casualties and the destruction of buildings and infrastructure. The vast majority of residential buildings in Luhansk suffered in the period June-September, 2014.



Since May 2014, locals have noted the appearance of block posts on the streets of the city, a large number of people in uniform, columns of military equipment. Shooting from small arms was heard periodically. One of the first shelling in Luhansk took place on June 2, 2014. In the morning, IAG be-

¹ Photos provided to NGO "Donbass SOS" by locals.

gan to storm the Administration of Luhansk border unit, which is located on the outskirts of the city. Luhansk border guards were provided with air support by the army aviation and AFU Air Force¹.

"The planes flew first. There were events in Slavyansk, and we all thought it will settle somehow, that nothing will happen to us. Lived, worked, thought of nothing. And then, we have the border unit in "Mirnyi" district. And it was shelled, as well as nearby houses. Then people started leaving the city rapidly. There were dead and wounded"².

Later, also on June 2, 2014, there was a series of explosions near the Luhansk OSA captured by IAG. According to the OSCE Special Monitoring Mission in Ukraine, these explosions were the result of unguided missiles launched from the aircraft³.



Since then, regular shelling of the city lasted until the beginning of September 2014. The most massive took place in the July – August 2014. Attacks were carried out in all areas of the village. Locals remember air shelling, the artillery shelling, including by MLR "Grad", and mortar attacks in early June 2014.

"It was impossible to count. At any time of day and night, there were attacks. In one day there could be three or four attacks. We heard a shooting nearby, and, obviously, a strike was coming in response. One shell from the Ukrainian army hit us... Because

¹ Army aviation and Air force aviation of the AFU provided air support to comrades -Luhansk border guards <<http://www.mil.gov.ua/news/2014/06/02/armijska-aviaciya-ta-aviaciya-povityanih-sil-zs-ukraini-nadali-povityanu-pidtrimku-tovarisham-po-zbroi-luganskim-prikordonnikam/>>.

² Interview N.

³ Latest news from the OSCE Special Monitoring Mission in Ukraine — based on the information received as of June 2, 2014, 18: 00 (Kyiv time) <<https://www.osce.org/uk/ukraine-smm/119529>>.

IAG was shooting at them, and they responded back"⁴.

Residents have noted multiple cases of attacks of IAG from densely populated areas of the city. Later several members of IAG publicly admitted that at least part of attacks of Luhansk in the summer of 2014 were carried out by their representatives⁵.

The next period when Luhansk suffered from shelling, was the end of January – February 2015. This time, there was new evidence of the destruction of civilian homes.

According to the so-called head of the Department of construction of the Luhansk city Administration Yury Zenzerov, at the beginning of April, 2019, 3293 residential houses were damaged in Luhansk. According to him, in the framework of the "2,000 homes" and "2,000+ homes" programs, 1,974 owners were assisted with construction materials. Recovery program did not include 1319 private houses, of which 444 were partially destroyed and not rebuilt, 108 – were destroyed completely, 767 – were restored by homeowners and with aid provided by the UN forces.⁶

The number of damaged or destroyed property of other forms of ownership remains unknown. Information about the provision of construction materials by the affected population in Luhansk was confirmed by locals, with whom the NGO "Donbass SOS" had the opportunity to chat. They also noted on the problem of payment for repair works.

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Luhansk, the following reasons for the destruction of property were named:

⁴ Interview M.

⁵ Bolotov's confession: Chronology of Luhansk shooting by militants in summer 2014 (PHOTO, VIDEO) <<https://dn.depo.ua/rus/lugansk/ziznannya-bolotova-yak-vlitku-2014-boyoviki-lnr-rozstrilyuli-10122016100000>>.

⁶ In Luhansk they specified the exact number of private homes affected by the fighting <<http://cxd.info/v-luganske-nazvali-tochnoe-chislo-chastnyh-domov-postradavshih-v-rezultate-boevyh-deystviy-n144540>>.

control of armed groups of the so-called “LPR”. On July 2, 2014, the village suffered from air shelling, which led to civilian casualties and destruction of buildings. The first plane destroyed the building of AMIAU in the center of the village. A little later, the second plane struck a densely populated area of the village “Kondrashovka”¹.

“Well, they were shooting at the police building. It’s not far from me. But somehow they hit private homes too”².

On August 21, 2014, after several days of fighting, the AFU forces seized control over the settlement³. Stanitsa Luhanska and districts near the settlement, starting from June 2014, and up till now are constantly under fire. The worst shelling, according to local residents, occurred from late August 2014 and continued until late winter of 2015. In 2016 shelling was periodical. During 2017–2019 attacks in the area of the settlement continued, usually at night, but the number of hits on the village has decreased significantly.

“In June 2014 for sure, the airstrikes began. The whole Stanitsa was hit with bombs. And then in August-September — “Grad” were hitting from all sides and hit Stanitsa as well. This is normal, as well as mines fly here and there, artillery, everything has wholes. At night they shoot further away, but before it was impossible to sleep. Only you are done with some repairs... My neighbor’s house was hit twice, even though they say that it will not get to the same place twice—it did hit his house twice. Thank God he is alive”⁴.

Residential properties in Stanitsa Luhanska suffered considerable damage. For the entire period of hostilities, the destruction of homes was caused by all types of weapons.

In addition to civilian houses, outbuildings, land, and households were also damaged. A significant problem for the locals was the mining of farmland.

¹ The tragedy in Kondrashivka. “Both, the error of the pilots, and the shelling from the side?” — media <https://www.ostro.org/lugansk/proishestviya/news/449097/>.

² Interview T.

³ The war in Eastern Ukraine. August 21. Online report <https://gordonua.com/news/separatism/vojna-na-vostoche-ukrainy-21-avgusta-onlayn-reportazh-37421.html>.

⁴ Interview V.

“It all suffered, it is impossible to divide the land. Because Stanitsa is like in a pit. And on the mountain which is on top, there is Luhansk. Stanitsa is very clearly visible. It was hit many times. My house was badly damaged in August. Because we got hit from Luhansk by “Grad” eight times in one day. People, who live during attacks... You already know where it goes, where it is coming from, and where it lands”⁵.



Damaged household in Stanitsa Luhanska⁶

One of the possible reasons for the regular shelling in the settlement is the proximity of the military positions of the parties to the conflict. Agreements on the withdrawal of forces in the area of Stanitsa Luhanska were reached in September 2016⁷, but through regular shelling, the process of withdrawal of forces in the area began only in June 2019⁸.

NGO “Donbass SOS” has not received any reply from Stanitsa Luhanska village Council to its request on the number of damaged or destroyed housing stock.

According to representatives of local authorities in January 2018, during the entire period of active fighting, 3,445 private buildings were damaged, out

of which 265 were destroyed completely. By then, 2,800 homes had been restored¹.

According to residents, the restoration of houses is carried out at the expense of international humanitarian organizations and citizens themselves. A small proportion of victims received little material assistance from local authorities.

During the survey which was carried out by NGO “Donbass SOS” among persons whose property was damaged or destroyed in Stanitsa Luhanska, the following reasons for the destruction of property were named:

- location of the settlement in close proximity to the contact line;
- placement of military and military equipment in the village;
- cross-fire from military positions;
- attacks from the NGCA;
- launching of attacks from the territory of the settlement.

Popasna city

Popasna — city, the district center of Popasna district of Luhansk oblast of Ukraine.

The city is located in the South-Western part of the oblast, 90 km from the regional center. A powerful railway junction is located in the settlement². As of January 1, 2013 the city had a population of 21 917 people³. Popasna is a front-line settlement. After the beginning of the armed conflict in Eastern Ukraine, there were IAG block posts in Popasna⁴.

A large number of armed people with military equipment, according to local residents, appeared

in the city in early July 2014. On July 22, 2014, ATO forces took control of the city⁵.



“They came first, and then Ukrainians started beating them. And they went towards Pervomaysk. LPR is in 6 km.”⁶.

The first shelling of the city occurred in July 2014 as a result of which the first destruction of residential properties took place. The most massive shelling of the city was in 2014–2015, Locals recall the period of frequent shelling of the settlement with mortars and MLR “Grad”. In 2016–2017 attacks occurred periodically. In 2018–2019 locals heard sounds of explosions mainly near the settlement.

“Pervomaysk is right next to us. Those fire from there, these fire back. My house, of course, was destroyed by IAG. They were firing from Pervomaysk. A direct hit to veranda, veranda shattered, then it passed through the whole house”⁷.

During the heavy shelling, most of the local population left, those who remained were forced to live in basements. In 2014–2015 were recorded facts of robberies of flats and houses, residents of which left for the period of heavy shelling. Local citizens blame soldiers who were in the settlement at that time.

According to Popasna OSA, as of June 2019, 1563 residential facilities of the private sector, 114 facilities of the municipal fund were damaged and 53 residential facilities of the private sector were completely destroyed. The highest level of damage and destruction was in the southern and southwest parts of the city—the residential district “Cheryomushki”.

¹ Stanitsa Luhanska 2014–2018. How the village on the line of fire is being restored. <http://vistilug.com.ua/news/1425-stanitsa-luganskaya-2014-2018-kak-vosstanavliaet-sya-poselok-na-linii-ognya/>.

² Popasna <https://uk.wikipedia.org/wiki/%D0%9F%D0%BE%D0%BF%D0%B0%D1%81%D0%BD%D0%B0>.

³ Population in Ukraine as of January 1, 2013. Data from the State Statistics Service of Ukraine http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2013/sb_nnas_2012.pdf.

⁴ Militiamen in the Luhansk oblast detained the truck with detonators <https://www.interfax.ru/world/377378>.

⁵ Popasna is liberated, they hung Ukrainian flags there <https://www.pravda.com.ua/news/2014/07/22/7032683/>.

⁶ Interview Y.

⁷ Interview T.

A significant part of the damaged houses has already been restored. Funds provided from the state, district and local budgets were used to eliminate the consequences of hostilities in 2015–2016. Repairs were made to multi-story buildings and some damaged apartments. Assistance in the repair of private sector homes in the city of Popasna was provided by charitable organizations: the Norwegian Refugee Council, "Caritas-Ukraine", "MersiCorps", the Danish Refugee Council, "ADRA" in Ukraine. In the period 2016–2018, the local budget provided financial aid to 52 residents of the city, whose housing was damaged¹.

Except for houses, outbuildings located on the territory of private households, and land plots were damaged in the village. According to locals, part of the victims spent their own money for house repairment. Individuals whose homes have been completely destroyed, local governments have provided with temporary housing, which is in communal ownership.

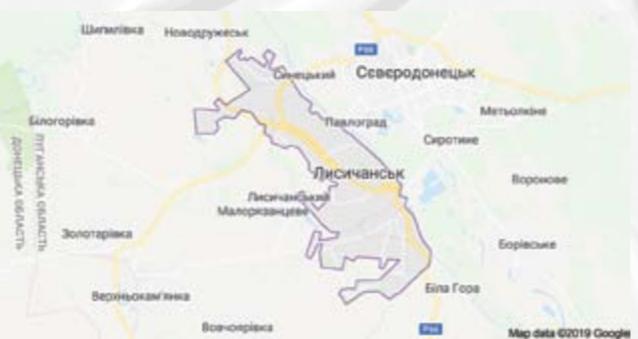
During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Popasna, the following reasons for the destruction of property were named:

- the proximity of block posts, military positions and equipment to residential properties;
- city attacks by IAG;
- attacks from the city territory towards TOT;
- part of respondents reported that there was nothing that could cause or provoke attacks that occurred next to their houses.

Lysychansk city

Lysychansk is a city of regional subordination in Ukraine and one of the oldest cities in Eastern Ukraine. A large industrial center, part of the Lysychansk — Severodonetsk agglomeration. The city is located in the North-Western part of the Luhansk oblast, on the territory of Popasna district, on the right bank of the Seversky Donets river. Distance from Luhansk is 90 km.

¹ OSA of Popasna in Luhansk oblast response to the request.



As of 1 January 2013, a population of the city was 104 thousand persons². The distance from Lysychansk to the contact line is about 30 km.

Since the beginning of the conflict in Eastern Ukraine armed groups in uniform and military equipment were in the city. On July 24, 2014, Lysychansk was freed by the ATO forces³. The most dramatic events in the settlement during the armed conflict in Eastern Ukraine took place in July 2014. Active fighting for the liberation of the city began on July 22 and lasted for several days. It was during this period when there were massive artillery attacks on the city, which led to the destruction and damage to houses. The population was forced to hide for several days in basements.

"We were being freed. IAG were firing from us, Ukrainians were coming toward us. So whose mines were flying... Maybe, it was from IAG when they were retreating, maybe it was from the national guard. It was a mess."⁴

"24th of July is when our nine-story building was hit. Unfortunate location of the building. It turns out our house was on a trajectory when it was hit from below and from above. So it is unknown who hit it. The building was hit 74 times. The fireman told me that. They started at eleven in the morning and finished at nine in the evening, from both sides. Our house is completely broken, destroyed, scattered."⁵

² Population in Ukraine as of January 1, 2013. Data from the State Statistics Service of Ukraine
http://database.ukrcensus.gov.ua/PXWEB2007/ukr/publ_new1/2013/sb_nnas_2012.pdf

³ There is a Ukrainian flag in Lysychansk
<https://www.pravda.com.ua/news/2014/07/24/7032915/>.

⁴ Interview S.

⁵ Interview O.



Destroyed house in Lysychansk, Skhidnyi district, 17¹

According to the Lysychansk city Council, 333 houses of private ownership were partially damaged during the fighting, and 34 were completely destroyed. 160 residential houses of municipal property were damaged, of which 3 were completely destroyed.

Between 2014 and 2018, with the direct assistance of the Norwegian Refugee Council, 16 houses were built in the private sector and 95 received partial assistance in reconstruction.

Restoration of two multi-story buildings was carried out at the expense of the local budget, two more — at the expense of the regional budget. Restoration of other damaged objects of multi-story buildings was carried out at the expense of municipal enterprises, owners of objects, humanitarian aid, concerned citizens, charitable foundations and international organizations. Today, the housing stock, which is in the municipal property of the city, does not require restoration. 88 owners of the destroyed houses (located at the Skhidnyi district, 17) received compensation from the regional budget, 12 families who were renting flats in communal property received alternative accommodation².

In addition to residential buildings, in some households outbuildings were damaged or destroyed.

During the survey which was carried out by NGO "Donbass SOS" among persons whose property was damaged or destroyed in Lysychansk, the

¹ Photo lisichansk.com.ua
<http://lisichansk.com.ua/2016/04/45631>.

² Responses to Lysychansk city Council request.

following reasons for the destruction of property were named:

- fighting for control of the city;
- placement of armed men and military equipment in the city;
- cross-fire of the city.

Thus, according to the data obtained, it can be concluded that during the long armed conflict in Eastern Ukraine, the parties are paying insufficient attention to the protection of civilians within the framework of international humanitarian law and international human rights law.

In Ukraine, there is still no comprehensive state strategy for the protection of civilians whose homes have suffered as a result of hostilities, including an assessment of the damage caused, the creation of an assessment of damaged/destroyed immovable property, addressing of compensation or restitution issues.

On July 10, 2019, the Cabinet of Ministers of Ukraine adopted a Resolution that provides an opportunity to receive compensation for a destroyed property as a result of the armed conflict in Ukraine³. The government has made changes to the procedure for provision and determination of the amount of financial aid to victims of emergencies who remained in their previous place of residence. Currently, this Resolution is not being used. The right to receive aid, according to the above-mentioned Resolution, have only citizens of Ukraine whose housing was destroyed and who remained in the previous place of residence and/or within the relevant settlement. Thus, the mentioned above Resolution does not apply to those people:

- whose property has been damaged as a result of the armed conflict and requires repair;
- who left their previous place of residence, relevant settlement in spite of the fact that their property was destroyed.

³ Amendments to the Resolutions of the Cabinet of Ministers of Ukraine as of December 18, 2013 No. 947: Resolution of the Cabinet of Ministers of Ukraine as of July 10, 2019 No. 623

https://www.kmu.gov.ua/ua/npas/pro-vnesennya-zmin-do-postanovi-kabinetu-ministriv-ukrayini-vid-t100719?fbclid=IwAR2G77_2iGy1gf_XZw3HxYO8Ff-6JA2RBCswlcW46Zjibsa6Ua_xN5g72Cs.

1.3. CONSEQUENCES FROM MASS SHELLING IN THE EAST OF UKRAINE FOR THE CIVILIAN POPULATION

It is enough to present some data in order to determine the possible impact on the population of the region due to the destruction of residential property caused by the armed conflict in Eastern Ukraine.

Of 227 respondents (95 of whom are pensioners), 139 persons left damaged housing and lived with private persons, 88 did not leave or returned shortly after the mass shelling stopped. 21 of them lived with relatives, 56 people continued to reside in the damaged premises, of which 33 have invested their own funds into housing repairs, and 17 received temporary housing (12 people on the GCA and 5 – on the NGCA).

Thus, less than 1% of persons whose housing was damaged as a result of the shelling were provided with aid in the form of temporary housing. Temporary housing provided to victims according to respondents included the following types: places in mobile towns, hostels, veterans' houses, apartments, which are in communal ownership of local authorities. All the rest were forced to solve the problem of housing on their own. Most of the respondents questioned by the NGO "Donbass SOS" rent their housing, whereas less than 1% of respondents were able to purchase their own accommodation.

Use of residential premises after damage



88 never left the territory or came back
139 left premises/lived with individuals

Among them

- | | |
|----|--|
| 21 | lived with relatives on GCA and NGCA of Ukraine |
| 56 | continued to live in the damaged premises |
| 33 | invested their money in repairs |
| 12 | temporary housing was provided |
| 5 | GCA of Ukraine NGCA of Ukraine |

Obviously, this data is not a fully representative sample but allows to form an idea of the negative impact on the population of the region caused by destruction or damage to residential property due to the armed conflict in the East of Ukraine. A significant number of appeals to the "Donbass SOS" hotline comes from persons of a retirement age,

which indicates that they lack timely and adequate aid both on the GCA and the NGCA.

Effect on property rights. As mentioned above, part of the population of Donetsk and Luhansk oblast leaves the damaged housing for an indefinite period of time. Such a step causes manipulation with the housing, land and property rights by representatives of the regime established on the NGCA. In particular, according to the existing practice, mandatory re-registration of property is required with the owner's presence. Given the situation, such presence is impossible. In this case, there is a risk of "nationalization" of the property.

Another feature which was common for Donetsk oblast back in 2018 – the property can be "nationalized" in case of non-payment of utility bills. It is clear that in a situation where a person who does not reside in a house that was damaged as a result of the armed conflict, he receives additional financial obligations due to a necessity of payment for utilities in the place of an actual residence and previous residence. In addition, cases were recorded, on both sides of the contact line, when the civilian property was used for the residence of combatants, and military fortifications were built on the territory of some households. This situation is typical primarily for houses that are located near the contact line.

Effect on living conditions. As of December 2018, about 9% of IDPs lived in dormitories or in compact accommodation centers. Some residents are under a constant threat of eviction from private housing

were damaged between 2014 and 2019. Since 2014, humanitarian partners have repaired half of the damaged buildings. Almost 80% of the restored houses are located on the GCA.

To prevent further displacement, most of the repairs were carried out for persons who had returned to their places of residence and for people living along the contact line and affected by the armed conflict. It was planned that humanitarian organizations will be able to cover about 50–60% of the necessary repairs costs in 2018, and the need for a repair of another 2,000–2,500 houses will be postponed to 2019.

It is known that there are families who continue to live in unsatisfactory conditions caused by the conflict, but they are not eligible for aid because they do not meet the established criteria of vulnerability (for example, households where adult members of working age are unemployed).

Partners of the Housing and non-food Cluster (managed by the UNHCR in connection with People in Need) work exclusively in relatively safe areas. Along the contact line, there are villages with damaged or destroyed houses, where security conditions do not allow repairs conduction. In addition, housing rehabilitation aid is provided only to the minimum extent necessary to create sufficient living conditions in accordance with national standards. Such aid usually does not include the full restoration of destroyed houses.

It was expected that in 2019 about 3,000 vulnerable families (mainly non-displaced, as well as those who have returned to their places of permanent residence and internally displaced persons) who live on the GCA near the contact line will need humanitarian aid in terms of housing provisions while their houses will be repaired. At the same

time, the forecast for the NGCA estimates from 8,000 to 10,000 vulnerable families (mainly non-displaced, as well as those who have returned to their places of permanent residence and internally displaced persons).¹

Effect on document obtainment. Persons whose houses have been damaged or destroyed as a result of the armed conflict in Eastern Ukraine often lose their documents. In order to restore them, it is necessary to cross the contact line and get to the GCA, which creates additional difficulties when, for example, the identity card is lost. In addition, document recovery often requires a long wait, resulting in additional financial costs.

Effect on psychological health. According to the 2017 Zone Study conducted by the REACH initiative, psychosocial support is among the five needs² most commonly identified by people living along the contact line. It is clear that those whose houses have been damaged or destroyed as a result of the armed conflict are in particular need of such aid. As a result of the conflict, psychosocial problems occur among all age groups, including children, the elderly, men, and women of working age.

A third of elderly people report that they feel isolated and lonely, which is compounded by the lack of access to social services for those living near the contact line and in many areas of the NGCA.

¹ Review of humanitarian needs. Ukraine. December 2019
http://www.un.org.ua/images/documents/4631/Ukraine%202019%20Humanitarian%20Needs%20Overview_UA.pdf.

² Situation Overview: Area Based Assessment in Government Controlled Areas within 5 km of the Line of Contact. Ukraine, July 2017
http://www.reachresourcecentre.info/system/files/resource-documents/reach_ukr_situation_overview_aba_overview_july_2017_0.pdf.

and compact living centers. At the same time, a significant number of these premises are unsuitable for living.

Effect on houses restoration. According to the Humanitarian Needs Assessment of the UN Office for the Coordination of Humanitarian Affairs, more than 50,000 homes on both sides of the contact line



FEATURES OF PROPERTY RIGHT PROTECTION OF CIVILIANS DURING THE ARMED CONFLICT

2.1. LEGAL QUALIFICATION OF EVENTS IN THE EAST OF UKRAINE FROM THE POINT OF VIEW OF INTERNATIONAL LAW

From the point of view of international law, it is possible to assess the complexity of the legal qualification that apply to the events in the East of Ukraine. The PACE Resolution "Recent developments in Ukraine: threats to the functioning of democratic institutions" stated: expresses its great concern about the build-up of large numbers of Russian military troops along the border with Ukraine which are detrimental to the already tense situation in the country."¹ Since April 2014, when riots in the East of Ukraine began, and in response to which the beginning of the ATO was proclaimed², at various international venues, there was a discussion of actions of the IAG. In fact, after the formation of the self-proclaimed republics, and the appearance of evidence of Russian influence and the likely exercise of effective control over the situation, there

¹ Recent developments in Ukraine: challenges to the functioning of democratic institutions: resolution of the Parliamentary Assembly of the Council of Europe of 9 April 2014 No. 1988
<http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbncveG1sL1hSZWYvWDJlLURXLWV4dHluYXNwP2ZpbGVpZD0yMDg3MyZsYW5nPUB0&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsC9QZGYvWFjZi1XRC1BVC1YTUwyUERGLnhzbA=&xslparams=ZmlsZWlkPTlwODcz>.

² On the decision of the National Security and Defense Council of Ukraine as of April 13, 2014 On the Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine": Resolution of the President of Ukraine as of April 14, 2014 No. 405/2014
<https://zakon.rada.gov.ua/laws/show/405/2014>.

were arguments stating this is an armed conflict of an international character.

Among variety of international organizations, it is necessary to highlight the one that is responsible for the maintenance of world peace and can identify certain situations as an armed conflict or a threat to peace. Meaning, the UN. One of the purposes of the organization is to support international peace and security³. Therefore, in this aspect, the UN institutions are authorized to make decisions on the implementation of the legal qualification of armed conflict, in particular, the UN General Assembly..."..can discuss any question relating to international peace and security... "and the UN Security Council."..bears primary responsibility for the maintenance of international peace and security"⁴.

When looking at the resolutions adopted by the UN institutions regarding the situation in the Eastern Ukraine from this side, it is worth noting that they discuss only the fact of the existence of the armed conflict, rather than a clear definition. For example, the UN Security Council Resolution of February 17, 2015, approved a package of measures for the implementation of the Minsk agreements, with-

³ According to the Article 1 of the UN Charter 1945 "...To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace..."
https://zakon.rada.gov.ua/laws/show/995_010.

⁴ The UN Charter 1945.
https://zakon.rada.gov.ua/laws/show/995_010.

out providing a general comment to the document¹. Or, in the Resolution of July 21, 2014, regarding the situation with the shooting down of the international flight MH17, it was only indicated that the control over the territory where the remnants of the aircraft were actually located is exercised by the armed groups².

In its periodic reports, the UN Monitoring Mission in Ukraine notes that there is an armed conflict in the East of Ukraine in the context of the international humanitarian law. There is no clear definition of the type of conflict (international or non-international) or its mixed nature. In addition, in the context of terms that apply to the determination of territories, reference is made to "territories controlled by the' Donetsk People's Republic 'and the' Luhansk people's Republic'"³.

On 4 February 2015, the Verkhovna Rada of Ukraine approved a statement⁴ recognizing the jurisdiction of the International Criminal Court over crimes that have been committed and are being committed in Eastern Ukraine for the period from February 20, 2014, until now. It was the second statement of Ukraine that concerned events not only in the East of Ukraine but also on the territory of the occupied ARC. But regarding the events in the East, it is necessary to pay attention to the wording presented in the statement: "crimes

¹ United Nations Security Council Resolution No. 2202 of 17.02.2015 (2015)
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2202.pdf.

² United Nations Security Council Resolution No. 2166 as of 21 July 2014 No. 2166
http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2166.pdf.

³ In particular, Report on the human rights situation in Ukraine, November 16, 2018- February 15, 2019
https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf.

⁴ Resolution of the Verkhovna Rada of Ukraine "On the recognition on the part of Ukraine jurisdiction of the International Criminal Court in regard to committing crimes against humanity and military crimes by higher-ranking officials of the Russian Federation and leaders of terrorist organizations of DPR and LPR that led to particularly serious consequences and mass killings of Ukrainian citizens" as of February 4, 2015
<https://zakon.rada.gov.ua/laws/show/145-19>.

against humanity and military crimes committed by the highest officials of the Russian Federation and the leaders of the terrorist organizations DPR and LPR."⁵. The document perceives armed groups as terrorist organizations and makes no mention of the existence of armed conflict in the context of events in Eastern Ukraine.

The Office of the Prosecutor of the International Criminal Court is conducting a preliminary examination of the situation in Ukraine to decide whether there are grounds to start an investigation. In the course of the study, to conduct the correct qualification of possible crimes under the relevant Articles of the Rome Statute, it has to be decided whether there is armed conflict on the territory of Ukraine and what is the nature of this confrontation. When looking at the general position of the Office in its report for the year of 2018 on the situation in the East of Ukraine, the following can be seen: "*In its Report on Preliminary Examination Activities 2016, the Office assessed that by 30 April 2014 the level of intensity of hostilities between Ukrainian government forces and anti-government armed elements in eastern Ukraine had reached a level that would trigger the application of the law of armed conflict and that the armed groups operating in eastern Ukraine, including the LPR and DPR, were sufficiently organised to qualify as parties to a non-international armed conflict. The Office also cited additional information, pointing to direct military engagement between the respective armed forces of the Russian Federation and Ukraine, suggesting the existence of an international armed conflict in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict.*"⁶.

As can be seen from the position of the Office of the Prosecutor of the International Criminal Court, based on the analyzed information, it is impossible to say that an armed conflict taking place in the East of Ukraine has an exclusively international nature. The issue continues to be studied, but it

⁵ Ibid.

⁶ Report of the Office of the Prosecutor of the International Criminal Court on preliminary examination activities 2018, §72
<https://www.icc-cpi.int/itemsDocuments/2018-otp-rep-PE-Ukraine.pdf>.

appears that an insufficient information has been provided to the Office to suggest that the armed forces of the self-proclaimed republics are under the common control¹ of the RF: “*The existence of a single international armed conflict in eastern Ukraine would entail the application of articles of the Statute relevant to armed conflict of an international character for the relevant period. Taking into account the possible alternative classifications of the armed conflict(s) in eastern Ukraine, the Office has considered provisions of the Rome Statute applicable in both international and non-international armed conflict in conducting its analysis of the alleged crimes committed by the different parties to the conflict.”²*

It is also necessary to pay attention to the national judicial practice, which is applied not only in cases involving violations of the property rights of civilians, but also when other acts are committed during the armed conflict in Eastern Ukraine. Referring to court cases which concern recognition of the fact of commission of act and cause of negative consequences “*as a result of armed aggression of the Russian Federation on the territory of Ukraine and occupation by the Russian Federation of the part of the territory*”³. And the Supreme Court actually legitimized this practice

¹ Common control is a principle defined by the International Court of Justice and the practice of international tribunals with respect to the extraterritorial jurisdiction of a state, which determines the responsibility of a certain state for the actions of armed groups on the territory of another state. The criterion determines how much the management of armed groups depends on the decision of a particular state. The principle is defined in the *Nicaragua v. the USA*, 1986 case of the International Court of justice <https://www.icj-cij.org/files/case-related/70/070-19860627-JUD-01-00-EN.pdf> and in the Tadic case of the International Tribunal for the former Yugoslavia <http://www.icty.org/case/tadic/>.

² Report of the Office of the Prosecutor of the International Criminal Court on preliminary examination activities 2018, §73 <https://www.icc-cpi.int/itemsDocuments/2018-opt-rep-PE-Ukraine.pdf>.

³ The Supreme Court ruling in case No. 363/2981/16-C of March 14, 2018 <http://www.reyestr.court.gov.ua/Review/72850452>.

of the courts in its decision regarding the fact of internal displacement:

“...Thus, the panel of judges, on the basis of the analysis of the above provisions of the law, came to the conclusion that as a type of state protection of human and civil rights and freedoms it is necessary to consider judicial protection of human and civil rights and freedoms, that is, the state assumes such a duty in accordance with the above constitutional norms, the right to judicial protection implies specific guarantees of effective restoration of rights through justice.

Given the above, the panel of judges concluded that liability for a violation of rights and freedoms determined by the Constitution and laws of Ukraine of a citizen on the temporarily occupied territory, including part of the Luhansk oblast, attributed to the Russian Federation as the state-occupier in accordance with the norms and principles of international law that is established by the Article 5 of the Law of Ukraine “On ensuring civil rights and freedoms and the legal regime on the temporarily occupied territory of Ukraine”, by part 4 of the Article 2 of the Law of Ukraine “On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in the Donetsk and Lugansk oblasts,” and confirms the fact that the forced displacement in July 2014, of INDIVIDUAL_1 and INDIVIDUAL_2 from the occupied territory of Luhansk oblast occurred as a result of the armed aggression of Russian Federation against Ukraine and the occupation of the Russian Federation of the territory of the Luhansk oblast...”⁴.

In the future, such positive decisions are used by the claimants to file lawsuits to the national courts of Ukraine against the Russian Federation with the request for damage compensation. It is worth noting that international courts have already heard similar cases when the state against which the claim for compensation for damage caused during the armed conflict was considered by the courts of another state. The most revealing case is the decision of the International Court of Justice in Germany’s appeal

⁴ The Supreme Court ruling in case No. 363/2981/16-C of March 14, 2018 <http://www.reyestr.court.gov.ua/Review/72850452>.

against Italy, the so-called case of jurisdictional immunities of States¹.

Firstly, the Court determined the relationship between the rules of international humanitarian law and the jurisdictional immunity of a state. In the International Court of Justice, Italy referred to the Art. 12 of the Convention on jurisdictional immunities of States and their property of 2 December 2004, which implies that a state shall not be immune in cases of pecuniary compensation in the event of death or injury to any person or damage to property or loss thereof as a result of an act or omission if such act or omission occurred on the territory of another state and if the person was on that territory at the time of an act or omission. The International Court of Justice refuted Italy’s argument and stated that the provisions of this Article do not apply if the injury to a person or his property was caused during armed conflict. In this case, the rules of international humanitarian law, including those relating to compensation and restitution in situations of armed conflict, come into force.

Secondly, the Court pointed out that the review of such cases in civil proceedings does not provide for consideration of the legality or illegality of the acts committed. The fact that a war crime or a crime against humanity has been committed is of paramount importance when deciding on compensation for its consequences. Italy argued that other attempts to obtain compensation for victims were unsuccessful, so the Italian Supreme Court ignored the jurisdictional immunity of Germany in the review of cases. The International Court of Justice replied that neither the national practice of countries nor the norms of international law make the immunity of a state to be dependent on the means of recourse against it, which can be used by both the injured person and the state itself on behalf of this person.

In this context, it is quite difficult to perceive the arguments of the national courts of Ukraine in this regard, which refer to the fact that the principle

¹ Jurisdictional Immunities of the State, *Germany v. Italy* / International Court of Justice, judgement on 3 February 2012 <https://www.icj-cij.org/files/case-related/143/143-20120203-JUD-01-00-EN.pdf>.

of state immunity in these cases is not applied for several reasons:

- *“Firstly, this norm defines immunity from bringing a claim against a foreign state and bringing it as a third person. However, in this case, the Russian Federation participates as an interested person in the case of special proceedings, and does not make claims as a party or a third party in the case of claim proceedings”²;*
- *“Secondly, the basis for the submission by citizens of Ukraine of an application for the establishment of the relevant fact is the temporary occupation by the Russian Federation of part of the territory of Ukraine. As stated in paragraph 15 of the preamble of the Law of Ukraine “On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in the Donetsk and Luhansk oblasts”, the actions of the Russian Federation in certain areas of Donetsk and Luhansk oblasts, the Autonomous Republic of Crimea and the city of Sevastopol grossly violate the principles and norms of international law. Part four of the Article 79 of the Law of Ukraine” On private international law “indicates those cases where Ukraine may apply resort-a lawful restrictive measures in response to similar measures of another state. Thus, if, in violation of international law, Ukraine, its property or representatives in a foreign state are not provided with the same judicial immunity, which, according to parts one and two of this Article, is provided to foreign States, their property and representatives in Ukraine, the Cabinet of Ministers of Ukraine may take appropriate measures to that State and its property, permitted by international law, unless measures of a diplomatic nature are not sufficient to resolve the consequences of the said violation of international law”³.*

² The Supreme Court ruling in case No. 381/2635/16-n of November 21, 2018 <http://www.reyestr.court.gov.ua/Review/78378788>.

³ The Supreme Court ruling in case No. 381/2635/16-n of November 21, 2018 <http://www.reyestr.court.gov.ua/Review/78378788>.

According to the General provisions of the Geneva Conventions of 1949, their rules apply to “...all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even of the state of war is not recognized by one of them¹. Ukraine has consolidated its position on the events in the East of Ukraine at the level of national legislation in the Law of Ukraine “On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in the Donetsk and Luhansk oblasts”, “...noting that the armed aggression of the Russian Federation began with undeclared and covert incursions into the territory of Ukraine by units of the armed forces and other law enforcement agencies of the Russian Federation, as well as by organizing and supporting terrorist activities...”². That is, for its part, Ukraine considers the events on its territory as an armed conflict, but such national decision does not mean that this position is also supported at the international level, cases regarding this issue still have to be resolved by the competent courts.

2.2. PROTECTION OF CIVILIANS IN ARMED CONFLICT (INTERNATIONAL STANDARDS)

2.2.1. International humanitarian law

International humanitarian law applies when armed conflict or occupation begins and ceases when hostilities cease altogether. Such a general rule is provided for by the provisions of the Geneva Conventions of 1949, which are the most consolidated collection of the “law of war”. Therefore, taking into account these norms, it is worth noting

¹ Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949
https://zakon.rada.gov.ua/laws/show/995_154.

² The Law of Ukraine “On the peculiarities of State policy on ensuring Ukraine’s State sovereignty over temporarily occupied territories in Donetsk and Luhansk regions” as of January 18, 2018
<https://zakon0.rada.gov.ua/laws/show/2268-19>.

that for the operation of the norms of international humanitarian law in the context of armed confrontation between States their separate decision, recognition or non-recognition of events, carrying out of appropriate domestic legal qualification is not required. These provisions are automatically applied and are aimed primarily at the protection of the civilian population that is most affected by the fighting.

The Geneva Convention relative to the protection of civilian persons in time of war incorporates specific principles relating to the treatment of civilians on the territory of conflict. According to the Article 53 of this Convention, any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations³. In addition, the protection of property rights may also correspond to the prohibition of looting and repression of civilians in the occupied territories provided for by the international humanitarian law⁴.

Under this provision, any property in armed conflict is subject to protection, regardless of its type and form of ownership, but only the one which is located on the occupied territory⁵. In addition, it excludes from its scope property which has been damaged during hostilities, unless excessive damage or destruction was caused by the violation of the laws and customs of war. Rules of the Convention on the Laws and Customs of War on Land of 1907 contain a prohibition to destroy or seize the enemy’s property unless such destruction

³ Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949
https://zakon.rada.gov.ua/laws/show/995_154.

⁴ Article 33: “...Pillage is prohibited. Reprisals against protected persons and their property are prohibited.”. Geneva Convention relative to the protection of civilian persons in time of war of 12 August 1949
https://zakon.rada.gov.ua/laws/show/995_154.

⁵ Commentary on Article 53 of the Convention relative to the protection of civilian persons in time of war, 1958, the International Committee of the Red Cross:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>.

or seizure be imperatively demanded by the necessities of war¹. In fact, the same principles and approaches used in the Hague Convention of 1907 were used in the elaboration of the norms of the Geneva Convention of 1949².

The norms provide that the occupying forces are allowed to destroy, in whole or in part, certain private or public property on the occupied territory when urgent military needs require it. But at the same time, the importance of such military needs must be assessed and it is the occupation authorities who are responsible for their good conduct in armed conflict, without abusing customs of warfare. Thus, the occupying power must try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in comparing the military advantages to be gained with the damage done³.

At the same time, it is necessary to recall what actions can be called a “scorched earth” tactic from a military point of view, that is, the systematic destruction of entire districts, mainly residential, by the occupying forces that came before the advancing forces. The practice of various courts since the end of the Second World War has established that such actions can only be accepted in exceptional cases, but the general position is that such actions were condemned when they actually became excessive or unjustified military operations. Article 6 (b) of the Charter of the International Military Tribunal describes “the wanton destruction of cities, towns

¹ Convention (IV) respecting the Laws and Customs of War on Land as of October, 1907
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=61CDD9E446504870C12563CD00516768>.

² Commentary on Article 53 of the Convention relative to the protection of civilian persons in time of war, 1958, the International Committee of the Red Cross:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>.

³ Commentary on Article 53 of the Convention relative to the protection of civilian persons in time of war, 1958, the International Committee of the Red Cross:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>.

or villages or devastation not justified by military necessity” as a war crime⁴. Moreover, the Article 147 of the Geneva Convention relative to the Protection of Civilian Persons in time of war includes “grave violations subject to penalties under the Article 146, in particular, “the extensive destruction” of property not justified by military necessity and carried out unlawfully and wantonly⁵.

In addition, international humanitarian law also provides for the right of the occupying authorities, under certain circumstances, to dispose of property in the occupied territory, namely, the right to requisition of private property, the right to confiscate any movable property belonging to the state that may be used for military operations, and the right to manage and use property belonging to the occupied state.⁶

Protocol I Additional to the Geneva Convention relative to the Protection of Civilian Persons in international armed conflicts of 8 June 1977 and the Protocol II Additional to the Geneva Convention relative to the Protection of Civilian Persons in non-international armed conflicts of 8 June 1977 should also be mentioned. Norms of these protocols to varying degrees protect property and social facilities, anticipating the following:

- prohibition of reprisals against objects performing medical functions⁷;

⁴ Charter of the International Military Tribunal as of August 8, 1945
https://www.un.org/en/genocideprevention/documents/atrocity-crimes/Doc.2_Charter%20of%20IMT%201945.pdf.

⁵ Commentary on Article 53 of the Convention relative to the protection of civilian persons in time of war, 1958, the International Committee of the Red Cross:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>.

⁶ Commentary on Article 53 of the Convention relative to the protection of civilian persons in time of war, 1958, the International Committee of the Red Cross:
<https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=A13817CDA3424C3CC12563CD0042C6E6>.

⁷ Article 20 “Reprisals against the persons and objects protected by this Part are prohibited.”/ the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977:
https://zakon.rada.gov.ua/laws/show/995_199.

- prohibition of employment of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering.¹;
- mandatory distinction between civilian and military objects, respectively, directing military operations against military objectives²;
- protection of the historic monuments, places of worship which constitute the cultural or spiritual heritage³;
- prohibition of attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population⁴;

¹ P. 2 of the Article 35 “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering” the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977:
https://zakon.rada.gov.ua/laws/show/995_199.

² Article 48 “In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives/ the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977:
https://zakon.rada.gov.ua/laws/show/995_199.

Article 13, the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977:
https://zakon.rada.gov.ua/laws/show/995_200.

³ Article 53 “...it is prohibited:
a) to commit any acts of hostility directed against the historic monuments, works of art or places of worship which constitute the cultural or spiritual heritage of peoples;
b) to use such objects in support of the military effort;
c) to make such objects the object of reprisals / the Convention relative to the protection of civilian persons in time of war (Protocol I):
https://zakon.rada.gov.ua/laws/show/995_199.

1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict
https://zakon.rada.gov.ua/laws/show/995_157.

Article 16, the Convention relative to the protection of civilian persons in time of war (Protocol II), as of June 8, 1977.
https://zakon.rada.gov.ua/laws/show/995_200.

⁴ P. 2 Art. 54 “A specific prohibition on attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installa-

- protection of the works or installations containing dangerous forces are specifically limited to dams, dykes and nuclear electrical generating stations⁵;
- in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects⁶.

The main feature of provisions of the international humanitarian law is that its application is the sole responsibility of the parties of armed conflict. No international organization or entity can compel a party to a conflict to comply with provisions and requirements of the law, but the international community supports the principle of justice and promotes justice for violations of the international humanitarian law.

Ukraine became the successor of the Ukrainian Soviet Socialist Republic, which, for its part, signed the Geneva Convention⁷ on August 12, 1949 and rati-

tions and supplies, and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse Party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive” the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977.
https://zakon.rada.gov.ua/laws/show/995_199.

Article 14, the Convention relative to the protection of civilian persons in time of war (Protocol II), as of June 8, 1977.
https://zakon.rada.gov.ua/laws/show/995_200.

⁵ Article 56 “Works and installations containing dangerous forces, namely dams, dykes and nuclear electrical generating stations, shall not be made the object of attack, even where these objects are military objectives, if such attack may cause the release of dangerous forces and consequent severe losses among the civilian population...” / the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977.
https://zakon.rada.gov.ua/laws/show/995_199.

Article 15, the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977.
https://zakon.rada.gov.ua/laws/show/995_200.

⁶ Article 58, the Convention relative to the protection of civilian persons in time of war (Protocol I), as of June 8, 1977
https://zakon.rada.gov.ua/laws/show/995_199.

⁷ On ratification of the Geneva Conventions of August 12, 1949 on the protection of war victims: Resolution of the President of the Verkhovna Rada of the Ukrainian SSR of July 3, 1954
<https://zakon.rada.gov.ua/laws/show/114%D0%80-03>.

fied the additional Protocols on August 18, 1989¹. Just as the Russian Federation of the Soviet Union of Socialist Republics, including its international obligations. Therefore, their provisions are binding on Ukraine itself and their compliance may be required from other participants.

2.2.2. International human rights law

Among the norms of international human rights law, it is necessary to distinguish provisions that protect the right of property belonging to a person. According to the Article 17 of the Universal Declaration of human rights, everyone has the right to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property². Also, the Article 28 of the Declaration adds that everyone is entitled to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized³.

Provisions for the protection of property rights are also contained in regional documents. The greatest importance for Ukraine and the practice of the national judicial bodies is the ECHR. Article 1 of the Protocol I to the ECHR enshrines the absolute right of ownership of individuals and legal entities. Provisions of this Article emphasize that no one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest

¹ The Resolution of the President of the Verkhovna Rada of the Ukrainian SSR “On ratification of the Additional Protocol of the Convention relative to the protection of civilian persons in time of war (Protocol I) and the Additional Protocol to the Convention relative to the protection of civilian persons in time of war (Protocol II)”, August 18, 1989.
<https://zakon.rada.gov.ua/laws/show/7960-11>.

² Universal Declaration of Human Rights as of December 10, 1948
https://zakon.rada.gov.ua/laws/show/995_015.

³ Ibid.

or to secure the payment of taxes or other contributions or penalties.”⁴.

In defining the concept of “property” and, accordingly, violations possible under the Article 1 of the Protocol I to the ECHR, the ECHR is not limited exclusively to immovable property: “the concept of “possessions” in the first part of Article 1 of Protocol No. 1 is an autonomous one, and is independent of the formal classification in domestic law and is not limited to the ownership of physical goods: The issue that needs to be examined in each case is whether the circumstances of the case, considered as a whole, conferred on the applicant title to a substantive interest protected by this provision. Certain other rights and interests constituting assets can also be regarded as “property rights”, and thus as “possessions” for the purposes of this provision. The concept of “possessions” covers both “existing possessions” and assets, including claims, in respect of which the applicant can argue that he or she has at least a “legitimate expectation”⁵. That is, in this context, the ECHR means that a broad approach is applied to the definition of the object of protection. For example, housing in public ownership, where the applicant lived, and for which he made the necessary payments, is also his property right and is subject to protection within the said Convention⁶.

Various aspects of property rights are described in more detail in the practice of the ECHR, including in relation to violations committed during armed conflict and measures to combat terrorism. The most widespread is the practice of cases against Turkey. Since 1984, in the southern regions of the country, there has been a series of terrorist attacks related to

⁴ Convention for the protection of human rights and fundamental freedoms 1950
https://www.echr.coe.int/Documents/Convention_UKR.pdf.

⁵ Öneriyıldız v. Turkey, appl. no. 48939/99, judgement 30.11.2004, §124
<http://hudoc.echr.coe.int/eng?i=001-67614>.

⁶ Sargsyan v. Azerbaijan, appl. no. 40167/06, judgement 16.16.2015, §180
<http://hudoc.echr.coe.int/eng?i=001-155662>.
Dzhioyeva and others v. Georgia, appl. no. 24964/09, judgement 20.11.2018, §34–37
<http://hudoc.echr.coe.int/eng?i=001-188714>.

the proclamation of Kurdish autonomy¹. The country was engaged in long-term anti-terrorist operation, the consequences of which were, in particular, the destruction and damage caused to civilian homes.

In *Ayder and Others v. Turkey*, the European Commission proclaimed that “*the Commission refers to its findings in similar cases, which concerned similar complaints of the destruction of homes and forcible expulsion. In that case, the Commission noted that it was a known fact that there had been destruction of villages in South-East Turkey with many people displaced as a result. While the Government had outlined a general scheme of remedies that would normally be available for complaints against the security forces, the Commission found it significant that, although the destruction of houses and property has been a frequent occurrence in South-East Turkey, the Government had not provided a single example of compensation being awarded to villagers for damage like that suffered by the applicants. Nor had relevant examples been given of successful prosecutions against members of the security forces for the destruction of villages and the expulsion of villagers.*”². Both the European Commission and the ECHR admitted that there was a violation of property rights by Turkey. The court confirmed that, despite the fact which party to the armed conflict committed the violation, the Turkish authorities were obliged to resolve the issue of compensation to the victims³.

In addition to the actual violation of property rights in cases against Turkey, the applicants also spoke of a possible violation of the Article 8 of the ECHR. The Article defines that everyone has the right to respect for his private and family life, his home and correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is

necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others⁴. In the case of *Mentes and Others vs. Turkey*, the applicants complained that the destruction of their homes by the security forces and the expulsion from their village constituted violations of the Article 8 of the ECHR. In its decision, the ECHR found that in this case there was a violation of the Article 8⁵.

A significant number of cases related to the events that were under consideration by the ECHR, and recognized by the Court as systematic violations by Turkey, the Committee of Ministers reminded the government that it is necessary:

- to reinforce the regulatory framework for the action of the security forces,
- to improve the professional training of the members of the security forces and
- to ensure the existence of effective domestic remedies in all cases of the alleged abuse⁶.

As a systemic solution to the problem, the Turkish authorities have adopted a special “Law on Compensation” to provide a right to compensation over and above the State’s liability for losses caused by the administration, notably in the fight against terrorism. In addition, more attention was paid to criminal liability for material damage and monitoring of the effectiveness of investigations. In order to restore the right to use property, a “return to village and rehabilitation” project was launched to create favourable conditions for the resumption of life in villages affected by the events – the rehabilitation

¹ Turkey: Extremism & Counter-Extremism, Counter Extremism Project, Report
https://www.counterextremism.com/sites/default/files/country_pdf/TR-10152018.pdf.

² *Ayder and others v. Turkey*, the European Commission of Human Rights, 15 May 1995
<http://hudoc.echr.coe.int/eng?i=001-2173>.

³ *Ayder and others v. Turkey*, the ECHR, appl. no. 23656/94, judgement 08.01.2004
<http://hudoc.echr.coe.int/eng?i=001-61560>.

⁴ Convention for the protection of human rights and fundamental freedoms 1950
https://www.echr.coe.int/Documents/Convention_UKR.pdf.

⁵ *Mentes and others v. Turkey*, case no. 23186/94, judgement 28.11.1997, §70–73
<http://hudoc.echr.coe.int/rus?i=001-58120>.

⁶ Actions of the security forces in Turkey. Progress achieved and outstanding problems. General measures to ensure compliance with the judgments of the European Court of Human Rights in the cases against Turkey concerning actions of members of the security forces, the Committee of Ministers, 7 June 2005
<http://hudoc.echr.coe.int/eng?i=001-69846>.

of civilian housing, infrastructure, and social institutions¹.

The ECHR also noted in its practice that the applicants’ arguments regarding the destruction of property must be supported by relevant evidence and supporting documents. The nature of the violation under the Article 1 of the ECHR Protocol I requires that the complaint filed under this violation contain at least a brief description of the property. In addition, given the lengthy nature of the case and the procedures of the ECHR, the applicant should take measures to account the actual material losses incurred and the assessment of the damage caused, which should be provided to the Court.² When providing examples of admissible evidence of ownership or location of property, the ECHR referred to documents such as: proof of ownership of land or property, excerpts from land or tax registers, documents from the local administration, plans, photographs and maintenance receipts, as well as evidence of postal parcels, witness statements or any other relevant materials³.

Special attention of the ECHR is paid to the evidence of committing certain violations during armed conflict: “...*The Court admits that situations arising from an armed conflict imply specific circumstances which may create obstacles for adducing evidence. The Court is, however, aware that many applicants before the Court, whose complaints stem from the particular context of the hostilities in the Tskhinvali Region during the same period of time and who raise similar issues, have been able to submit documentary evidence from the local authorities attesting to*

¹ Action report, Turkey, *Aksøy group of 284 cases v. Turkey*, February 2019, §83–87
https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168092d61c.

² *Damayev v. Russia*, appl. no. 36150/04, judgement 29.05.2012, §107–112
<http://hudoc.echr.coe.int/eng?i=001-110944>.

³ *Sargsyan v. Azerbaijan*, appl. no. 40167/06, judgement 16.16.2015, §183
<http://hudoc.echr.coe.int/eng?i=001-155662>.

Prokopovich v. Russia, appl. no. 58255/00, judgement 18.11.2004, §37
<http://hudoc.echr.coe.int/eng?i=001-67538>.

Elsanova v. Russia, appl. no. 57952/00, judgement 15.11.2005
<http://hudoc.echr.coe.int/eng?i=001-71522>.

the damage suffered and its extent. Regarding the present case, the Court cannot but note that the applicants did not provide any specific explanation as to why no documentation confirming the damage or destruction of their property could have been adduced”⁴.

Regarding the situation in Eastern Ukraine, the ECHR has already made a decision in several cases, pointing to the need to comply with the principle of proof of alleged violations. In the decision on the admissibility of *Lisnyy and others v. Ukraine and Russia*, the Court stated that the applicant had submitted only a copy of his passport and photographs of the damage to the building. No evidence of ownership of the house or any other document confirming the applicant’s right to the house has not been filed. The second applicant submitted a copy of his passport and copies of various OSCE reports and certain printouts of articles found on the Internet regarding the general situation in Eastern Ukraine. The third applicant submitted only a copy of his passport. Despite the materials provided to the Court, the cases were declared inadmissible.⁵

In general, the judicial procedure has developed a flexible approach to the evidence to be provided by applicants who claim to have lost their property and housing in situations of international or non-international armed conflict. The ECHR notes that a similar approach is reflected in paragraph 7, of the Article 15, of the *Pinheiro Principles*⁶, the *UN Principles on housing and property restitution for refugees and displaced persons*⁷. Thus, the ECHR links its practice to the principles and standards

⁴ *Kudukhova v. Georgia*, app. no. 8274/09, 8275/09, decision 20.11.2018, §33
<http://hudoc.echr.coe.int/eng?i=001-188712>.
Nanieva and Bagayev v. Georgia, appl. no. 2256/09, 2260/09, judgement 20.11.2018, §31–32
<http://hudoc.echr.coe.int/eng?i=001-188710>.

⁵ *Lisnyy and others v. Ukraine and Russia*, appl. no. 5355/15, decision 05.07.2016
<http://hudoc.echr.coe.int/eng?i=001-165566>.

⁶ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
<https://2001-2009.state.gov/documents/organization/99774.pdf>.

⁷ *Sargsyan v. Azerbaijan*, appl. no. 40167/06, judgement 16.16.2015, §183
<http://hudoc.echr.coe.int/eng?i=001-155662>.

adopted by the UN in the field of protection of victims of armed conflict.

In directing the actions of the armed forces, States must be responsible for their actions and possible violations, while preventing possible abuses and negative effects on the civilian population. In the decision of *Kerimova and others v. Russia* the Court stated that “*while directing the federal forces to destroy military targets, such as illegal fighters’ bases, ammunition depots, etc., this order does not appear to have specifically authorized the federal servicemen to inflict damage on the aforementioned applicants’ housing and property and, in any event, it contained no guarantees against an arbitrary use of force that might result in damage to, or destruction of, an individual’s private property. The Court thus concludes, in view of the above considerations and in the absence of an individualised decision or order which clearly indicated the grounds and conditions for inflicting damage on the relevant applicants’ homes and the property of the second to seventh and fourteenth applicants, and which could have been appealed against in a court, that the interference with the relevant applicants’ rights under Article 8 of the Convention and the rights of the second to seventh and fourteenth applicants was not “lawful”, within the meaning of these Articles*”¹. Thus, if a State plans a military operation, it must assess the real threat of damage and to what extent it is exceeding the target set during the operation. In the case of civilian property, this should be indicated in the relevant orders for the conduct of a military operation, which would allow victims to appeal against the decisions taken. And in the event of a risk of harm, a State should provide for appropriate reparation for victims.

In addition, as one of the aspects of the right under the Article 8 of the ECHR, one can speak about the possible infliction of stress and suffering on victims for interference with their rights to respect for

¹ *Kerimova and others v. Russia*, appl. no. 17170/04, judgement 03.05.2011, §303–304
<http://hudoc.echr.coe.int/eng?i=001-104662>.
Khamzayev and others v. Russia, appl. no. 1503/02, judgement 03.05.2011, §217–219
<http://hudoc.echr.coe.int/eng?i=001-104649>.

private and family life and home, and to the peaceful enjoyment of his possessions, especially when applicants were directly witnessing it, and lack of opportunity to use their belongings for a long period of time². Such requirements, together with the violation of the Article 3 of the ECHR (prohibition of cruel, inhuman or degrading treatment), were stated when submitting complaints to the ECHR on the armed conflict in Georgia. But such allegations were declared inadmissible by the Court, in particular, despite the short duration of the resettlement of victims from their own homes: “...Although it is reasonable to assume that taking refuge in another country for a relatively short period of time allegedly due to the hostilities would have caused the applicants some level of stress and discomfort, the Court concludes that such discomfort alone does not amount to an interference with private and family life of the applicants protected by Article 8 of the Convention”³. However, despite the continuing nature of violations against civilians in Eastern Ukraine, the importance of such an argument is gaining strength for the victims.

Currently, there are over 4,000 individual applications before the Court which are apparently related to the events in Crimea or the hostilities in Eastern Ukraine.⁴ A large part of these cases relates to the damage and destruction of civilian property during hostilities. According to the last press-release by the Court, decisions in these cases can be expected after the decision in the first inter-State claim of Ukraine against Russia regarding the situation in the East (complaint No. 8019/16) will be made, because in this particular case the decision on the division of responsibility between States for the events taking

² *Yöyler v. Turkey*, app. no. 26973/95, judgement 24.07.2003, §79–80
<http://hudoc.echr.coe.int/eng?i=001-61264>.

³ *Dzhioyeva and others v. Georgia*, appl. no. 24964/09, judgement 20.11.2018, §41
<http://hudoc.echr.coe.int/eng?i=001-188714>.

⁴ ECHR to adjourn some individual applications on Eastern Ukraine pending Grand Chamber judgment in related inter-State case, the ECHR, press-release on 17.12.2018
<http://hudoc.echr.coe.int/eng-press?i=003-6282063-8189102>.

place from April 2014¹ will be outlined. The available time and consideration of individual cases should be used by the applicants and their representatives to collect and present to the ECHR all possible and available evidence of violations.

2.2.3. Standards and principles of the United Nations and other regional organizations

International law, in situations where civilian populations are harmed, provides for a number of principles and standards that can be used by States at the national level, which can form the basis for the development of relevant legislation. Analyzing international norms, it is worth noting that they do not provide clear guidance for action but only set a certain framework and guidelines for building specialized policies.

The Pinheiro Principles² are very important, which are the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons. According to these principles, all refugees and displaced persons have the right to have restored to them any housing, land and/or property of which they were arbitrarily or unlawfully deprived, or to be compensated for any housing, land and/or property that is factually impossible to restore. States shall demonstrably prioritize the right to restitution as the preferred remedy for displacement and as a key element of restorative justice. The right to restitution exists as a distinct right, and is prejudiced neither by the actual return nor non-return of refugees and displaced persons entitled to housing, land and property restitution.³

¹ ECHR to adjourn some individual applications on Eastern Ukraine pending Grand Chamber judgment in related inter-State case, the ECHR, press-release on 17.12.2018
<https://hudoc.echr.coe.int/eng-press?i=003-6282063-8189102>.

² United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
<https://2001-2009.state.gov/documents/organization/99774.pdf>.

³ Principle 2, United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
<https://2001-2009.state.gov/documents/organization/99774.pdf>.

Among the established principles of restitution are the following:

- the right to non-discrimination;
- the right to equality between men and women;
- the right to be protected from displacement;
- the right to privacy and respect for the home;
- the right to peaceful enjoyment of possessions;
- the right to adequate housing;
- the right to freedom of movement;
- the right to voluntary return in safety and dignity;
- compatibility with international human rights, refugee and humanitarian law and related standards;
- accessibility of restitution claims procedures;
- housing, land and property records and documentation are kept on the sufficient level⁴.

Among the UN documents dealing with the issue of harm caused, the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law should be highlighted⁵. One of the obligations of States under these Principles is to ensure that their domestic law provides at least the same level of protection for victims as that required by their international obligations.

The basic obligation of a State in a situation of a gross violation of international norms is to respect, ensure respect for and implement international human rights law and international humanitarian law as provided for under the respective bodies of law, includes, *inter alia*, the duty to:

- take appropriate legislative and administrative and other appropriate measures to prevent violations;
- investigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly

⁴ United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons
<https://2001-2009.state.gov/documents/organization/99774.pdf>.

⁵ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as of July 25, 2005
https://zakon.rada.gov.ua/laws/show/995_e53.

- responsible in accordance with domestic and international law;
- provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation;
- provide effective remedies to victims, including reparation, as described below.¹

In addition, these Principles define the victim of gross violations of international humanitarian law. This term refers to persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law².

In accordance with the state's obligations with regard to victims, special attention is paid to informing the general public of the rights and remedies as well as available services to which victims may have a right of access.³ At the same time, a State should endeavour to establish national programmes for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.⁴ In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition⁵.

Most of the principles and regional instruments relating to the protection of the property of civilians in armed conflict relate to the concept of IDP and

the regulation of state obligations in relation to them. Thus, the UN Guiding Principles on internal displacement note that all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to the displacement of persons⁶. Certain provisions of Principles relate to IDPs' ownership right and determine the following:

- no one shall be arbitrarily deprived of property and possessions;
- the property and possessions of internally displaced persons shall in all circumstances be protected, in particular, against the pillage, direct or indiscriminate attacks or other acts of violence; being used to shield military operations or objectives; being made the object of reprisal; and being destroyed or appropriated as a form of collective punishment;
- property and possessions left behind by internally displaced persons should be protected against destruction and arbitrary and illegal appropriation, occupation or use⁷.

On January 28, 2010, PACE adopted "Solving property issues of refugees and internally displaced persons Resolution". The adoption of this document was caused by the growing number of refugees and IDPs as a result of armed conflicts and the significant damage to their property. Among the provisions of this Resolution, attention is drawn to:

- guarantee timely and effective redress for the loss of access and rights to housing, land, and property abandoned by refugees and IDPs without regard to pending negotiations concerning the resolution of armed conflicts or the status of a particular territory;
- ensure that such redress takes the form of restitution in the form of confirmation of the

¹ Ibid.

² Ibid.

³ Ibid.

⁴ Ibid.

⁵ Ibid.

⁶ Guiding principles on internal displacement, UN, June 2001
<https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

⁷ Principle 21, Guiding principles on internal displacement, UN, June 2001
<https://www.unhcr.org/protection/idps/43ce1cff2/guiding-principles-internal-displacement.html>.

legal rights of refugees and displaced persons to their property and restoration of their safe physical access to, and possession of, such property. Where restitution is not possible, adequate compensation must be provided;

- ensure equal and effective access to legal remedies and redress for their dispossession;
- ensure that previous occupancy and tenancy rights with regard to public or social accommodation or other analogous forms of homeownership which existed in former communist systems are recognized and protected;
- ensure that the absence from their accommodation of holders of occupancy and tenancy rights who have been forced to abandon their homes shall be deemed justified until the conditions that allow for voluntary return in safety and dignity have been restored;
- provide rapid, accessible and effective procedures for claiming redress;
- secure the independence, impartiality, and expertise of adjudicatory bodies, including through appropriate rules on their composition that may provide for the inclusion of international members;
- compensation for non-pecuniary damage related to the circumstances in which displacement and dispossession occurred and were perpetuated;
- compensation for damage suffered as a result of displacement and lack of access to abandoned properties, such as loss of income and costs that would not have been incurred had they not been forced to leave;
- assistance and reintegration measures to facilitate durable solutions, such as the establishment of conditions of security, reconstruction of homes and infrastructure at return sites, and social and economic support to all displaced persons, regardless of whether or not they choose to return to their homes of origin;
- public acknowledgment of any responsibility for displacement-related human rights violations by the competent authorities, full investigation, and disclosure of such violations and

for which individual perpetrators should be held to account.¹

The provisions of the Resolution are of recom-mendatory nature for the Member States of the Council of Europe and their implementation depends on the will of the particular State and other internal factors. But in some situations, PACE has adopted separate resolutions and recom-mendations for individual countries in response to the difficult situation in the region. For example, the relevant documents were adopted on the issue of IDPs in Armenia, Azerbaijan and Georgia, where it was noted that there is the need to establish and support domestic programs to provide victims with housing² and their full integration in their new places of residence with the possibility for them to return to their place of residence on the occupied territories safely³.

In addition, the Committee of Ministers of the Council of Europe, in its recommendation on IDPs, emphasized that IDPs have the right to use their property in accordance with human rights. In par-ticular, if they are deprived of their property in any way during an armed conflict, they should be pro-vided with adequate compensation⁴. The Committee reminded States that it was their responsibility to implement the principles of international law and to guarantee respect for the human rights of victims.

Regarding the situation in the East of Ukraine, PACE also drew attention to the housing problem

¹ Solving property issues of refugees and internally displaced persons, General Assembly of Council of Europe, Resolution 1708 (2010), 28.01.2010
<http://assembly.coe.int/nw/xml/XRef/Xref-XMI2HT-MI-en.asp?fileid=17814&lang=en>.

² Situation of refugees and displaced persons in Armenia, Azerbaijan and Georgia, General Assembly of Council of Europe, Recommendation 1570 (2002), 27.06.2002
<http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-en.asp?FileId=17028>.

³ Refugees and displaced persons in Armenia, Azerbai-jan and Georgia, General Assembly of Council of Europe, Resolution 1497 (2006), 13.04.2006
<http://assembly.coe.int/nw/xml/XRef/Xref-DocDe-tails-en.asp?FileID=17431&lang=en>.

⁴ Recommendation to member states on internally displaced persons, the Committee of Ministers of Council of Europe, Rec(2006)6, 05.04.2006
<https://rm.coe.int/16806b5aa>.

of those affected by the armed conflict. Thus, in the Resolution on the humanitarian needs and rights of internally displaced persons in Europe, specifically with regard to Ukraine, PACE drew attention to the fact that the governments of Ukraine and the Russian Federation "...establish a Commission for the compensation or return of IDPs' possessions and property, in accordance with the jurisprudence of the European Court of Human Rights under the Article 1 of the Protocol to the European Convention on Human Rights. In addition, both parties must abstain from any action that will prolong or cause further internal displacement of persons and aggravate the humanitarian situation of IDPs, in violation of international humanitarian law".

A number of PACE documents deal exclusively with the consequences of the events in Ukraine. In the "Resolution on the humanitarian consequences of the war in Ukraine" it was noted that Ukraine should ensure the right to adequate housing and address housing issues of IDPs through the adoption of appropriate legal regulation². The text of the "Resolution on the political consequences of the Russian aggression in Ukraine" highlighted the importance of a ceasefire in accordance with the Minsk agreements between the parties to the armed conflict in Eastern Ukraine³. "The Resolution on legal remedies for human rights violations on the Ukrainian territories outside the

control of the Ukrainian authorities" required both parties to the armed conflict to conduct effective investigations of all human rights violations committed in all territories under their control and to provide for the possibility of victims to receive compensation⁴. Unfortunately, both sides of the armed conflict in Eastern Ukraine continue to ignore the recommendations and norms of international law, not contributing to the resolution of the situation and humanitarian problems of victims.

2.3. INTERFERENCE WITH CIVILIAN PROPERTY THROUGH THE LENS OF THE ROME STATUTE

The jurisdiction of the International Criminal Court is limited to serious international crimes, which include war crimes⁵. This category of acts is worth paying attention to in the context of damage caused to immovable property in the East of Ukraine. Although Ukraine has not yet ratified the Rome Statute and has not become a full member of the Assembly of Member States, the Court has jurisdiction to consider the situation in Ukraine according to the statement of the Verkhovna Rada of Ukraine as of February 4, 2015.⁶

¹ Humanitarian needs and rights of internally displaced persons in Europe, General Assembly of Council of Europe, Resolution 2214 (2018) <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24736&lang=EN&search=Y29uZmxpY3QgaW4gVWtyYWluZXx0eXBIX3N0cl9lbpSZNvbHV0aW9u>.

² Humanitarian consequences of the war in Ukraine, General Assembly of Council of Europe, Resolution 2198 (2018), 23.01.2018 <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=24432&lang=EN&search=Y29uZmxpY3QgaW4gVWtyYWluZXx0eXBIX3N0cl9lbpSZNvbHV0aW9u/>.

³ Political consequences of the Russian aggression in Ukraine, General Assembly of Council of Europe, Resolution 2132 (2016), 12.10.2016 <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?fileid=23166&lang=EN&search=Y29uZmxpY3QgaW4gVWtyYWluZXx0eXBIX3N0cl9lbpSZNvbHV0aW9u>. <https://zakon.rada.gov.ua/laws/show/145-19>.

In its reports on the previous investigation of the situation in Ukraine, the Prosecutor's Office of the International Criminal Court noted on the likely commission of war crimes by the parties during the conduct of hostilities: "*the Office analysed in detail information relating to a number of particular instances of shelling to determine whether in these incidents any conduct may amount to the war crime of directing intentional attacks on civilians under the Article 8(2)(b)(i) or Article 8(2)(e)(i); intentional attacks on civilian objects under article 8(2)(b)(ii); intentionally launching attacks in the knowledge that they will cause disproportionate harm, under article 8(2)(b)(iv); or intentionally directing attacks against protected objects such as medical and educational facilities, under the Article 8(2)(b)(ix) or Article 8(2)(e)(iv).*"

The potential qualification of these facts by the Prosecutor's Office allows to generalize the situation to such elements:

- the perpetrator committed an attack (in this context, it is referred to an actual armed attack during hostilities, in particular with the use of weapons that are capable of causing incomensurable harm);
- the object was the civilian population as a whole or individuals who did not participate in hostilities; the object of the attack was civilian objects, that is, objects which are not military objectives; protected objects — the perpetrator intended such building or buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals or places where the sick and wounded are collected, which were not military objectives, to be the object of the attack;
- acts are reviewed in the framework of both international and non-international armed conflict, according to a preliminary assessment of

¹ Report of the Office of the Prosecutor of the International Criminal Court on preliminary examination activities 2018, §86 <https://www.icc-cpi.int/itemsDocuments/2018-otp-rep-PE-Ukraine.pdf>.

the situation by the Office of the Prosecutor of the International Criminal Court².

Since the Office of the Prosecutor does not consider the possibility of committing crimes against humanity in the context of harming civilian property and infrastructure, it is worth taking a closer look at the characteristics of war crimes. In its previous qualification, the Office of the Prosecutor draws attention to a number of war crimes that could potentially take place in Eastern Ukraine. According to the Art. 8 the Rome Charter war crime is a grave breach of the Geneva Conventions of 12 August 1949, namely, any of the defined acts against persons or property protected under the provisions of the relevant Geneva Convention and other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law³.

When reviewing the elements of crimes provided for in the Rome Charter, special attention should be paid to the contextual elements that unite the entire category. Considering the rhetoric that exists within Ukraine and on the NGCA regarding the general qualification of the conflict, it should be understood that it has nothing to do with the work of the International Criminal Court, as long as only facts are taken as a basis for consideration of the situation. Thus, the elements of war crimes include:

- there is no requirement for a legal evaluation by the perpetrator as to the existence of armed conflict or its character as international or non-international
- there is no requirement for awareness by the perpetrator of the facts that established the character of the conflict as international or non-international;
- there is only a requirement for the awareness of the factual circumstances that established the existence of armed conflict that is implicit

² Elements of crime. Rome Statute of the International Criminal Court https://www.un.org/ru/documents/rules/icc_elements.pdf.

³ Rome Statute of the International Criminal Court of 17 July 1998 <https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>.

in the terms “took place in the context of and was associated with”¹.

Therefore, for the assessment and qualification of the committed acts during the hostilities in the East of Ukraine of exceptional importance are objective facts that show the likely perpetrator of committed acts, and his awareness of the fact that there is armed conflict in which he is involved.

So far, the International Criminal Court has not dealt with charges of wilful attacks on civilians and civilian objects in the context of causing destruction. During the investigation of the situation in Sudan, the Court issued warrants for the arrest of several persons, whom among other charges, were also given charges of commission of an offense under the Article 8 (2) (e) (i) of the Rome Statute².

But other international tribunals have already dealt with these acts in their investigations, taking into account the provisions of their own statutes. The practice of the International Tribunal for the former Yugoslavia is the most appropriate. In *Prosecutor v. Gotovina* case³ the Tribunal considered facts of the unjustified destruction of towns, villages or settlements not required by military needs as a violation of the laws and customs of warfare. The legal analysis of the situation included two criteria: the scale of violations and military necessity. With regard to the first criterion, the Tribunal noted “in assessing the requirement of destruction “on a large scale”, the Trial Chamber considered that in many in-

stances the acts of destruction concerned a house or building and the Trial Chamber finds that in those instances the requirement was met on the basis of the value of a house or building alone. The Trial Chamber further finds that the total number of destroyed items was very high”⁴. When assessing the criterion of military necessity “...the Trial Chamber has considered the level of hostilities in the places where destruction took place and that the objects were civilian”⁵. The Trial Chamber also noted that civilian targets that were hit, were located at a distance of 200–300 m from military facilities, therefore it cannot be considered as a military inaccuracy⁶.

Theft of public and private property was also considered by the Trial Chamber as commission of a crime: “...the Trial Chamber considered in particular evidence from witnesses who either observed the incidents, or otherwise could provide information about the circumstances surrounding these acts, as well as documentary evidence. The Trial Chamber considered in particular that in some instances acts of plunder were carried out simultaneously, and by the same persons as acts of destruction... and in the overwhelming number of incidents in which the appropriated items were specified, the possibility of military necessity could clearly be ruled out...”⁷.

The basic position of the Tribunal in such cases is that the use of civilian populations and civilian objects as military objectives is prohibited and cannot be justified by military necessity⁸. In *Galic case*⁹, the International Tribunal for the former Yugoslavia

¹ Elements of crime. Rome Statute of the International Criminal Court:
https://www.un.org/ru/documents/rules/icc_elements.pdf.

² Warrant of arrest for Ali Kushayb/ Situation in Darfur, Sudan, in the case of the Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Al Abd-Al-Rahman/ Pre-trial chamber ICC, 27 April 2007
https://www.icc-cpi.int/CourtRecords/CR2007_02907.PDF.

Warrant of arrest for Abdel Raheem Muhammad Hussein/ Situation in Darfur, Sudan, in the case of the Prosecutor v. Abdel Raheem Muhammad Hussein/ Pre-trial chamber ICC, 1 March 2012
https://www.icc-cpi.int/CourtRecords/CR2012_03573.PDF.

³ Prosecutor v. Gotovina, ICTY, judgment on 15 April 2011
http://www.icty.org/x/cases/gotovina/tjug/en/110415_judgement_vol1.pdf,
http://www.icty.org/x/cases/gotovina/tjug/en/110415_judgement_vol2.pdf.

was unable to prove that attacks against civilians as measures of intimidation or of terrorism violating the laws and customs of war.

In addition to the targeted destruction of civilian property and civilian objects during military operations, targeted attacks in combination with other war crimes and crimes against humanity have also been considered a crime. Thus, the International Tribunal for the former Yugoslavia addressed the situation of the attack by the Croatian military police on April 16, 1993, in the Muslim village Ahmisi. The Tribunal stated that the purpose of the attack was to destroy as many Muslim houses as possible, to kill all the men of military age, and thereby prompt all the others to leave the village and move elsewhere. The burning of the Muslim houses and the killing of the livestock were clearly intended to deprive the people living there of their most precious assets.¹

¹ *Prosecutor v. Zoran Kupre, Mirjan Kupre, Vlatko Kupre, Drago Josipov, Dragan Papi, Vladimir Anti/ ICTY, judgement on 14 January 2000, §336*

The practice of bringing perpetrators to justice shows that evidence of commission of a crime is of paramount importance in proving guilt.

Combined with an overall assessment of the damage, even if facts are limited, they can provide an objective assessment of the situation and show the scale of the attack. This realization is extremely important for Ukraine through the perspective of the results of the consideration of the situation by both international courts and the investigation at the national level.

It is worth remembering that the ICC, when considering the situation in Ukraine, will not focus on all the alleged facts of war crimes, its main task is to investigate perpetrators who are at the top of the hierarchy and are responsible for planning and organizing criminal acts. The bulk of the work, in any case, will remain for the national law enforcement and judicial system.

<http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>.

PROTECTION OF PROPERTY RIGHTS OF PERSONS AFFECTED BY THE ARMED CONFLICT IN UKRAINE

3.1. PROCEDURES WITHIN THE NATIONAL LEGISLATION OF UKRAINE

The UN Monitoring Mission in Ukraine constantly monitors the situation with victims of the fighting in Eastern Ukraine, the results of which are recorded in their periodic reports. In particular, it is noted that as of 15 February 2019, there are over 50,000 civilian homes on both sides of the contact line which were damaged during the hostilities and homes of some 40,000 families, living on both sides of the contact line, are reportedly in urgent need of repairs to protect inhabitants from low winter temperatures. Civilians face multiple obstacles in accessing compensation for the military use of their houses, land and other property in government-controlled territory.¹

For buildings located on the GCA, the mechanisms of inspection of damaged property are available. Appropriate Committees² are being created under the governance of local authorities, these Committees carry out inspection of buildings and make the appropriate act based on investigation

¹ Report on the human rights situation in Ukraine, November 16, 2018 – February 15, 2019 (§3–32) https://www.ohchr.org/Documents/Countries/UA/ReportUkraine16Nov2018-15Feb2019_Ukrainian.pdf.

² For example, the procedure of formation and composition of the commission is provided by the Resolution of the Council of Ministers of the USSR “On the procedure of inspection of the condition of houses in order to establish their compliance with sanitary and technical requirements and recognition of houses and premises unfit for living” as of April 26, 1984 No. 189 <https://zakon.rada.gov.ua/laws/show/189-84-D0%BF>.

results. If there was a fire, the State Service of Ukraine for emergency situations carries out an inspection of the scene and documents the case in the established template³. But the complexity of the work on the inspection of buildings has some complexities:

- first, at the level of national legislation, there is no unified form of the certificate which has to be compiled as a result of object investigation carried out by the Commission. As a result, each Commission, each government authority has its own form, which may lack important points and factual data;
- second, the Commission physically is unable to investigate objects which are located along the contact line and in places which represent a potential danger to members of the Commission, therefore residents of a number of settlements cannot receive any documents confirming the fact of damage or destruction of their property for a long time;
- third, the buildings located on the NGCA are not inspected. In some settlements, houses are inspected by the self-proclaimed republics, whereas the Ukrainian authorities have no access to these objects.

On the other hand, there are no special procedures at the national level to protect people whose property has been affected by the armed conflict. The current legislation provides for two separate mechanisms that have been applied for five years

³ On approval of the reporting form No. 1 (monthly) “The report on fires and its consequences” and the fire act form: the order of the Ministry of Internal Affairs of Ukraine as of June 14, 2017 No. 503 <https://zakon2.rada.gov.ua/laws/show/z0829-17>.

of events in the East of Ukraine and are considered by the national courts.

In fact, from April 13, 2014,¹ to April 30, 2018², ATO was carried out in the East of Ukraine, during this period of time, relevant anti-terrorism legislation was active. According to the Article 19 of the Law of Ukraine “On the fight against terrorism”, compensation for harm caused to citizens by a terrorist act is carried out at the expense of the State budget of Ukraine in accordance with the law and with the subsequent recovery of the amount of this compensation from persons who caused harm, in the manner prescribed by law. Compensation for damage caused to an organization, enterprise or institution by a terrorist act shall be carried out in the manner prescribed by law³.

The norms are closely linked and make reference to the relevant provisions of the criminal law — individuals guilty of terrorist activities are prosecuted in the manner prescribed by law⁴. From the point of view of the analysis of the mechanism, this connection is of great importance, because according to the Art. 1177 of the Civil Code of Ukraine: harm caused to an individual who suffered from a criminal offense is compensated in accordance with the law; the harm caused to a victim as a result of a criminal offense shall be compensated to him/her at the expense of the State budget of Ukraine in cases and in the manner prescribed by law⁵.

The possibility of obtaining an appropriate compensation at the expense of the State budget

¹ On the decision of the National Security and Defense Council of Ukraine as of April 13, 2014 “On the Urgent Measures to Overcome the Terrorist Threat and Preserve the Territorial Integrity of Ukraine” Resolution of the President of Ukraine as of April 14, 2014 No. 405/2014 <https://zakon.rada.gov.ua/laws/show/405/2014>.

² On the decision of the National Security and Defense Council of Ukraine as of April 30, 2018 “On large-scale anti-terrorist operation on the territory of Donetsk and Luhansk oblasts”: Resolution of the President of Ukraine as of April 30, 2018 No. 116/2018 <https://zakon5.rada.gov.ua/laws/show/116/2018>.

³ On the fight against terrorism: the Law of Ukraine as of March 20, 2003 No. 638-IV <https://zakon.rada.gov.ua/laws/show/638-15>.

⁴ Ibid.

⁵ Civil Code of Ukraine as of January 16, 2003 <https://zakon.rada.gov.ua/laws/show/435-15#n5509>.

of Ukraine is envisaged by the Criminal Procedural Code of Ukraine as well as the procedure for civil proceedings to a suspect, accused persons or physical or legal person which by law shall bear civil liability for damages caused by the acts of the suspect or accused, or incapacitated person who has committed a socially dangerous act⁶.

In general, this method is actively used by victims who go to a court in an attempt to protect and restore their rights. The judicial procedure and effectiveness of the mechanism will be further analyzed in this section of the study.

As a second mechanism, Ukrainian society discusses the possibility of applying the relevant norms of national legislation that regulate behavior in the event of an emergency. Accordingly to its definition events in the East of Ukraine may fall under the relevant national norms — emergency is a situation within a scope of a specific territory, business entity facilities, or a water body, characterized by disruption of the normal human living environment, resulting from a catastrophe, accident, fire, natural disaster, epidemic, epizootic or epiphytotic outbreak, the use of means of destruction or another dangerous event, which has led (may lead) to a threat to the public life or health, a large number of casualties or injuries, or make such territory or facility unsuitable for human living or business activity⁷.

According to the national legislation, the provision of housing for victims whose housing has become unsuitable for living as a result of an emergency situation is carried out by local state administrations, local self-government bodies and economic entities by: provision of premises from the housing fund for temporary residence; extraordinary provision of housing built by order of local state administrations, local self-government bodies and economic entities; construction of houses

⁶ Criminal Procedure Code of Ukraine as of December 19, 2012 (Chapter 9) <https://zakon.rada.gov.ua/laws/show/4651-17#n1359>.

⁷ Article 2, Civil Code of Ukraine as of October 2, 2012 (Art. 2) <https://zakon.rada.gov.ua/laws/show/5403-17>.

for victims; purchase of apartments or houses¹. However, for the implementation of this norm, it is important to make a clarification — provision of housing to the victim or payment of monetary compensation by the state is subject to the voluntary transfer of victims' destroyed or damaged as a result of emergency property to local state administrations or local self-government bodies, economic entities². That is, before raising the question of obtaining compensation in any form through such a mechanism, a victim must relinquish ownership of the damaged or destroyed object in favor of the state or territorial community.

It is also important to note that in addressing the issue of compensation for damaged housing, the calculation of the amount is determined by the indicators of the indirect cost of housing construction in the regions of Ukraine in accordance with the location of such property³, which is being established on a yearly basis⁴. Despite the fact that houses include decoration and things necessary for living, the cost of the latter is not taken into account.

The main drawback of these national legislation provisions is that they do not take into account the fact of armed conflict that takes place on the territory of Ukraine, and the peculiarities of the protection of civilians from the point of view of international law. Issues of damaged and destroyed property are reduced to the issue of compensation, without solving the problem of lack of accounting and the need to determine the scope of damages. However, the Law of Ukraine On the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk oblasts indirectly emphasizes in its provision that “liability for material or non-material damage caused to Ukraine as a result of the armed aggres-

*sion of the Russian Federation rests with the Russian Federation in accordance with the principles and norms of international law...”*⁵ and when noting on the need to prepare a consolidated claim for damages⁶.

3.2. JUDICIAL PROCEDURE AND ITS EFFECTIVENESS

Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law establish that “...States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavor to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgements⁷. Despite the fact that there are no special procedures in the Ukrainian legislation that relate specifically to property damage caused during the armed conflict, the national judicial procedure has cases that arise from the mechanisms described in the previous section: “...Any other procedure for determining the amount of compensation for the damaged apartment, as a result of an emergency such as a terrorist act, is currently absent...”⁸.

To begin with, attention should be paid to the definition of the general rules of a statute of limitations in such appeals. The general rule in civil law

¹ Ibid (Art. 86).

² Ibid (Art. 86).

³ Ibid (Art. 86).

⁴ For example, for the current year approved by the Resolution of the Ministry of Regional Development, Building and Housing and Communal Services of Ukraine as of December 6, 2018 No. 335 “On indicators of indirect cost of housing construction for the regions of Ukraine” <http://www.minregion.gov.ua/wp-content/uploads/2018/12/nakaz-vid-06.12.2018----335.pdf>.

⁵ About features of the state policy on ensuring the state sovereignty of Ukraine on temporarily occupied territories in Donetsk and Luhansk oblasts: the Law of Ukraine as of January 18, 2018 <https://zakon0.rada.gov.ua/laws/show/2268-19>.

⁶ Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law as of July 25, 2005. https://zakon.rada.gov.ua/laws/show/995_e53.

⁷ The Supreme Court ruling in case No. 227/6023/15-TS as of April 2, 2018 <http://www.reyestr.court.gov.ua/Review/74021731>.

provides for a statute of limitations running three years¹. This period begins the day after the event that is relevant to the violated right took place². Its period begins from the day when the person learned or could have learned about the violation of his right or about the person who violated his right³. That is, in practice, if general rules can be applied to the facts of property damage, the statute of limitation can be counted from:

- the day when the property was destroyed or damaged. If you look at the record of court decisions, plaintiffs appealed to the court within the statute of limitations, which began from the date of actual damage caused to property.

For example:

*“...In August 2017, INDIVIDUAL_1 appealed to the court with the specified claim, in support of which he referred to the fact that he owned a house, located at the address: ADDRESS_1. He lived in this house permanently with his family. On December 08, 2014, as a result of a terrorist attack during the anti-terrorist operation, the house was completely destroyed. The cause of the destruction was hit by an artillery shell during the conduction of the anti-terrorist operation...”*⁴

At the same time, in justification of their claim plaintiffs also specified that at the time of the destruction they lived in the house permanently: “...When describing the motivation of the claim, he specified that he is the owner of the specified apartment in which as of June 15, 2016, he permanently lived with his wife. On June 15, 2016, as a result of a terrorist attack during the anti-terrorist operation, the house belonging to the plaintiff was destroyed...”;

- the day when a person learned, or could potentially learn, that his property had been damaged. Most people after leaving their

¹ Article 257, Civil Code of Ukraine as of January 16, 2003 (Art. 257) <https://zakon.rada.gov.ua/laws/show/435-15#n5509>.

² Ibid (Art. 253).

³ Ibid (Art. 261).

⁴ Ruling of the Donetsk oblast Appeal Court as of May 2, 2018 <http://www.reyestr.court.gov.ua/Review/73740752>.

⁵ Ibid.

homes due to the outbreak of hostilities have no information about the condition of their housing. Therefore, in this case, it is necessary to clearly mark the day when the victim learned about the damage from neighbors, relatives, friends, media and other sources. This moment must be captured and indicated when applying to the court:

*“...In May 2017, INDIVIDUAL_2 appealed to the court against the state of Ukraine represented by the Cabinet of Ministers of Ukraine, the State Treasury Service of Ukraine for compensation for damage caused as a result of the anti-terrorist operation. She justified her demands by the fact that she is the owner of a garden house. In March 2017, she learned that the garden house was completely burned down due to the mass shelling of the village on March 15, 2017. According to the note from the Gardening Association “the Assembler-2 in Shakhtospetsmontazhnaya Administration of the trest ‘Donetskugillyabud’”, the garden house was burned completely as a result of a direct hit by a shell. Fire departments did not participate in fire fighting due to the intense shelling of the village...”*⁶;

- or the day when a victim learned about the perpetrator of the committed damage — in the context of hostilities in the East of Ukraine, this possibility can be interpreted as the establishment of the perpetrator in criminal proceedings.

Plaintiffs use the provisions of the anti-terrorist legislation as grounds for filing an application for compensation for damage caused to property. It should be noted that the duration of the ATO in some areas of Donetsk and Luhansk oblasts has a very clear timeline: it began on April 13, 2014, and was completed on April 30, 2018⁷. This means that victims can use the above — analyzed provisions of the Law of Ukraine “On the fight against

⁶ Ruling of the Donetsk oblast Appeal Court as of April 3, 2018 <http://www.reyestr.court.gov.ua/Review/73170245>.

⁷ There was no official order to stop the ATO. On April 30, 2018, by Presidential Resolution No. 116/2018, the NSDC decision as of April 30, 2018 “On a large-scale anti-terrorist operation in Donetsk and Luhansk oblast” was put into effect.

terrorism" as a basis for court appeal only within this period, when ATO was indeed taking place on these territories.

The statement of claim is filed against. "...The state of Ukraine represented by the Cabinet of Ministers of Ukraine, the State Treasury Service of Ukraine...¹". SSU, the Ministry of Defense of Ukraine and other law enforcement agencies may be involved as defendants to the case.

When looking at this category of cases, it is worth noting that:

- in the statement of claim, the main reference is made to the fact that a terrorist act was committed, which is the subject of an investigation, by the relevant law enforcement agency. Given this, the fact and circumstances of its commission are subject to proof in criminal proceedings². Therefore, it is quite logical that the court in the course of consideration of the case requires the plaintiff to provide evidence relevant to the criminal proceedings or related to it. In fact, the scope of consideration of the case in the court of general jurisdiction is mixed with the work of law enforcement agencies when dealing with such cases.

For example:

"...According to the Act of inspection of the house No. 2 as of November 11, 2015, the house of the claimant was destroyed as a result of a hit by the artillery weapon during the military operation which is being conducted in the framework of the anti-terrorist operation. In the statement of claim, the plaintiff raises the question of compensation for damage caused as a result of a terrorist act. However, no proper evidence of the existence of a sentence in the criminal case, which entered into force, the plaintiff did not provide. The conclusion of the court of the first instance is that for the onset of responsibility for damage caused to property by a terrorist act as a crime, responsibility for which is provided by the Article 258 of the Criminal Code of

Ukraine, there is no need in a court sentence that came into force, made in violation of the rules of substantive and procedural law... Considering that the claimant did not prove in court the fact of destruction of her house, outbuildings and household structures as a result of the terrorist act, satisfaction of her claim is refused..."³;

- the need to apply the provisions of the Civil Protection Code relating to the voluntary transfer of property before applying for compensation remains an open question.

The decision of the Supreme Court as part of the panel of judges of the first judicial Chamber of the Civil Court of Cassation of July 11, 2018 concluded that, "...in making a claim to the state for payment of compensation for property destroyed during the anti-terrorist operation, the owner of this property initially, that is, before a court decision, has to voluntarily transfer the house or property damaged or destroyed as a result of a terrorist act to local state administrations or local self-government bodies...⁴". The Supreme Court reached the same conclusion in other cases⁵. Instead, the Grand Chamber of the Supreme Court is now considering a case that raises the question of a unified application of these provisions⁶;

- the price of the claim, which is indicated when filing the claim, is calculated not at the actual cost of the damaged property, but according to the indicators of the indirect cost of housing construction in a certain region, in accordance with the provisions of the Code of Civil Protection of the population. Thus, in judicial practice it is noted that:

³ Ruling of the Donetsk oblast Appeal Court as of June 8, 2017
<http://reyestr.court.gov.ua/Review/67119543>.

⁴ The Supreme Court ruling in case No. 219/11736/16-C from July, 11, 2018
<http://www.reyestr.court.gov.ua/Review/75345588>.

⁵ The Supreme Court ruling in case No. 242/1618/17 as of August 1, 2018.
<http://www.reyestr.court.gov.ua/Review/75781622>.

The Supreme Court ruling in case No. 243/8302/16-n from September 20, 2018.
<http://www.reyestr.court.gov.ua/Review/76614844>.

⁶ The Supreme Court ruling in case No. 265/6582/16-n as of January 21, 2019
<http://reyestr.court.gov.ua/Review/79365489>.

¹ Ruling of the Donetsk oblast Appeal Court as of June 8, 2017
<http://reyestr.court.gov.ua/Review/67119543>.

² Criminal Procedure Code of Ukraine as of December 19, 2012 (Article 91)
<https://zakon.rada.gov.ua/laws/show/4651-17#n1359>.

"...At the same time, to confirm the scope of the damage caused by the destruction of the house, it is necessary to submit a act of inspection of the damaged (destroyed) property of the plaintiff caused by the anti-terrorist operation, which must be made pursuant to the Resolution of the Cabinet of Ministers of Ukraine as of October 16, 2014 No. 1002-R and orders of the Chairman of Oblast State Administration, because, in accordance with the Article 4 and part IV of the Article 5 of the Law of Ukraine "On the fight against terrorism", the Central Executive bodies, providing forming and implementation of the state policy in the field of civil protection, which are entities directly engaged in combating terrorism, their subordinate bodies of administration of affairs of civil defence and specialized formations, troops of civil defence take measures for the protection of population and territories in case of threat and occurrence of emergencies connected with technological terrorist displays and other types of terrorist activities; participate in the activities of minimization and elimination of consequences of such situations during the conduct of anti-terrorist operations...".¹

In general, the trial is quite long and does not always guarantee the satisfaction of the claims of the victim. Therefore, if the Court of the First instance refuses to satisfy the claim, it is necessary to appeal the decision to the Court of Appeal and the Supreme Court. If the procedure is followed, the victim may receive a final decision in his favor, but the judicial procedure is not permanent. It is also worth noting that the receipt of a positive decision² on the payment of monetary compensation in favor of the victim does not guarantee the implementation of such payment. In Ukraine, cases of such payments are unknown. Therefore, such judicial practice does not prove its effectiveness. In addition, decisions are closely related to the question of establishment of facts that are relevant to criminal proceedings, but in this case, are taken exclusively by the Court of Civil Jurisdiction. This approach is not entirely cor-

¹ The Supreme Court ruling in case No. 242/1618/17 from August 1, 2018.
<http://www.reyestr.court.gov.ua/Review/75781622>.

² The ruling of the Donetsk Appeal Court in case No. 243/11658/15-C as of October 11, 2017.
<http://www.reyestr.court.gov.ua/Review/69498996>.

rect, since neither the plaintiffs themselves, nor the state bodies involved in court cases, nor, in fact, the court have access to the array of data on the commission of an act referred to in the proceedings, which actually prove the fact of the commission of the crime and the scope of actual damages caused. In addition, the subject matter of the dispute and the proceedings are directly affected by the characterization of the events in the East of Ukraine which is being conducted by national laws, and the qualification of acts as terrorist acts, instead of war crimes, limiting the use of international legal guarantees for civilian victims.

3.3. THE NATIONAL INVESTIGATION

The practice of national pre-trial investigations on the facts of damage and destruction of property of the civilian population shows that criminal proceedings are registered with legal qualification—the commission of a terrorist act. According to the Article 1 of the Law of Ukraine "On the fight against terrorism" a terrorist act is a crime in the form of weapons, committing an explosion, arson or other actions for which under the Article 258 of the Criminal Code of Ukraine responsibility is established³. This article specifies the list of acts constituting the objective side of this act, including:

- use of weapons,
- commission of blast,
- commission of arson,
- commission of other acts that create a danger to human life or health or cause significant property damage or other serious consequences;
- threat of such actions for the specified purpose⁴.

At the same time, the special purpose of commission of a crime is specified: violation of public safety, intimidation of the population, provocation of the military conflict of international complication,

³ On the fight against terrorism: the Law of Ukraine as of March 20, 2003 No. 638-IV

⁴ Criminal Code of Ukraine as of April 5, 2001
<https://zakon.rada.gov.ua/laws/show/2341-14#n1707>.

or influence on decision-making or commission or omission of actions by public authorities or local governments, officials of these bodies, associations of citizens, legal entities, or drawing public attention to certain political, religious or other views of a perpetrator (terrorist)¹.

A number of criminal offences linked to terrorist activities, envisaged in other articles of the Criminal Code of Ukraine, among which: involvement in the commission of a terrorist act (Art. 258-1); public calls to commit a terrorist act (Article 258-2); creation of terrorist group or terrorist organization (Article 258-3); facilitation of a commission of a terrorist act (Article 258-4); financing of a terrorism (Article 258-5)². Additional qualification under these Articles can be carried out by the investigator both, at the registration of criminal proceedings, and in the course of its conduction.

At the same time, it should be noted that these crimes in their essence do not take into account the context of the existence of the armed conflict in Eastern Ukraine. According to the logic of this legal qualification, the self-proclaimed "DPR" and "LPR" and their armed groups are perceived as operating terrorist organizations and at the level of judicial decisions, this fact is considered as a well-known. For example, such arguments were cited in court decisions in 2014–2015:

"...Knowingly for INDIVIDUAL_3, the terrorist organization "DPR" is stable, has a clear hierarchy and structure, which consists of so-called "political" and the "power" units, as well as the distribution of functions between its participants, who are entrusted with relevant responsibilities under the joint plan of criminal acts..."³.

In the future, when considering various criminal cases that relate to the events in the East, little attention was paid to the proof that the self-proclaimed republics "DPR" and "LPR" are terrorist organizations, which negatively affects the effectiveness of the investigation and bringing it to the

proper qualification. That is why among the decisions of the courts there are such arguments:

"The fact that the" Donetsk People's Republic "is a terrorist organization is not a well-known, and legally it is not recognized as a terrorist organization, and therefore the terrorist nature of this organization requires proof. But the indictment does not specify where, when and what terrorist acts were carried out or planned by this organization, nor the composition of its participants, that is, there was no specific investigation of facts on the basis of which it is possible to draw a conclusion about the terrorist orientation of this organization..."⁴.

In this context, it is also important to pay attention to the provisions and norms of the current legislation. Currently, the most complete legal perception of representatives of the self-proclaimed republics in the Ukrainian legal field is revealed in the provisions of the Law of Ukraine On the peculiarities of State policy on ensuring Ukraine's State sovereignty over temporarily occupied territories in Donetsk and Luhansk oblasts. The document makes this distinction: "...armed forces of the Russian Federation, consisting of regular troops and units subordinate to the Ministry of Defence of the Russian Federation, divisions and special formations subordinate to other law enforcement agencies of the Russian Federation, their advisors, instructors and irregular illegal armed groups, armed gangs and mercenary groups created, subordinated, managed and financed by the Russian Federation, as well as with the assistance of occupational administration of the Russian Federation, which constitute its State organs and structures, functionally responsible for the management of the temporarily occupied territories of Ukraine, and self-proclaimed bodies controlled by the Russian Federation, which usurped the exercise of power functions on the temporarily occupied territories of Ukraine...⁵". Yet, the fact that this position is fixed

¹ Ibid.

² Ibid.

³ Ruling of the Oktyabrsky district court of Mariupol as of October 23, 2015
<http://reystroycourt.gov.ua/Review/52744951>.

at the legislative level does not mean that law enforcement agencies should use it in the process of investigation without the appropriate communication and use of related evidence.

As an alternative to the above legal qualification, it is worth looking at the crimes provided for in the Article 437 of the Criminal Code of Ukraine, which establishes responsibility for the conduct of aggressive war, and the Art. 438 of the Criminal Code of Ukraine, which criminalizes violations of laws and customs of warfare¹. In particular, the objective side of the Art. 438 notes: "...the use of means of warfare prohibited by international law, other violations of the laws and customs of war provided for by international treaties, the consent to be bound by the Verkhovna Rada of Ukraine, as well as the order to commit such actions...", which is consistent with the position of the Prosecutor's Office of the International Criminal Court to consider the situation in the East of Ukraine. Moreover, the application of these articles would be more appropriate in terms of the existence of armed conflict.

The practice of international law does not deny the possibility of the existence of terrorist activities during armed conflict, but it is important to remember that every such fact must be properly proven. At the same time, it is categorically unacceptable that various law enforcement agencies allow such acts to be classified as terrorist crimes and as international crimes.

According to the Art. 216 of the Criminal Procedure Code of Ukraine investigators of security bodies carry out a pre-judicial investigation of crimes provided by Articles 258–258-5, 437, 438 of the Criminal Code of Ukraine. In addition, according to the peculiarities of the definition of investigative jurisdiction, units of the Chief Military Prosecutor's Office are also involved in criminal proceedings of these facts. And procedural supervision of the observance of laws during a pre-judicial investigation and representation of interests of prosecution in

<https://zakon0.rada.gov.ua/laws/show/2268-19>.

¹ Criminal Code of Ukraine of April 5, 2001
<https://zakon.rada.gov.ua/laws/show/2341-14#n1707>.

a court is carried out by bodies of GPU, according to rules of territorial jurisdiction.²

Also, it is worth paying attention to the fact that in the GPU was created a Department on investigation of crimes committed at TOT. The main focus of the Department is "fixing the facts of the armed aggression of the Russian Federation, primarily the shelling of settlements and other civilian infrastructure on the territory of Donetsk and Luhansk oblasts." Acts are qualified based on characteristics mentioned in part 1, 2 of the Art. 438, p. 2 of the Art. 437, parts 2, 3 of the Art. 258 of the Criminal Code of Ukraine. In addition, within the framework of open criminal proceedings, construction and technical expertise are carried out, which allows to identify the scope of damages caused. For example, as a result of the shelling of Popasna and Popasna district of the Luhansk oblast for the period from January 27, 2015, and August 31, 2015, the total amount of losses is UAH 1 932 341; total amount of damages caused by attacks of Shastya city of Novoaydar district of Luhansk oblast which took place on February 13, 2015, and 30–31 August 2015 is UAH 116 433.³

According to the information received from the Main Departments of the National Police of Ukraine in Donetsk and Luhansk oblasts, when territorial offices receive notifications on criminal offenses committed on the territory of self-proclaimed republics, which are being pre-qualified under the Article 258 of the Criminal Code of Ukraine, these notifications are being "logged to the unified register of applications and notifications on committed criminal offenses and other events, and a decision is made about entering data to the Unified register of pre-trial investigations"⁴. As it is noted in the information received from the Main Department of National Police in Donetsk oblast, additional qualification of acts is carried out by them according to the Art. 194

² Criminal Procedural Code of Ukraine as of December 19, 2012
<https://zakon.rada.gov.ua/laws/show/4651-17#n1359>.

³ A letter from the PGO from April 16, 2019.

⁴ Letter from the Chief Directorate of the National Police of Ukraine in Luhansk oblast from April 16, 2019. Letter from the Chief Directorate of the National Police of Ukraine in Donetsk oblast from April 17, 2019.

of the Criminal Code of Ukraine¹ (intentional destruction or damage of property)².

It is worth paying attention to an important point that a large number of victims turn to law enforcement agencies, reporting only the fact of damage or destruction of their property, without filing a statement about a commission of a crime. Therefore, such reports can be considered in the order of consideration of citizens' appeal³, in respect of which there is a 30-day period for the provision of a response. But, in accordance with the requirements of the Art. 214 of the Criminal Procedural Code of Ukraine the investigator/prosecutor immediately, but not later than 24 hours after the submission of appeal, reports about the committed criminal offense, or after he himself found out about the offense from any source that may indicate the commission of a criminal offense, the investigator/prosecutor is obliged to enter the relevant information to the Unified register of pre-judicial investigations, to conduct the investigation and in 24 hours from the moment of entering of such information to provide the applicant with an extract from the Unified register of pre-judicial investigations⁴. Practice proves that during the submission of a crime appeal, investigators enter the data from an appeal without a delay.

In accordance with the rules of jurisdiction, cases that qualify under the Article 258 of the Criminal Code of Ukraine are transferred to the Directorate-General of the SSU in Donetsk and Luhansk oblast. The decision on the transfer of criminal proceedings initiated by the territorial offices of the National Police of Ukraine shall be taken by relevant prosecutors⁵. For example, there are two criminal

proceedings launched in 2019, that are currently in production of investigators of divisions of the Main Department of National Police in the Luhansk oblast on the facts of the destruction of buildings of civilians⁶. According to the Main Directorate of the National police in the Donetsk oblast, from April 13, 2014 and until now, territorial investigation departments of the Police in the Donetsk oblast began the pre-trial investigation of 1610 proceedings on the facts of damage and destruction of buildings, structures and other property of the civilian population as a result of attacks by armed opposition groups⁷. 818 criminal proceedings were transferred to another investigative jurisdiction. Also, the Administration in Donetsk oblast made the decision on termination of 118 criminal proceedings entered in the register under the Art. 194 of the Criminal Code of Ukraine⁸.

The complexity of investigations in some cases is due to the lack of access to the crime scene. This issue is especially relevant to the cases that occur on the NGCA. Concerning other locations- investigative task force goes to the crime scene⁹. It is noted that “*in order to properly document and record the consequences of shelling by illegal armed groups, investigators at the primary stage of the investigation conduct inspections of the scene if there is a real possibility of their conduct without putting anyone in danger. During the inspection, where possible, photo and video recording devices are used. In order to obtain assistance on matters requiring additional knowledge, investigators engage to the investigation, other relevant specialists*”¹⁰.

Among the main problems that arise during the investigation of criminal offenses, law enforcement agencies note the following:

Ukraine in Donetsk oblast from April 17, 2019.

⁶ Letter from the Chief Directorate of the National Police of Ukraine in Luhansk oblast from April 16, 2019.

⁷ Letter from the Chief Directorate of the National Police of Ukraine in Donetsk oblast from April 17, 2019.

⁸ Letter from the Chief Directorate of the National Police of Ukraine in Donetsk oblast from April 17, 2019.

⁹ Letter from the Chief Directorate of the National Police of Ukraine in Luhansk oblast from April 16, 2019.

¹⁰ Letter from the Chief Directorate of the National Police of Ukraine in Donetsk oblast from April 17, 2019.

- impossibility of carrying out an investigation (search) and procedural actions on the NGCA of Donetsk¹;
- a threat to life and health of members of the investigation group because of the proximity to the firing positions of illegal armed groups, the possibility of a bombardment of the scene²;
- a complication in carrying out of prime investigative actions (inspection of the crime scene, seizure of material evidence, identification and interrogation of victims, witnesses, etc)³;
- the procedure for appointment of relevant examinations⁴;
- the need to involve representatives of the International Committee of the Red Cross and OSCE⁵.

In the information received from law enforcement agencies in response to the requests sent, there is no data regarding the investigation of the facts of causing material damage to the civilian population on the Ukrainian side. Criminal proceedings, which were mentioned in the responses to requests for public information, the focus is only on the consequences caused by the actions of the IAG. It is obvious that due to the use of artillery weapons during hostilities, negative consequences to the property can be caused by both sides of the armed conflict. Ukraine is obliged to investigate criminal offenses committed on its territory and towards its citizens, about which it, as the State, became aware of or relevant appeal was received. Therefore, it is hardly possible to say that these facts have not been reported to law enforcement agencies or law enforcement agencies do not have such informa-

¹ Criminal Code of Ukraine of April 5, 2001
<https://zakon.rada.gov.ua/laws/show/2341-14#n1707>.

² Letter from the Chief Directorate of the National Police of Ukraine in Donetsk oblast from April 17, 2019.

³ Law of Ukraine on Citizens 'appeal as of October 2, 1996
<https://zakon2.rada.gov.ua/laws/show/393/96-%D0%B2%D1%80>.

⁴ Criminal Procedural Code of Ukraine as of December 19, 2012 p.
<https://zakon.rada.gov.ua/laws/show/4651-17#n1359>.

⁵ Letter from the Chief Directorate of the National Police of Ukraine in Luhansk oblast from April 16, 2019. Letter from the Chief Directorate of the National Police of

tion. We assume that the data was not provided to the organization.

Despite the objective difficulty of the investigation, potential threat to life and health of investigators and experts when working along the contact line and the inability to obtain access to the territories controlled by the self-proclaimed republics, yet Ukrainian law enforcement agencies embrace in their work the facts of damage of a significant number of objects that are located on the GCA. It is worth noting the efforts of law enforcement agencies in documenting the facts and evidence of acts committed, as well as determination of the amount of damage caused. Unfortunately, we cannot draw a conclusion about the direct work of the main Department of the SSU in Donetsk and Luhansk oblasts, since the response to the request sent to them has not been received. But we hope for coordinated work between all law enforcement agencies in the investigation of these acts. However, for the generalization of work practice of law enforcement agencies, it is necessary to make some remarks:

- the legal characterization of the acts committed is ambiguous. The facts are viewed simultaneously through the prism of a terrorist act and as war crimes, without properly substantiating the nature of the guilty party, either a terrorist organization or a combatant. It is worth recalling the norms of international humanitarian law and the general regulation of the conduct of hostilities;
- the quality and completeness of the evidence remain to be questioned. Through a large number of repeated hits to the same objects and lack of access to individual crime scenes, there is a threat of a loss of evidence;
- for an effective work of law enforcement agencies it is necessary to attract additional human resources for investigation and evidence gathering on the ground, in addition — conduct of extra training for law enforcement agencies in the field of international humanitarian law and methods of investigation of international crimes.

CONCLUSIONS AND RECOMMENDATIONS

After analyzing the chronology of the armed conflict in the East of Ukraine, it is possible to conclude that the greatest harm to real property of civilians was inflicted during heavy fighting and active use by parties to the conflict of heavy weapons, which are marked by non-selectivity and has a wide area of destruction. With the decrease in the intensity of hostilities, residential facilities were destroyed in settlements located in close proximity to the contact line and close to military positions of the parties to the conflict.

Considering the official sources, it can be concluded that on the NGCA, the number of damaged residential properties is far more than on the GCA. The UN Monitoring Mission on Human Rights in Ukraine as of February 15, 2015 provides data on damage being caused to more than 50 thousand civilian homes on both sides of the contact line, and according to the information provided by the Donetsk and Luhansk OSA, as of February 2019, on the GCA, the number of damaged houses of all forms of ownership is 20 354 objects. Some of the damaged houses have not yet been inspected, and therefore are not being counted.

In addition to residential buildings, many private households had damaged or destroyed outbuildings: garages, summer kitchens, sheds, toilets, etc. Homesteads and land plots were also damaged. Part of the population for a long time was unable to, and some are still unable to use their land.

Reconstruction of residential buildings in areas located on the NGCA is being conducted at a faster pace. As of February 2019, 11,513 houses were restored on the GCA of Donetsk and Luhansk oblasts, while in January 2019, representatives of the de-facto authorities of the so-called "DPR" reported about 9942 restored houses, and the so-called "LPR", in June 2018, reported about the restoration of 5618 houses.

On the GCA, the restoration of private property takes place mainly with the help of international humanitarian organizations, charitable aid, and citizens themselves. In some settlements, aid for the restoration of private housing was provided from the regional material reserve of Donetsk oblast.

According to the information from open sources, it can be concluded that on the NGCA, the bulk of the restoration work is carried out with the help of the Russian Federation. International organizations also provide aid for the restoration of property.

It is obvious that the destruction of residential facilities is due to the shelling from both, the Ukrainian military and representatives of the so-called "LPR" and "DPR".

The survey conducted by NGO "Donbass SOS" showed that most of the damage caused to immovable property was in 2014–2015.

Most of survey respondents, whose immovable property was destroyed on the GCA and the NGCA, pointed that block posts, military positions and military equipment were located near the damaged housing. At the same time, there are cases of destruction or damage of residential facilities that are distant from military facilities and there were no reasons that could potentially provoke the shelling.

Analysis of the survey results suggests that most of the destruction of residential facilities on both sides of the contact line occurred because of battles for control of the city or a specific object. Respondents also frequently noted that attacks, which have damaged their property, were preceded by the attacks that occurred within their settlement.

Persons whose housing suffered on the NGCA, also specified that attacks on the settlement were carried out by representatives of IAG from dense-

ly populated areas of settlements. Most of these facts were in 2014–2015. Additionally, respondents named the presence of illegal armed groups as another reason for attacks of the NGCA.

On both sides of the armed conflict, there have been cases of combatants using the civilian property for military purposes: soldiers residing in civilian homes, deployment of military fortifications, placement of military equipment on the territory of private households. This situation is typical for residential facilities located close to the contact line.

In addition to damage or destruction of immovable property as a result of shelling, on both sides of the armed conflict, there were cases of looting of houses, the owners of which left the settlements for a period of heavy shelling. In most cases, robbery perpetrators were not found and/or punished.

All these facts had a negative effect on the civilian population.

Thus, according to the data obtained, it can be concluded that during the long-term armed conflict in Eastern Ukraine, the parties paid insufficient attention to the protection of civilians within the international humanitarian law and international human rights law.

In Ukraine, there is still no comprehensive state strategy for the protection of civilians whose homes have suffered as a result of hostilities, which will include an assessment of the damage caused, the creation of an assessment of damaged/destroyed property, addressing of compensation or restitution issues.

For its part, Ukraine considers the events on its territory as an armed conflict, but such a national decision does not mean that the position is also supported at the international level, cases on this issue still have to be resolved by the competent courts.

More than 4,000 individual complaints have now been filed to the ECHR regarding violations committed during the armed conflict in Ukraine (both in Crimea and in the East). A large part of these cases relates to the damage and destruction of the civilian property during hostilities. According to the last press-release by the Court, decisions in these cases can be expected after the decision in

the first inter-State claim of Ukraine against Russia regarding the situation in the East (complaint No. 8019/16) will be made, because in this particular case the decision on the division of responsibility between States for the events taking place from April 2014 will be outlined. The available time and consideration of individual cases should be used by the applicants and their representatives to collect and present to the ECHR all possible and available evidence of violations.

The practice of bringing perpetrators to justice shows that evidence of commission of a crime is of paramount importance in proving guilt. Combined with an overall assessment of the damage, even if facts are limited, they can provide an objective assessment of the situation and show the scale of the attack. This realization is extremely important for Ukraine through the perspective of the results of the consideration of the situation by both international courts and the investigation at the national level. It is worth remembering that the ICC, when considering the situation in Ukraine, will not focus on all the alleged facts of war crimes, its main task is to investigate perpetrators who are at the top of the hierarchy and are responsible for planning and organizing criminal acts. The bulk of the work, in any case, will remain for the national law enforcement and judicial system.

Judicial procedure in cases of compensation for damage caused to the immovable property of the civilian population proves that this mechanism is ineffective in practice. Due to the long duration of cases and the imperfection of national legislation, the procedure is difficult to consider as an effective way of restoration of victims' rights.

In the practice of national law enforcement agencies in situations of damage to civilian property during armed conflict, the analysis also raised several observations: the legal characterization of the acts committed is ambiguous. The facts are viewed simultaneously through the prism of a terrorist act and as war crimes, without properly substantiating the nature of the guilty party, either a terrorist organization or a combatant. It is worth recalling the norms of international humanitarian law and the general regulation of the conduct of hostilities; the quality and completeness of the

evidence remain to be questioned. Through a large number of repeated hits to the same objects and lack of access to individual crime scenes, there is a threat of a loss of evidence; for an effective work of law enforcement agencies it is necessary to attract additional human resources for investigation and evidence gathering on the ground, in addition – conduction of extra training for law enforcement agencies in the field of international humanitarian law and methods of investigation of international crimes.

On July 10, 2019, the Cabinet of Ministers of Ukraine amended the Procedure for provision and determination of the amount of financial aid to victims of emergencies who remained at their previous place of residence, which will allow some of the victims to receive compensation for destroyed property as a result of the armed conflict in Ukraine. The adoption of this Resolution is an important first step towards the restoration of the rights of the affected population, whose property has been destroyed.

RECOMMENDATIONS

1. To approve regulations and create the register of the damaged and destroyed property as a result of the armed conflict in separate areas of Donetsk and Luhansk oblasts to which documentary confirmations of the received damages will be added.
2. To approve the procedure for the inspection of damaged and destroyed property as a result of the armed conflict in certain areas of Donetsk and Luhansk oblasts, which will include a mechanism for documentation of the degree of damage caused to the object and assessment of the damage caused.
3. To provide control over the efficiency of the implementation of criminal proceedings on the facts of damage and destruction of property as a result of the armed conflict in separate areas of Donetsk and Luhansk oblasts.
4. To ensure an effective investigation into the facts of damage and destruction of property as a result of the armed conflict in certain areas of Donetsk and Luhansk oblasts, committed on the territory of Ukraine and against citizens of Ukraine by both parties to the armed conflict.
5. To provide training for law enforcement officers in the field of international humanitarian law and methods of investigation of international crimes, in accordance with the requirements of the international criminal law.
6. To introduce at the state level mechanisms of compensation and restitution to persons who suffered from damage and destruction of property as a result of the armed conflict in certain areas of Donetsk and Luhansk oblasts.

THE TABLE OF CONTENTS

FOR NOTES

| | |
|--|----|
| LIST OF ABBREVIATIONS | 3 |
| INTRODUCTION | 4 |
| 1. MASS SHELLING IN THE EAST OF UKRAINE..... | 7 |
| 1.1. Chronology of the armed conflict in Eastern Ukraine..... | 7 |
| 1.2. Destruction of civilian housing in the combat zone..... | 16 |
| Avdiivka city | 20 |
| Karlivka village | 22 |
| Maryinka city | 23 |
| Krasnogorivka city | 25 |
| Pisky village | 26 |
| Verkhnyotoretsk village | 28 |
| Zaytseve urban settlement | 30 |
| Gorlivka city | 31 |
| Debaltseve city | 32 |
| Donetsk city..... | 34 |
| Luhansk city | 38 |
| Pervomaysk city..... | 38 |
| Urban settlement Stanitsa Luhanska | 39 |
| Popasna city | 41 |
| Lysychansk city..... | 42 |
| 1.3. Consequences from mass shelling in the East of Ukraine for the civilian population..... | 44 |
| 2. FEATURES OF PROPERTY RIGHT PROTECTION OF CIVILIANS DURING THE ARMED CONFLICT..... | 46 |
| 2.1. Legal qualification of events in the East of Ukraine from the point of view of international law..... | 48 |
| 2.2. Protection of civilians in armed conflict (international standards)..... | 50 |
| 2.2.1. International humanitarian law | 50 |
| 2.2.2. International human rights law | 53 |
| 2.2.3. Standards and principles of the United Nations and other regional organizations | 57 |
| 2.3. Interference with civilian property through the lens of the Rome Statute..... | 60 |
| 3. PROTECTION OF PROPERTY RIGHTS OF PERSONS AFFECTED BY THE ARMED CONFLICT IN UKRAINE..... | 64 |
| 3.1. Procedures within the national legislation of Ukraine | 64 |
| 3.2. Judicial procedure and its effectiveness..... | 66 |
| 3.3. The national investigation | 69 |
| CONCLUSIONS AND RECOMMENDATIONS | 74 |
| RECOMMENDATIONS..... | 77 |

У доповіді аналізуються масштаби руйнувань житлових будинків внаслідок бойових дій у Донецькій та Луганській областях, ймовірні порушення норм міжнародного гуманітарного права, які могли призвести до пошкодження чи руйнування житла цивільних громадян, вплив масових обстрілів на населення регіону, особливості захисту майнових прав цивільних осіб під час збройного конфлікту. Надаються рекомендації з метою покращення ситуації.

Наукове видання

Збройний конфлікт на сході України: шкода, завдана житлу цивільного населення

(англійською мовою)

Автори доповіді:

Н. М. Мельник, А. В. Павлюк, М. В. Петров, О. В. Глушко

Відповідальний за випуск: *Н. М. Мельник*

Редактор: *Н. М. Мельник*

Верстка: *О. А. Мірошниченко*

Підписано до друку 05.09.2019

Формат 60×84 1/8. Папір крейдовий. Гарнітура MetaPro

Умов. друк. арк. 9,53. Облік.-вид. арк. 9,02

Наклад — 100 прим. Зам. № ПЛ-03/19

ТОВ «ВИДАВНИЦТВО ПРАВА ЛЮДИНИ»

61002, Харків, вул. Дарвіна, 7, кв. 35

Свідоцтво Державного комітету телебачення і радіомовлення України

серія ДК № 4783 від 23.10.2014 р.

ел. пошта: distribution.hr.publisher@gmail.com