

RESEARCH NOTE

HOW UKRAINE HELPS CIVILIAN HOSTAGES AND THEIR RELATIVES?

A Year Passed Since Law
of Ukraine "On Social and Legal
Protection of Persons Deprived
of Personal Freedom as a Result
of Armed Aggression Against
Ukraine, and Their Family Members"
Came in Force

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Kyiv, 2023

How Ukraine Helps Civilian Hostages and Their Relatives? A Year Passed Since Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members” Came in Force. Research Note. – Editor: O.Luniova. – Kyiv, 2023.

The research note reviewing the Law implementation practice and presenting recommendations on its provisions improvement is based on the analysis of Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members”, no 2010-IX of 26 January 2022 (came in force on 19 November, 2022), articles, and governmental bodies’ responses on its implementation, taking into account the experience of human rights NGOs and position of the relatives of the persons deprived of personal freedom as a result of armed aggression against Ukraine.

The research note is prepared by experts of the Crimean Human Rights Group, ZMINA Center for Human Rights, CrimeaSOS, Media Initiative for Human Rights, EastSOS CF, the organizations acting in the human rights sphere, taking care of persons deprived of personal freedom as a result of armed aggression against Ukraine, and documenting war crimes and crimes against humanity.

TRANSITION

Transition Promotion Program

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INTRODUCTION

Having unleashed the armed aggression against Ukraine in 2014, the Russian Federation immediately initiated the practice of forced disappearances and persecution of Ukrainian citizens who were not loyal to the occupation regime or expressed a pro-Ukrainian position. This caused an appearance of the new category of victims: prisoners of war and civilian hostages or “civilian persons detained in connection with the conflict” — that may also include persons persecuted for political or religious reasons in the temporarily occupied territories of Ukraine.

Starting from 2018, Ukraine has been providing the aid to the families of persons persecuted for political reasons as well as due to their public, political or professional activities. This aid was provided in accordance with the governmental resolution¹ that established, for instance, giving a) annual state monetary assistance to the persons that were verified as persons deprived of personal freedom as a result of armed aggression against Ukraine, or their family members while such persons were held in the places of unfreedom; b) one-time state monetary assistance to such persons after their release; c) one-time state monetary assistance in case of death (decease) of such a person; d) reimbursement of expenses for professional legal services delivered to the persons verified as persons deprived of personal freedom as a result of armed aggression against Ukraine, to defend their rights and legal interests.

To approve decisions on providing such aid, the Inter-Departmental Commission on considering the assistance to the persons deprived of personal freedom by illegal military formations, the occupation administration and/or governmental bodies of the Russian Federation in the temporarily occupied territories of Ukraine and/or the territory of the Russian Federation due to the public or political activity of such persons as well as the support for such persons and their family members, was set up at the Ministry of Reintegration of Temporarily Occupied Territories.

The number of applications to the Commission has been increasing year-by-year. For instance, in 2018 77 Ukrainian citizens unlawfully deprived of personal freedom as a result of armed aggression against Ukraine received UAH100,000 of budget funds. In 2019 this number was 103 persons, in 2020 — 116, 2021 — 140.

In 2021, upon the initiative of President of Ukraine, Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members” (hereinafter the Law), no 2010-IX of 26 January 2022 (came in force on 19 November 2022), was adopted. The Law establishes a procedure for verifying the fact of deprivation of personal freedom as a result of armed aggression against Ukraine as well as key benefits for the persons whose

1 <https://zakon.rada.gov.ua/laws/show/328-2018-%D0%BF#Text>

freedom is unlawfully restricted by the Russian Federation, and their family members.

The Law, *inter alia*, stipulates giving annual and one-time monetary assistance, supporting the legal services payment, offering temporary accommodation, education privileges, etc.

However, though the year passed since the Law enforcement day, not all its provisions have been properly implemented, and the Law itself does not sufficiently support exercising rights and additional benefits for those whose freedom was restricted as a result of armed aggression against Ukraine, and their family members.

The primary purpose of this research is to assess the status of implementing Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members” for the year since its enforcement, and to make recommendations on improving the Law provision practical achievement.

METHODOLOGY

To comprehensively assess the implementation status of Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members”, the expert group of NGOs², members of UKRAINE. 5:00AM Coalition³, reviewed the norms of valid Law version, and prepared requests for access to public information to the governmental bodies carrying out the mandates according to the Law. The best practices of organizations dealing for a long time with protection of persons deprived of freedom as a result of armed aggression against Ukraine, including representatives of the organizations that became members of the Commission on verifying the person as deprived of personal freedom as a result of armed aggression against Ukraine, were considered.

To assess the Law implementation practice in a more detailed way, Kharkiv Institute for Social Research CA held two focus group interviews in October – November 2023, that involved:

- Relatives of the persons verified as deprived of freedom as a result of armed aggression against Ukraine;
- Members of families who have addressed the competent bodies to verify their relative as person deprived of freedom as a result of armed aggression against Ukraine;
- Persons verified as deprived of freedom as a result of armed aggression against Ukraine.

The focus groups included both persons living in the Government of Ukraine controlled territory and persons staying in the temporary occupied territory of Ukraine or who have left abroad (zoom platform interviews). The total number of interviewed persons is 14 (12 women, 2 men).

The focus group interviews were aimed at experience of receiving the state aid due to unlawful incarceration of the person by the occupying power, by such persons themselves or their family members as well as perception of governmental actions on providing such aid.

The research note on the Law implementation practice as well as recommendations for its provisions improvement were developed based on the analysis of the Law articles, and governmental bodies' responses regarding the Law implementation, taking into account the experience of human rights NGOs and position of the relatives of the persons deprived of personal freedom as a result of armed aggression against Ukraine.

² Crimean Human Rights Group, ZMINA Center for Human Rights, CrimeaSOS, Media Initiative for Human Rights, EastSOS CF

³ <https://www.5am.in.ua/en>

EXECUTIVE SUMMARY

- 1.** Law of Ukraine “On Social and Legal Protection of Persons Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine, and Their Family Members”, no 2010-IX of 26 January 2022, came in force on 19 November 2022. The Law establishes a framework and a procedure to verify the fact of personal freedom deprivation as a result of armed aggression against Ukraine, and to maintain the Unified Register of Persons Verified as Deprived of Personal Freedom as a Result of Armed Aggression Against Ukraine. Though the Law does not define the concept “civilian hostages”, it states the categories of citizens of Ukraine covered by this Law. In addition, the Law stipulates some additional benefits and rights granted to such persons (e.g., monetary payments (one-time and annual monetary assistance, reimbursement of expenses for professional legal services delivered to such persons to defend their rights and legal interests) as well as other types of state aid.
- 2.** The Commission on verifying the person as deprived of personal freedom as a result of armed aggression against Ukraine functions at the Ministry of Reintegration of Temporarily Occupied Territories. The Commission consists of representatives of governmental bodies and NGOs acting in the human rights sphere, taking care of persons deprived of personal freedom as a result of armed aggression against Ukraine, documenting facts and crimes of armed aggression against Ukraine, and doing searching. This Commission is mandated to take a decision on verifying the deprivation of personal freedom and fix the date when the period of deprivation of personal freedom has started, and the date of release when the person has been released from custody. The Commission members take decisions in camera and have little communication with the families of civilian hostages and the released persons. As a result, people whose needs satisfying this Commission was set up for distrust its activity to a certain extent.
- 3.** The Ministry of Reintegration has informed that as of 17 November 2023, eight meetings of the Commission were held. Upon their outcomes, 4,337 persons (3,574 military and 763 civilians) were verified as deprived of freedom, including 1,953 freed from captivity. Since the beginning of 2023, UAH 422mln has been paid to the freed from captivity as well as families of POWs, civilian hostages, and political prisoners.
- 4.** Though some types of aid are assigned and granted, the abovementioned Law and the by-law regulations adopted for its enforcement, are not implemented in full that have been many times pointed out by the human rights organizations

as well as the persons deprived of personal freedom as a result of armed aggression against Ukraine and their relatives. At the same time, when speaking about the overall perception of acts of State by the relatives of the persons deprived of personal freedom as a result of armed aggression against Ukraine, they would rather feel no care on behalf of the State than feel it.

- 5.** As to the major issues of concern in the Commission activity to be paid attention to, these may be mentioned: 1) lack of transparency in the Commission activity, lack of understanding how the decisions on verifying or not verifying the fact of deprivation of personal freedom as a result of armed aggression against Ukraine are taken; 2) challenges in proving the fact of depriving a civilian of personal freedom as a result of armed aggression against Ukraine; 3) failure to communicate to the applicants how the situation should be described in the application for verifying the fact of deprivation of personal freedom as a result of armed aggression against Ukraine; 4) lack of possibility to confirm the place of person's incarceration; 5) need to introduce transparent procedures for electing the public representatives, and to re-elect the Commission composition on a regular basis; 6) loading of the Commission with applications regarding POWs when the fact of their captivity has been confirmed by relevant documents issued by Ukrainian governmental bodies (e.g., by the Ministro of Defense); 7) lack of methods guidance on considering specific complicated cases.
- 6.** The key challenge for persons staying in the temporarily occupied territory of Ukraine (in particular in the AR of Crimea, in the City of Sevastopol) to receive the payments, when the full-scale armed aggression against Ukraine started, became the lost possibility of receiving the assistance via the attorneys (lawyers). Such situation was in place in 2022 and 2023, but on November 10, 2023, the Government approved relevant changes that made it possible for the Commission, for the period of martial law in force, to empower the person authorized by the person verified as deprived of personal freedom as a result of armed aggression against Ukraine or his/her family member, to receive an annual state monetary assistance for the verified person and reimbursement of the expenses for the professional legal services at this authorized person's account.
- 7.** The persons verified as deprived of personal freedom as a result of armed aggression against Ukraine are also guaranteed the reimbursement of expenses for professional legal services delivered to such persons to defend their rights and legal interests. However, the human rights organizations as well as the relatives of the persons deprived of personal freedom as a result of armed aggression against Ukraine, emphasize that the funds allocated by the State to reimburse the expenses for the professional legal services are critically insufficient. As of now, the ceiling for reimbursement is UAH53,680, while the cost of lawyers' services for one trip to the penal colony or other action within the

criminal proceedings is rated in hundreds and thousands of dollars. In addition, the families face challenges in verifying their payments for lawyers' services to the Commission.

8. The focus group interview data make it possible to claim that in fact, relatives of civilian hostages do not know and do not use other than financial forms of State aid. Some aid forms are not relevant yet for the families questioned during the focus group interviews. For instance, currently education benefits have no value for the families with pre-school or school age children that are provided with any State aid. However, families with small children, particularly, multi-child ones, need dedicated care and support.

RECOMMENDATIONS

- 1.** It makes sense to mandate the Ministry of Reintegration of Temporarily Occupied Territories to supervise the Law implementation, monitor its achievement status, and advise other central executive bodies on improving the Law implementation status as well as ensuring the rights and freedoms of persons deprived of personal freedom as a result of armed aggression, and their family members.
- 2.** It is important to grant Commission members access to the information on all applications for verifying the fact of deprivation of personal freedom as a result of armed aggression against Ukraine, sent to the Commission. In this case the Commission members should be provided with authorized remote (distant) access to the applications submitted by the applicants and the documents.
- 3.** The Commission members should collect and summarize the information available at structural units of each agency (organization): on the fact of criminal proceedings, the person's status – affected person, witness, time periods for submission the statements to the law enforcement bodies, in order to clarify the circumstances of detaining, incarcerating, and releasing the citizens detained due to the armed aggression of the Russian Federation, in a more consistent and comprehensive manner, and improve the Commission work quality.
- 4.** To efficiently implement the Commission task on reviewing the practice of enforcing laws on social and legal protection of persons verified as deprived of personal freedom as a result of armed aggression.
- 5.** It is advised that the Ministry of Integration together with the NGOs should update (elaborate) a template of application for verifying the fact of deprivation of personal freedom as a result of armed aggression against Ukraine as well as prepare explanations for the most complete presentation (description) of the situation the applicant applies with.
- 6.** It is necessary to plan and manage a wide joint (Ministry of Integration, MFA, Representative Office of President of Ukraine to the AR of Crimea, Coordination Headquarters for the Treatment of Prisoners of War, NGOs) information campaign about rights of persons deprived of personal freedom as a result of armed aggression against Ukraine and their families as well as plan of actions to exercise these rights and receive additional benefits, among the target audience.
- 7.** To draft and approve procedures for selecting NGO representatives to participate in the Commission work.

- 8.** To draft amendments to the Law to ensure:
Inputting automatically the information on depriving POWs of personal freedom into the Unified Register;

Specifying the Commission composition: in addition to the MIA, the National Police of Ukraine and the State Border Guard Service of Ukraine should be also represented in the Commission. It also makes sense to increase the number of Ministry of Reintegration representatives to two members with assigned functions of Chairperson and Secretary of the Commission.
- 9.** It is advised that the Ministry of Integration should regularly review and summarize the Commission work practices, and produce, together with the Commission members, recommendations on considering the applications to the Commission.
- 10.** To exclude the obligation of the relatives to submit the data verifying the costs incurred to pay for professional legal services from item 6 of the Procedure of assigning and paying the assistance to the persons verified as deprived of personal freedom as a result of armed aggression against Ukraine and their family members.
- 11.** To introduce recording the persons verified as deprived of personal freedom as a result of armed aggression against Ukraine who apply for receiving state services guaranteed by the Law.

