

# Compensation for War Damage: Essential Steps



Russia's war against Ukraine has long failed to comply with the provisions on the laws of war: not only military infrastructure objects but also civilian ones are destroyed, including property of Ukrainian and foreign business. Sometimes such deliberate destruction occurs with extreme cynicism. It can definitely not be forgiven. It should be dealt with in a legally sound manner instead. Mechanisms for compensating the damage caused to the individual property of an enterprise or to whole property complexes as a result of military actions are being discussed everywhere. This issue is complicated and at the same time, strategically essential for the struggle against the occupier and subsequent effective recovery of all the damages incurred from it.



## What steps should currently be taken to obtain compensation?

The sources and procedures for compensating for property damaged or destroyed as a result of military action may be different. But the more accurate and correct steps the business takes now, the more chance it gets to recover damages inflicted hereafter. Regardless of a further scenario, we suggest that every person seeking a refund takes the steps given below.

### **COMPLETE RECORDING AND DESCRIPTION OF DAMAGE CAUSED**

**A proper and detailed recording by the enterprise of the damage caused to it is, perhaps, the most important step towards obtaining a fair and just compensation. Therefore, business needs to be especially responsible for this, given the necessity for such actions.**



#### **Preservation of documents**

During combat actions at the location of the enterprise or close to it, authorized persons, first of all, must ensure preservation of major documents of the legal entity, in particular: (1) statutory documents, (2) documents on legal entity's business activity, (3) accounting documents, (4) inventory documents,



(5) property titles and technical passports, (6) design estimates, (7) legal documents for equipment and items/goods inside the enterprise.

These documents should be scanned and saved on special file storage servers, for instance, **Google Drive**. The original documents should be moved to a safe place. If part of the documents has been lost, one must ensure their restoration as soon as possible. The importance of this step lies in their further use to establish objective damage caused to the enterprise.



## Recording of circumstances by authorized authorities

In case the enterprise's property was damaged or destroyed and it is possible to call representatives of the National Police of Ukraine and the State Emergency Service to the scene, it should be done. These services will officially record the damage caused to the enterprise. Copies of relevant documents should be kept. However, it is clear that in areas of active combat actions, this option is likely to be unavailable.



## Independent recording of property condition

**Independent recording of the damage and condition of the property should be made with the simultaneous combination of the following methods:**

### 1) PHOTO AND VIDEO RECORDING

First of all, before recording, it is necessary to ensure that things are immutable.

**Secondly**, it is necessary to turn on geolocation services in the application, so that the location can be recorded.

**Thirdly**, if possible, turn on automatic video file saving on special file storage servers.

**Fourthly**, before recording the video for personal use, the exact location of the object should be recorded with all necessary details, as well as the name of the device used for recording and its serial number (including IMEI).



**After that recording may be started.**

At the very beginning, you should point the camera at yourself and clearly introduce yourself (specifying full name, date of birth, passport data and relation to the enterprise, as well as state the exact video shooting date and place, name of the device it is shot with (it was previously specified in the notes).

The date, time and circumstances under which the property was damaged should be further mentioned. Then, in the video document, the condition of items around should be displayed with detailed description of the nature of damage. The photo should capture a landscape view (possibly using a panoramic mode), as well as a close-up of individual objects having a particularly significant value and have been damaged.



### 2) DRAWING UP A SCHEDULE OF CONDITION

**The Schedule of Condition shall be the written support file to the preliminary created video document. There is no approved sample, and therefore this Schedule may be drafted in an arbitrary form.**

However, the following information should be specified:

1. Schedule details, its drafting date and time;
2. Personal information about an individual drafting such document shall (preferably a commission of employees or authorized persons of the enterprise);
3. Identification information on the enterprise or its property that has been damaged;
4. The nature of damage to the property;
5. Circumstances of the damage to property.

Moreover, using the plan of premises from the technical passport, a scheme of localization of destroyed or damaged property should be drafted, if possible.



## Obtaining testimonies from witnesses and others evidence

If there are video surveillance cameras close to the scene, it is necessary to obtain their recording of the moment of damage to the enterprise or its property at all costs. In addition, if there were witnesses to the event, it is mandatory to record their testimonies.

It is preferably to do it both in the written and video format. In each format it is worth recording the identification information of the witness, as well as directly his/her evidence regarding circumstances of the damage to the enterprise and other related information. In the written form, the witness shall affix his/her signature, credibility and authenticity of which shall be certified either by a notary or by an official of the local self-government authority. It is also necessary to collect as many photos and videos of the condition of property destroyed prior to the beginning of the military aggression against Ukraine as possible.

In addition, as much evidence as possible should be obtained regarding the cause of damage to property specifically by the Russian servicemen (if specific perpetrators are known, it should be recorded as well). Such evidence may be received from the media (Ukrainian and foreign), official statements of officials concerning shelling by Russia of the territory where the enterprise is located, or about deployment of a hostile army in this territory. Besides, it may be direct evidence of the presence of the hostile army in the territory where the enterprise is located (lost documents, items, etc.), or even information from the occupiers' social networks.



## Preservation of collected evidence

All the collected evidence should be kept by authorized persons of the enterprise in a safe place. It is desirable to create multiple copies of each evidence. We also recommend to submit evidence copies only to all institutions. At least this advice is almost imperative for submitting evidence to the national criminal justice bodies.



## INITIATION AND SUPPORT OF CRIMINAL PROCEEDINGS IN UKRAINE

Every crime committed in the territory of Ukraine should fall within the jurisdiction of the national criminal justice bodies of Ukraine. As part of the pre-trial investigation in absentia and conviction in absentia, it is possible not only to hold perpetrators criminally responsible, but also, and most importantly, upholding the injured party's (a natural's or legal entity's) civil claim against the perpetrator. Execution of the same judgement is likely to be possible at the expense of the nationalized and seized property of Russia and its residents.

However, within criminal proceedings, it is important to obtain the victim's status, record destruction, damage, loss of profit, conduct relevant expert examinations, gather evidence, file a civil lawsuit in criminal proceedings, maintain the victim's positions in court proceedings and provide legal support for execution of the judgement.



## APPEALING TO PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT (ICC)

Application to the ICC Prosecutor by the person seeking reparation is one of the major steps towards obtaining a compensation through an international criminal justice body. It should be noted that the ICC is an effective mechanism in the fight against commissioning of the gravest crimes being of concern to the international community. In addition, the ICC is the first international judicial body in which ordinary persons may participate and seek appropriate compensation. It is possible to contact the ICC Prosecutor via special web resource. At the same time, sufficient evidence should be collected before doing so.

# SUBMITTING APPLICATIONS TO CREATED ONLINE RESOURCES

There are at least three online resources that can help a person to receive compensation in Ukraine. They should not be overlooked.



The first one is the **Diia public services portal**.

It is the government-launched application, which includes the opportunity to provide information on damage or destruction of residential developments as a result of Russia's military aggression (as of the date of the article publication). Though, we believe that there will be other damage compensation opportunities added over time.



The second online resource is **WarCrimes.gov.ua** established by the Prosecutor General's Office (PGO) along with Ukrainian and international partners.

The purpose of the resource is to collect due evidence regarding all war crimes and crimes against humanity committed by the Russian army in Ukraine. Ukraine intends to use them for Ukrainian and international courts and tribunals. This, in turn, is a factor influencing the scope of Russia's liability and the amount of reparations recovered from it.



The third resource is **"Russia will pay" (damaged.in.ua)**.

With the help of this resource, persons can report on the material damage inflicted to them by filling an electronic form. The government will use this information for estimation of losses to further require compensation of a proportionate funds amount from Russia that will be able to cover the damage caused to both individuals and legal entities.

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"For all who take the sword will perish by the sword." Moreover, the occupier will repay the value of all that has been damaged or destroyed by it. At the same time, the compensation mechanism may be different: both international and domestic.

Business should assert its position in all possible institutions mentioned in the article. Meanwhile, it is necessary to ensure the preservation of documents of the legal entity, to record the damage caused independently and with the help of competent authorities, to collect all possible evidence of the circumstances of the damage, initiate criminal proceedings within the national criminal justice, apply to the ICC Prosecutor, an international criminal justice body, submit applications to created online resources and gradually take a number of other steps depending on the reimbursement mechanism selected.



For all pressing issues regarding the implementation of the mechanism to ensure collection of a fair and just compensation, please contact Legal Alliance Partner  
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